Laws 1993
First Regular Session, Forty-First Legislature

CONSTITUTIONAL AMENDMENT 1

PROPOSING AN AMENDMENT TO ARTICLE 12 OF THE CONSTITUTION OF NEW MEXICO BY ELIMINATING THE RECALL OF LOCAL SCHOOL BOARD MEMBERS.

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

Section 1

Section 1. It is proposed to amend Article 12 of the constitution of New Mexico by repealing Section 14.

Section 2

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date which may be called for that purpose. SJR 15

CONSTITUTIONAL AMENDMENT 2

PROPOSING AN AMENDMENT TO ARTICLE 2, SECTION 14 OF THE CONSTITUTION OF NEW MEXICO TO INCREASE THE MINIMUM NUMBER OF SIGNATURES REQUIRED ON A GRAND JURY PETITION TO THE GREATER OF TWO PERCENT OF THE REGISTERED VOTERS OF THE COUNTY OR TWO HUNDRED REGISTERED VOTERS.

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

Section 1

Section 1. It is proposed to amend Article 2, Section 14 of the constitution of New Mexico to read:

"No person shall be held to answer for a capital, felonious or infamous crime unless on a presentment or indictment of a grand jury or information filed by a district attorney or attorney general or their deputies, except in cases arising in the militia when in actual service in time of war or public danger. No person shall be so held on information without having had a preliminary examination before an examining magistrate, or having waived such preliminary examination.

A grand jury shall be composed of such number, not less than twelve, as may be prescribed by law. Citizens only, residing in the county for which a grand jury may be convened and qualified as prescribed by law, may serve on a grand jury. Concurrence necessary for the finding of an indictment by a grand jury shall be prescribed by law; provided, such concurrence shall never be by less than a majority of those who compose a grand jury, and, provided, at least eight must concur in finding an indictment when a grand jury is composed of twelve in number. Until otherwise prescribed by law a grand jury shall be composed of twelve in number of which eight must concur in finding an indictment. A grand jury shall be convened upon order of a judge of a court empowered to try and determine cases of capital, felonious or infamous crimes at such times as to him shall be deemed necessary, or a grand jury shall be ordered to convene by such judge upon the filing of a petition therefor signed by not less than the greater of two hundred registered voters or two percent of the registered voters of the county, or a grand jury may be convened in any additional manner as may be prescribed by law.

In all criminal prosecutions, the accused shall have the right to appear and defend himself in person, and by counsel; to demand the nature and cause of the accusation; to be confronted with the witnesses against him; to hae the charge and testimony interpreted to him in a language that he understands; to have compulsory process to compel the attendance of necessary witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed."

Section 2

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date which may be called for that purpose. SJR 5

CONSTITUTIONAL AMENDMENT 3

PROPOSING AN AMENDMENT TO ARTICLE 12, SECTION 13 OF THE CONSTITUTION OF NEW MEXICO TO ADD A STUDENT MEMBER TO THE BOARD OF REGENTS AT EACH PUBLIC INSTITUTION OF HIGHER EDUCATION.

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

Section 1

Section 1. It is proposed to amend Article 12, Section 13 of the constitution of New Mexico to read:

"The legislature shall provide for the control and management of each of said institutions, except the university of New Mexico, by a board of regents for each institution, consisting of five members, four of whom shall be qualified electors of the state of New Mexico, one of whom shall be a member of the student body of the

institution and no more than three of whom at the time of their appointment shall be members of the same political party; provided, however, that the student body member provision in this section shall not apply to the New Mexico school for the deaf, the New Mexico
military institute, the northern New Mexico state school or the New Mexico school for the visually handicapped, and for each of those four institutions all five members of the board of regents shall be qualified electors of the state of New Mexico. The governor shall nominate and by and with the consent of the senate shall appoint the members of each board of regents for each of said institutions. The terms of said nonstudent members shall be for six years, provided that of the five first appointed the terms of two shall be for two years, the terms for two shall be for four years, and the term of one shall be for six years. Following the approval by the voters of this amendment and upon the first vacancy of a position held by a nonstudent member on each eligible institution's board of regents, the governor shall nominate and by and with the consent of the senate shall appoint a student member to serve a two-year term. The governor shall select, with the advice and consent of the senate, a student member from a list provided by the president of the institution. In making the list, the president of the institution shall give due consideration to the recommendations of the student body president of the institution.

The legislature shall provide for the control and management of the university of New Mexico by a board of regents consisting of seven members, six of whom shall be qualified electors of the state of New Mexico, one of whom shall be a member of the student body of the university of New Mexico and no more than four of whom at the time of their appointment shall be members of the same political party. The governor shall nominate and by and with the consent of the senate shall appoint the members of the board of regents. The present five members shall serve out their present terms. The two additional members shall be appointed in 1987 for terms of six years. Following the approval by the voters of this amendment and upon the first vacancy of a position held by a nonstudent member on the university of New Mexico's board of regents, the governor shall nominate and by and with the consent of the senate shall appoint a student member to serve a two-year term. The governor shall select, with the advice and consent of the senate, a student member from a list provided by the president of the university of New Mexico. In making the list, the president of the university of New Mexico shall give due consideration to the recommendations of the student body president of the university.

Members of the board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given such member. The supreme court of the state of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove members of the board under such rules as it may promulgate, and its decision in connection with such matters shall be final."

Section 2

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose. SJR 18

CONSTITUTIONAL AMENDMENT 4

PROPOSING TO AMEND ARTICLE 5, SECTION 14 OF THE CONSTITUTION OF NEW MEXICO TO CHANGE THE NAME OF THE STATE HIGHWAY COMMISSION TO THE STATE TRANSPORTATION COMMISSION.

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

Section 1

Section 1. It is proposed to amend Article 5, Section 14 of the constitution of New Mexico to read:

"There is created a "state transportation commission." The members of the state transportation commission shall be appointed, shall have such power and shall perform such duties as may be provided by law. Notwithstanding the provisions of Article 5, Section 5, of the constitution of New Mexico, state transportation commissioners shall only be removed as provided by law."

Section 2

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date which may be called for that purpose. HJR2

CONSTITUTIONAL AMENDMENT 5

PROPOSING AN AMENDMENT TO ARTICLE 4, SECTION 10 OF THE CONSTITUTION OF NEW MEXICO TO PROVIDE LEGISLATIVE PER DIEM AND MILEAGE AND OTHER EXPENSES AT AN AMOUNT ALLOWED UNDER THE INTERNAL REVENUE CODE.

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

Section 1

Section 1. It is proposed to amend Article 4, Section 10 of the constitution of New Mexico to read:

"A. Each member of the legislature shall receive per diem for each day's attendance during the session at the Internal Revenue Code rate for per diem expenses

in the city of Santa Fe and the Internal Revenue Code standard mileage rate for each mile traveled in going to and returning from the seat of government by the usual traveled route, weekly each session as defined by Article 4, Section 5 of this constitution.

B. Each member of the legislature shall receive monthly, for additional expenses incurred in performing the duties of office, the sum of one day's per diem; provided that if a member represents a multicounty district, that member shall receive monthly a sum equal to two days' per diem.

C. In addition to the per diem provided in Subsections A and B of this section, each whip and caucus chairman in the house of representatives and the senate shall receive monthly a sum equal to three days' per diem.

D. In addition to the per diem provided in Subsections A and B of this section, each floor leader in the house of representatives and the senate shall receive monthly a sum equal to four days' per diem.

E. In addition to the per diem provided in Subsections A and B of this section, the speaker of the house of representatives and the president pro tempore of the senate shall receive monthly a sum equal to six days' per diem.

F. Each member of the legislature shall receive, for out-of-state per diem, the sum of not more than that per diem rate authorized by the Internal Revenue Code for that municipality or place of destination.

G. Each member of the legislature shall receive per diem expense and mileage at the same rates as
provided in Subsections A and F of this section for service at meetings required by legislative committees established by the legislature to meet in the interim between sessions.

H. Each member of the legislature shall receive no other compensation, perquisite or allowance."

Section 2

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date which may be called for that purpose. HJR 8

CONSTITUTIONAL AMENDMENT 6

PROPOSING AN AMENDMENT TO ARTICLE 9, SECTION 10 OF THE CONSTITUTION OF NEW MEXICO TO AUTHORIZE COUNTIES TO BORROW

MONEY TO REPAIR PUBLIC BUILDINGS AND TO ACQUIRE REAL ESTATE FOR OPEN SPACE AND OTHER PUBLIC PURPOSES.

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

Section 1

Section 1. It is proposed to amend Article 9, Section 10 of the constitution of New Mexico to read:

"No county shall borrow money except for the following purposes:

A. erecting, remodeling, repairing and making additions to necessary public buildings;

B. constructing or repairing public roads and bridges;

C. constructing or acquiring a system for supplying water, including the acquisition of water and water rights, necessary real estate or rights-of-way and easements;

D. constructing or acquiring a sewer system, including the necessary real estate or rights-of-way and
easements;

E. constructing an airport or sanitary landfill, including the necessary real estate;

F. acquiring necessary real estate for open space and other public purposes; or

G. the purchase of books and other library resources for libraries in the county.

In such cases, indebtedness shall be incurred only after the proposition to create such debt has been submitted to the registered voters of the county and approved by a majority of those voting thereon. No bonds issued for such purpose shall run for more than fifty years. Provided, however, that except as authorized in Subsection A of this section, no money derived from general obligation bonds issued and sold hereunder shall be used for maintaining existing buildings and, if so, such bonds shall be invalid."

Section 2

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date which may be called for that purpose. HJR 9

CONSTITUTIONAL AMENDMENT 7

PROPOSING AN AMENDMENT TO ARTICLE 14 OF THE CONSTITUTION OF NEW MEXICO TO CHANGE THE NAME OF THE NEW MEXICO STATE HOSPITAL AT LAS VEGAS TO THE NEW MEXICO CENTER FOR GERONTOLOGY AND PSYCHIATRY.

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

Section 1

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

"The penitentiary at Santa Fe, the miners' hospital at Raton, the New Mexico center for gerontology and psychiatry at Las Vegas, the New Mexico boys' school at Springer, the girls' welfare home at Albuquerque, the Carrie Tingley crippled children's hospital at Truth or Consequences and the Los Lunas mental hospital at Los Lunas are hereby confirmed as state institutions."

Section 2

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date which may be called for that purpose. HJR 10

CONSTITUTIONAL AMENDMENT 8

PROPOSING AN AMENDMENT TO ARTICLE 20 OF THE CONSTITUTION OF NEW MEXICO TO ADD A NEW SECTION TO PERMIT A STATEWIDE LOTTERY AND CERTAIN GAMES OF CHANCE.

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

Section 1

Section 1. It is proposed to amend Article 20 of the constitution of New Mexico by adding a new Section 22 to read:

"A. A state operated lottery to be conducted statewide and wagering on video machine games of chance to be conducted statewide shall be lawful from the first moment of the ninetieth day following the adjournment of the next regular session of the legislature held subsequent to any general election or special election in which a majority of voters, voting on the question, vote in favor of the adoption of this amendment.

B. The legislature may enact such laws governing the conduct of the lottery and games of chance as deemed necessary and in the public interest, including imposition of taxes, wagering limits, restrictions on the hours of operation and limitations on the locations and facilities where wagering can occur."

Section 2

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at the next special election prior to that date which may be called for that or any other purpose. HJR 11

CONSTITUTIONAL AMENDMENT 9

PROPOSING AN AMENDMENT TO ARTICLE 9, SECTION 14 OF THE CONSTITUTION OF NEW MEXICO TO PERMIT PUBLIC SUPPORT OF ECONOMIC DEVELOPMENT OPPORTUNITIES WHEN AUTHORIZED BY LAW.

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

Section 1

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

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

A. nothing in this section shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons;

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

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

D. nothing in this section shall be construed to prohibit the state or a county or municipality from
creating new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if this assistance is granted pursuant to general implementing legislation that is approved by a majority vote of those elected to each house of the legislature. The implementing legislation shall include adequate safeguards to protect public money or other resources used for the purposes authorized in this subsection. The implementing legislation shall further provide that:

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

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

Section 2

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date which may be called for that purpose. HJR 12

CHAPTER 1

RELATING TO THE LEGISLATIVE BRANCH OF GOVERNMENT; APPROPRIATING FUNDS FOR THE EXPENSE OF THE FORTY-FIRST LEGISLATURE, AND FOR INTERIM LEGISLATIVE EXPENSES FOR THE LEGISLATIVE COUNCIL SERVICE, THE LEGISLATIVE FINANCE COMMITTEE, THE LEGISLATIVE EDUCATION STUDY COMMITTEE AND THE SENATE RULES COMMITTEE; DECLARING AN EMERGENCY.

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

Section 1

Section 1. There is appropriated for the expense of the legislative department of the state of New Mexico for the forty-first legislature, for per diem and mileage of the

members, for salaries of employees and for other expenses of the legislature, the sum of four million four hundred seventy-five thousand six hundred seventy dollars ($4,475,670) or so much thereof as may be necessary for such purposes.

Section 2

Section 2. The expenditures referred to in Section 1 above are as follows:

A. per diem for senators .....$ 189,000;

B. per diem for members of the house of representatives.....$ 315,000;

C. mileage traveled by members of the senate going to and returning from the seat of government by the usually traveled route, one round trip .....$ 2,952;

D. mileage traveled by members of the house of representatives going to and returning from the seat of government by the usually traveled route, one round trip.....$ 4,980;

E. salaries and employee benefits of senate employees $1,279,857;

F. salaries and employee benefits of house of representatives employees.....$1,285,148;

G. for expense of the senate not itemized above three hundred sixty-seven thousand, one hundred ninety-four dollars ($367,194). No part of this item may be transferred to salaries or employee benefits;

H. for expense of the house of representatives not itemized above two hundred ninety-seven thousand dollars ($297,000). No part of this item may be transferred to salaries or employee benefits;

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

J. for session expenses of the legislative council service, the joint billroom and joint legislative switchboard seven hundred thirty-four thousand five hundred thirty-nine dollars ($734,539) to be disbursed upon vouchers signed by the director of the legislative council service. Following adjournment of the session, expenditures

authorized under Subsections E through H of this section shall be disbursed upon vouchers signed by the director of the legislative council service.

Section 3

Section 3. Typewriters and computers purchased by the legislature are to be placed in the custody of the legislative council service by the chief clerks of the respective houses as soon after the session as practicable. Typewriters and computers used for two consecutive regular sessions and not needed for legislative use may be offered for resale to state agencies, public officials, public institutions and local public bodies at the original price paid by the legislature less ninety dollars ($90.00), and the proceeds shall be deposited in the "legislative information system fund", hereby created. Any typewriters and computers purchased by the legislature and held for a period of more than two consecutive regular sessions may be sold at a price found to be the fair market price by the legislative council.

Section 4

Section 4. Under the printing contracts entered into for the fortieth legislature, second session and the forty-first legislature, first session, the chairman of the committees' committee of the senate, subject to the approval of the committee, and the speaker of the house are authorized and directed to provide for the printing of all bills, resolutions, joint resolutions, memorials and joint memorials introduced in the senate or house, the printing of the weekly bill locator and the printing of all necessary stationery required for use in the respective houses. They are further directed to provide for the purchase of all supplies necessary for use in the respective houses within the appropriation provided. The orders for printing, stationery and supplies shall be approved by the chairman of the committees' committee in the senate or by the speaker for the house.

Section 5

Section 5. For the first session of the forty-first legislature, bills, resolutions, joint resolutions, memorials and joint memorials delivered to the printer shall be returned by the printer to the joint billroom within forty-two hours after they are ordered to be printed. The billroom personnel shall supply a complete file of bills, resolutions, joint resolutions, memorials, joint memorials and other printed distribution materials to the following:

A. two copies to each member of the house and senate;

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

C. upon written request therefor, one copy to each state department, commission, board, institution or agency, each elected state official, each incorporated

municipality, each district attorney, each ex-governor, each member of congress and each public school district in the state; and

D. one copy to two other addresses specified by each individual member of the legislature in that legislator's district.

Section 6

Section 6. Any person not enumerated in the preceding section may secure a complete file of the bills, resolutions, joint resolutions, memorials and joint memorials of the legislature by depositing with the legislative council service the amount of four hundred fifty dollars ($450), which deposit shall be paid to the state treasurer to the credit of the legislative expense fund. Additional single copies of items of legislation shall be sold for fifty cents ($.50) unless the director of the legislative council service shall, because of its length, assign a higher price not to exceed ten cents ($.10) per page. Copies of a daily bill locator, other than those copies furnished each member of the respective houses, shall be supplied by the legislative council service at a charge of ninety dollars ($90.00) for the entire session.

Section 7

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

A. Personal Services	$1,355,358
Employee Benefits	407,414
Travel	36,966
Maintenance & Repairs	72,655
Supplies & Materials	41,196
Contractual Services	129,000
Operating Costs	205,649
Other Operating Costs	65,000
Capital Outlay	77,500
Out-of-State Travel	29,000
Total	$2,419,738;

B. for travel expenses of legislators other than legislative council members, on legislative council business, for committee travel, staff and other necessary expenses for other interim committees and for other necessary legislative expenses for the eighty-second fiscal year, the sum of three hundred eighty-two thousand dollars ($382,000); provided that the legislative council may transfer amounts from the appropriation in this subsection, during the fiscal year for which appropriated, to any other legislative appropriation where they may be needed;

C. for presession expenditures and for necessary contracts, supplies and personnel for interim session preparation, the sum of three hundred two thousand five hundred dollars ($302,500);

D. for the society of legislative clerks and secretaries host committee to perform such functions as are necessary to prepare for a national clerks and secretaries meeting, the sum of fifty thousand dollars ($50,000); and

E. for legal expenses to be incurred in hiring a nationally known constitutional lawyer to work with the legislative council service in addressing issues related to interstate taxation of natural gas pipelines and related interstate tax issues, the sum of fifty thousand dollars ($50,000).

Section 8

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

Personal Services	$1,087,200
Employee Benefits	305,000
Travel	106,400
Maintenance & Repairs	5,200
Supplies & Materials	24,500
Contractual Services	268,000
Operating Costs	73,800
Capital Outlay	33,900
Out-of-State Travel	14,600
Total	$1,918,600.

Section 9

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

Personal Services	$334,200
Employee Benefits	100,900
Travel	37,500
Maintenance & Repairs	11,000
Supplies & Materials	10,500
Contractual Services	11,500
Operating Costs	13,000
Capital Outlay	17,700
Out-of-State Travel	10,000

Total $546,300.

Section 10

Section 10. There is appropriated from the general fund to the legislative council service for the interim duties of the senate rules committee the sum of forty-six thousand five hundred eighty-five dollars ($46,585) for the eighty-second fiscal year.

Section 11

Section 11. CATEGORY TRANSFER.--Amounts set out in Sections 7, 8 and 9 of this act are provided for informational purposes only and may be freely transferred among categories.

Section 12

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

HB 1

CHAPTER 2

RELATING TO EDUCATION; AMENDING A CERTAIN SECTION OF THE PUBLIC SCHOOL FINANCE ACT PERTAINING TO THE DETERMINATION OF BASIC PROGRAM UNITS; ESTABLISHING LEGISLATIVE INTENT.

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

Section 1

Section 1. Section 22-8-20 NMSA 1978 (being Laws 1991, Chapter 85, Section 3) is amended to read:

"22-8-20. BASIC PROGRAM UNITS.--The number of basic program units is determined by multiplying the basic program MEM in each grade by the corresponding cost differential factor as follows:

Grades	Cost Differential Factor
1	1.26
2 and 3	1.1
4 through 6	1.0

7 through 12 1.25."

Section 2

Section 2. TEMPORARY PROVISION--LEGISLATIVE INTENT--EIGHTY-FIRST FISCAL YEAR.--Notwithstanding the provisions of Section 22-8-20 NMSA 1978, it is the intent of the legislature that for the eighty-first fiscal year, the state superintendent of public instruction shall calculate the state equalization guarantee distribution and adjust incremental distributions as necessary to achieve a total program cost that includes basic program units for grade one calculated using a cost differential factor not to exceed 1.26.

HB 6

CHAPTER 3

RELATING TO THE LEGISLATURE; AUTHORIZING AND PROVIDING INTERIM DUTIES FOR THE CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES AND THE CHIEF CLERK OF THE SENATE; PROHIBITING PARTISAN ACTIVITY; MAKING AN APPROPRIATION.

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

Section 1

Section 1. A new Section 2-14-1 NMSA 1978 is enacted to read:

"2-14-1. LEGISLATIVE FINDINGS.--The legislature finds that the administration of the legislative branch of state government is becoming increasingly complex. This complexity and the ever-increasing demands on legislative officials necessitate maintaining during the interim the offices of chief clerk of the house of representatives and chief clerk of the senate with necessary support staff."

Section 2

Section 2. A new Section 2-14-2 NMSA 1978 is enacted to read:

"2-14-2. CHIEF CLERKS--INTERIM ACTIVITIES AUTHORIZED.--

A. The chief clerk of the house of representatives and other necessary support staff, not to exceed five full-time equivalents, including the chief clerk, are authorized to operate during the interim between regular legislative sessions to provide support to members of the house of representatives.

B. The chief clerk of the senate and other necessary support staff, not to exceed five full-time equivalents, including the chief clerk, are authorized to operate during the interim between regular legislative sessions to provide support to members of the senate.

C. During the interim, the chief clerks shall report to the legislative council. In addition to the duties established in Section 2-14-3 NMSA 1978, the legislative council may establish other interim duties for the chief clerks. Except as provided in Section 2-14-3 NMSA 1978, any duty established by the legislative council shall not overlap or conflict with any duty established for the legislative council service, the legislative education study committee, the legislative finance committee or any other committee created by statute or by the legislative council."

Section 3

Section 3. A new Section 2-14-3 NMSA 1978 is enacted to read:

"2-14-3. INTERIM DUTIES OF THE CHIEF CLERKS.--During the interim, the chief clerks elected by the house of representatives and the senate shall perform the following duties:

A. perform clerical duties, including assistance with general correspondence, within guidelines of the legislative council;

B. conduct presession training for the staffs of the respective houses;

C. perform presession duties necessary to assist the legislature in preparing for session in accordance with directions of the legislative council and in coordination with the legislative council service;

D. perform routine legislative requests for constituents regarding the availability of and access to existing programs and services of state government within guidelines established by the legislative council;

E. maintain accurate inventories of the property of the respective houses in cooperation with the legislative council service;

F. perform public outreach functions necessary to educate the public about the legislature and the respective houses, including coordinating with the state department of public education and post-secondary educational institutions on educational program development regarding the legislative branch of government;

G. serve on the coordinating group of the integrated legislative information system; and

H. receive requests from members of the house of representatives or senate for changes affecting the members' office spaces in the state capitol prior to the request being presented to the building subcommittee of the legislative council."

Section 4

Section 4. A new section 2-14-4 NMSA 1978 is enacted to read:

"2-14-4. PARTISAN POLITICAL ACTIVITIES--PROHIBITION.--The chief clerks and their
respective staffs shall not engage in partisan political activity during the course or in the performance of their duties."

Section 5

Section 5. APPROPRIATION.--

A. Three hundred twenty thousand dollars ($320,000) is appropriated from the general fund to the legislative council service for expenditure in the eighty-second fiscal year, to be disbursed upon vouchers signed by the director of the legislative council service, for the following purposes and in the following amounts:

(1) one hundred sixty thousand dollars ($160,000) for the interim operation of the house chief clerk's office; and

(2) one hundred sixty thousand dollars ($160,000) for the interim operation of the senate chief clerk's office.

B. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

HB 7

CHAPTER 4

RELATING TO ELECTIONS; AMENDING CERTAIN PROVISIONS OF THE SCHOOL ELECTION LAW; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 1-22-10 NMSA 1978 (being Laws 1985, Chapter 168, Section 12) is amended to read:

"1-22-10. BALLOTS.--

A. The proper filing officer shall determine whether a candidate filing a declaration of candidacy is a registered qualified elector of the state residing within the school district. If the candidate is so qualified and no withdrawal of candidacy has been filed as provided in the School Election Law, the proper filing officer shall place the candidate's name on the ballot for the position specified in the declaration of candidacy. A declaration of candidacy shall not be amended after it has been filed with the proper filing officer.

B. Ballots for the school district election shall be prepared by the proper filing officer and printed by the thirtieth day preceding the election. The cost of printing the ballots shall be paid by the school district. The proper filing officer shall furnish printed ballots to the county clerk of each county in which the school district is situate. The printed ballot shall contain the name of each candidate and the position on the board for which he is a candidate. The ballot shall also contain all questions to be submitted to the voters of the district as certified to the proper filing officer by the board.

C. Paper ballots and ballot labels shall be printed in a form in substantial compliance with the provisions of Section 1-12-44 NMSA 1978 and in compliance with the provisions of the federal Voting Rights Act of 1965, as amended.

D. A school district election shall be a nonpartisan election, and the names of all candidates shall be listed on the ballot without party or slate designation. The order in which the names of candidates are listed on the ballot shall be determined by lot.

E. Whenever two or more members of the board are to be elected for terms of the same length of time, the positions shall be numerically designated on the ballot as "position one", "position two" and such additional consecutively numbered positions as are necessary, but only one member shall be elected for each position.

F. Space shall be provided on each ballot for a voter to write in the name of one candidate for each position to be filled when a declaration of intent to be a write-in candidate has been filed.

G. Voting machines shall be used for the recording of votes cast in a school district election; provided that paper ballots may be used in lieu of a voting machine for:

(1) school districts of less than five hundred average daily membership;

(2) school district elections in which only one candidate has filed a declaration of candidacy for each position to be filled at the election, no declared write-

ins have filed for any position and there are no questions or bond issues on the ballot and notwithstanding any other provision in this chapter; or

(3) for emergency ballots in case of a malfunction of the voting machine."

Section 2

Section 2. Section 1-22-12 NMSA 1978 (being Laws 1985, Chapter 168, Section 14) is amended to read:

"1-22-12. CONDUCT OF ELECTIONS.--

A. Except as otherwise provided in the School Election Law, the county clerk shall administer and conduct school district elections pursuant to the provisions of the Election Code for the conduct of general elections.

B. Precinct board members for each polling place shall be appointed by the county clerk from among those persons who meet the qualifications set forth in Section 1-2-7 NMSA 1978 and who reside within the school district. The number of members on each precinct board shall be as provided in Section 1-2-12 NMSA 1978. Vacancies on election day shall be filled as provided in Section 1-2-15 NMSA 1978.

C. In the event that only one candidate has filed a declaration of candidacy for each position to be filled at the election, no declared write-ins have filed for any position and there are no questions or bond issues on the ballot, the county clerk shall perform the duties of the precinct board and no other precinct board shall be appointed.

D. All costs of school district elections shall be paid by the school district."

Section 3

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. HB 68

CHAPTER 5

RELATING TO TAXATION; AMENDING THE TAX ADMINISTRATION ACT TO MODIFY CONFIDENTIALITY RESTRICTIONS, EXTEND TO ADDITIONAL TAXES THE REQUIREMENT FOR PAYMENT BY SPECIAL METHOD AND REVISE REQUIREMENTS FOR FILING PROTESTS AND CLAIMS FOR REFUND; AMENDING AND REPEALING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act applies to and governs:

A. the administration and enforcement of the following taxes or tax acts as they now exist or may hereafter be amended:

(1) Income Tax Act;

(2) Withholding Tax Act;

(3) Gross Receipts and Compensating Tax Act and any state gross receipts tax;

(4) Liquor Excise Tax Act;

(5) Local Liquor Excise Tax Act;

(6) Banking and Financial Corporations Tax Act;

(7) any municipal local option gross receipts tax;

(8) any county local option gross receipts tax;

(9) Special Fuels Supplier Tax Act;

(10) Gasoline Tax Act;

(11) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act;

(12) Cigarette Tax Act;

(13) Estate Tax Act;

(14) Railroad Car Company Tax Act;

(15) Investment Credit Act;

(16) Corporate Income Tax Act;

(17) Corporate Income and Franchise Tax Act;

(18) Uniform Division of Income for Tax Purposes Act;

(19) Multistate Tax Compact;

(20) Tobacco Products Tax Act; and

(21) Filmmaker's Credit Act;

B. the administration and enforcement of the following taxes, surtaxes, advanced payments or tax acts as they now exist or may hereafter be amended:

(1) Resources Excise Tax Act;

(2) Severance Tax Act;

(3) any severance surtax;

(4) Oil and Gas Severance Tax Act;

(5) Oil and Gas Conservation Tax Act;

(6) Oil and Gas Emergency School Tax Act;

(7) Oil and Gas Ad Valorem Production Tax Act;

(8) Natural Gas Processors Tax Act;

(9) Oil and Gas Production Equipment Ad Valorem Tax Act;

(10) Copper Production Ad Valorem Tax Act; and

(11) any advance payment required to be made by any act specified in this subsection, which advance payment shall be considered a tax for the purposes of the Tax Administration Act;

C. the administration and enforcement of the following taxes, surcharges, fees or acts as they now exist or may hereafter be amended:

(1) Weight Distance Tax Act;

(2) Special Fuels Tax Act;

(3) the workers' compensation fee authorized by Section 52-5-19 NMSA 1978, which fee shall be considered a tax for purposes of the Tax Administration Act;

(4) Controlled Substance Tax Act;

(5) Uniform Unclaimed Property Act;

(6) 911 emergency surcharge, which surcharge shall be considered a tax for purposes of the Tax Administration Act; and

(7) the solid waste assessment fee authorized by the Solid Waste Act, which fee shall be considered a tax for purposes of the Tax Administration Act; and

D. the administration and enforcement of all other laws, with respect to which the department is charged with responsibilities pursuant to the Tax Administration Act, but only to the extent that such other laws do not conflict with the Tax Administration Act."

Section 2

Section 2. Section 7-1-3 NMSA 1978 (being Laws 1965, Chapter 248, Section 3, as amended) is amended to read:

"7-1-3. DEFINITIONS.--Unless the context clearly indicates a different meaning, the definitions of words and phrases as they are stated in this section are to be used, and whenever in the Tax Administration Act these words and phrases appear, the singular includes the plural and the plural includes the singular:

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

B. "division" or "oil and gas accounting division" means the taxation and revenue department;

C. "director" means the secretary of taxation and revenue;

D. "director or his delegate" means the secretary or the secretary's delegate;

E. "employee of the department" means any employee of the department, including the secretary, or any person acting as agent or authorized to represent or perform services for the department in any capacity with respect to any law made subject to administration and enforcement under the provisions of the Tax Administration Act;

F. "levy" means the lawful power, hereby invested in the secretary, to take into possession or to require the present or future surrender to the secretary or the

secretary's delegate of any property or rights to property belonging to a delinquent taxpayer;

G. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act, and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Gross Receipts Tax Act, Supplemental Municipal Gross Receipts Tax Act, Special Municipal Gross Receipts Tax Act, Municipal Environmental Services Gross Receipts Tax Act, Municipal Infrastructure Gross Receipts Tax Act, County Gross Receipts Tax Act, County Fire Protection Excise Tax Act, Special County Hospital Gross Receipts Tax Act, County Environmental Services Gross Receipts Tax Act, Local Hospital Gross Receipts Tax Act, County Health Care Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax;

H. "net receipts" means the total amount of money paid by taxpayers to the department in a month pursuant to a tax or tax act less any refunds disbursed in that month with respect to that tax or tax act;

I. "overpayment" means any amount paid, pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act, by any person to the department, or withheld from the person, in excess of tax due from the person to the state at the time of the payment or at the time the amount withheld is credited against tax due;

J. "paid" includes the term "paid over";

K. "pay" includes the term "pay over";

L. "payment" includes the term "payment over";

M. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate, other association or gas, water or electric utility owned or operated by a county or municipality; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision, or an agency, department or instrumentality thereof; "person", as used in Sections 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

N. "property" means property or rights to property;

O. "property or rightsto property" means any tangible property, real or personal, or any intangible property of a taxpayer;

P. "secretary" means the secretary of taxation and revenue and, except for purposes of Subsection B of Section 7-1-4, Paragraphs (1) and (2) of Subsection B of Section 7-1-5 and Subsection E of Section 7-1-24 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

Q. "secretary or the secretary's delegate" means the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

R. "security" means money, property or rights to property or a surety bond;

S. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico and any territory or possession of the United States;

T. "tax" means the total amount of each tax imposed and required to be paid, withheld and paid or collected and paid under provision of any law made subject to administration and enforcement according to the provisions of the Tax Administration Act and, unless the context otherwise requires, includes the amount of any interest or civil penalty relating thereto; "tax" also means any amount of any credit, rebate or refund paid or credited by the department under any law subject to administration and enforcement under the provisions of the Tax Administration Act to any person contrary to law and includes, unless the context requires otherwise, the amount of any interest or civil penalty relating thereto;

U. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment or for collection and payment of any tax or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid; and

V. "tax return preparer" means a person who prepares for others for compensation, or who employs one or more persons to prepare for others for compensation, any return of income tax, a substantial portion of any return of income tax, any claim for refund with respect to income tax or a substantial portion of any claim for refund with respect to income tax; provided that a person shall not be a "tax return preparer" merely because such person:

(1) furnishes typing, reproducing or other mechanical assistance;

(2) is an employee who prepares an income tax return or claim for refund with respect to an income tax return of the employer, or of an officer or employee of the employer, by whom the person is regularly and continuously employed; or

(3) prepares as a trustee or other fiduciary an income tax return or claim for refund with respect to income tax for any person."

Section 3

Section 3. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for any employee of the department or any former employee of the department to reveal to any individual other than another employee of the department any information contained in the return of any taxpayer made pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about any taxpayer acquired as a result of his employment by the department except:

A. to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only and that the receiving state has enacted a confidentiality statute similar to this section;

B. to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of such information;

C. to the multistate tax commission or its authorized representative; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission only to states which have met the requirements of Subsection A of this section;

D. to a district court or an appellate court or a federal court:

(1) in response to an order thereof in an action relating to taxes to which the state is a party and in which the information sought is about a taxpayer who is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in any action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put his own liability for taxes at issue, in which case only that information regarding the taxpayer who is party to the action may be produced, but this shall not prevent the disclosure of department policy or interpretation of law arising from circumstances of a taxpayer who is not a party;

E. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this subsection shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection D of this section;

F. information obtained through the administration of any law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that release of such information is not otherwise prohibited by law;

G. in such manner, for statistical purposes, that the information revealed is not identified as applicable to any individual taxpayer;

H. with reference to any information concerning the tax on tobacco imposed by Sections 7-12-1 through 7-12-17 NMSA 1978 to a committee of the legislature for a valid legislative purpose;

I. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of any unpaid assessment of tax for which his transferor, assignor, seller or lessee is liable;

J. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-64 NMSA 1978, the amount and basis of any unpaid assessment of tax for which the purchaser's seller is liable;

K. to a municipality upon its request for any period specified by that municipality within the twelve months preceding the request for such information by that municipality:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also release, within the twelve months following the request for such information by the municipality, the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on any list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality.

The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if such information is revealed to individuals other than other employees of the municipality in question or the department;

L. to the commissioner of public lands for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts; the commissioner of public lands and employees of the commissioner are subject to the same provisions regarding confidentiality of information as employees of the department;

M. the department shall furnish, upon request by the child support enforcement division of the human services department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance. The child support enforcement division personnel shall use such information only for the purpose of enforcing the support liability of such absent parents and shall not use the information or disclose it for any other purpose; the child support enforcement division and its employees are subject to the provisions of this section with respect to any information acquired from the department;

N. with respect to the tax on gasoline imposed by the Gasoline Tax Act, the department shall make available for public inspection at monthly intervals a report covering the amount and gallonage of gasoline and ethanol blended fuels imported, exported, sold and used, including tax exempt sales to the federal government reported or upon which the gasoline tax was paid, together with a tabulation of taxes received from each distributor in the state of New Mexico;

O. the identity of distributors and gallonage reported on returns required under the Gasoline Tax Act or Special Fuels Supplier Tax Act to any distributor or supplier, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act or the Special Fuels Supplier Tax Act;

P. the department shall release upon request only the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers to the New Mexico department of agriculture, the employees of which are thereby subject to the penalty contained in Section 7-1-76 NMSA 1978 if such information is revealed to individuals other than employees of either the New Mexico department of agriculture or the department;

Q. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer;

R. upon request of the municipality or the county, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties. Any

information provided in this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalties contained in Section 7-1-76 NMSA 1978;

S. to a county that has in effect any local option gross receipts tax imposed by the county upon its request for any period specified by that county within the twelve months preceding the request for such information by that county:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a county-wide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also release within the twelve months following the request for such information by the county the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a local option gross receipts tax imposed by a county on a county-wide basis, information indicating whether persons shown on any list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a county-wide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of any incorporated municipalities, information indicating whether persons shown on any lis of businesses located in the area of that county outside of any incorporated municipalities within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for the area of that county outside of any incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or any local option gross receipts tax imposed by the county only on persons engaging in business in that area of the county outside of any incorporated municipalities.

The officers and employees of counties receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if such information is revealed to individuals other than other officers or employees of the county in question or the department;

T. to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a reciprocal agreement entered into with the Indian nation, tribe or pueblo for the exchange of such information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute similar to this section;

U. information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) information for or relating to any period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-9 NMSA 1978 may be released only to a committee of the legislature for a valid legislative purpose;

(2) contracts and other agreements between the taxpayer and other parties and the proprietary information contained in such contracts and agreements shall not be released without the consent of all parties to the contract or agreement; and

(3) audit workpapers and the proprietary information contained in such workpapers shall not be released except to a person having a legal interest in the property that is subject to the audit, to a purchaser of products severed from a property subject to the audit or to the authorized representative of either, but this paragraph does not prohibit the release of any proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of this section;

V. information with respect to the taxes or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

W. to the state corporation commission, information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties;

X. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by race tracks;

Y. upon request of a corporation authorized to be formed under the Educational Assistance Act, the department shall furnish the last known address and the date of that address of every person certified to the department as being an absent obligor of an educational debt that is due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use such information only for the purpose of enforcing the educational debt obligation of such absent obligors and shall not disclose that information or use it for any other purpose;

Z. any decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993; and

AA. information required by any provision of the Tax Administration Act to be made available to the public by the department."

Section 4

Section 4. Section 7-1-13 NMSA 1978 (being Laws 1965, Chapter 248, Section 18, as amended) is amended to read:

"7-1-13. TAXPAYER RETURNS--PAYMENT OF TAXES--EXTENSION OF TIME.--

A. Taxpayers are liable for tax at the time of and after the transaction or incident giving rise to tax, until payment is made. Taxes are due on and after the date on which their payment is required, until payment is made.

B. Every taxpayer shall, on or before the date on which payment of any tax is due, complete and file a tax return in a form prescribed and according to the regulations issued by the secretary. Except as provided in Section 7-1-13.1 NMSA 1978 or by regulation, ruling, order or instruction of the secretary, the payment of any tax or the filing of any return may be accomplished by mail.

C. If any adjustment is made in the basis for computation of any federal tax as a result of an audit by the internal revenue service or the filing of an amended federal return changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code, the taxpayer affected shall, within thirty days of the internal revenue service audit adjustment or payment of the federal refund, file an amended return with the department. Payment of any additional tax due shall accompany the return.

D. Payment of the total amount of all taxes that are due from the taxpayer shall precede or accompany the return. Delivery to the department of a check that is not paid upon presentment does not constitute payment.

E. The secretary or the secretary's delegate may, for good cause, extend in favor of a taxpayer or a class of taxpayers, for no more than a total of twelve months, the date on which payment of any tax is required or on which any return required by provision of the Tax Administration Act shall be filed, but no extension shall prevent the accrual of interest as otherwise provided by law. When an extension of time for income tax has been granted a taxpayer under the Internal Revenue Code, such extension shall serve to extend the time for filing New Mexico income tax, provided that a copy of the approved federal extension of time is attached to the taxpayer's New Mexico income tax return, except that the secretary by regulation may also provide for the automatic extension for no more than four months of the date upon which payment of any New Mexico income tax or the filing of any New Mexico income tax return is required. If the secretary or the secretary's delegate believes it necessary to assure the collection of the tax, the secretary or the secretary's delegate may require, as a condition of granting any extension, that the taxpayer furnish security in accordance with the provisions of Section 7-1-54 NMSA 1978."

Section 5

Section 5. Section 7-1-13.1 NMSA 1978 (being Laws 1988, Chapter 99, Section 3, as amended) is amended to read:

"7-1-13.1. METHOD OF PAYMENT OF CERTAIN TAXES DUE.--

A. Payment of the taxes, including any applicable penalties and interest, described in Paragraph (1), (2) or (3) of this subsection shall be made on or before the date due in accordance with Subsection B of this section if the taxpayer's average tax payment for the group of taxes during the preceding calendar year equaled or exceeded twenty-five thousand dollars ($25,000):

(1) Group 1: all taxes due under the Withholding Tax Act, the Gross Receipts and Compensating Tax Act, local option gross receipts tax acts, the Interstate Telecommunications Gross Receipts Tax Act and the Leased Vehicles Gross Receipts Tax Act;

(2) Group 2: all taxes due under the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad Valorem Production Tax Act; or

(3) Group 3: the tax due under the Natural Gas Processors Tax Act.

For taxpayers who have more than one identification number issued by the department, the average tax payment shall be computed by combining the amounts paid under the several identification numbers.

B. Taxpayers who are required to make payment in accordance with the provisions of this section shall make payment by one or more of the following means on or before the due date so that funds are immediately available to the state on or before the due date:

(1) automated clearinghouse transactions to allow deposit and fund availability to the state on or before the due date and containing the information required by the department;

(2) a transfer of funds through the wire transfer system operated by the federal reserve system, which provides immediate availability of funds to the state on or before the due date and containing the information required by the department;

(3) currency of the United States;

(4) check drawn on and payable at any New Mexico financial institution, provided that the check is received by the department at the place and time required by the department at least one banking day prior to the due date; or

(5) check drawn on and payable at any domestic non-New Mexico financial institution, provided that the check is received by the department at the time and place required by the department at least two banking days prior to the due date.

C. If the taxes required to be paid under this section are not paid in accordance with Subsection B of this section, the payment is not timely and is subject to the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978. When an automated clearinghouse transaction is reversed or a check is dishonored by the taxpayer's financial institution, neither the department nor the fiscal agent is obligated to resubmit the automated clearinghouse transaction or check for payment. If the reversal or dishonoring causes the final payment of taxes to be not timely under the provisions of this section, then the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978 apply.

D. For the purposes of this section:

(1) "automated clearinghouse transaction" means an electronic credit or debit transmitted through an automated clearinghouse payable to the state treasurer and deposited with the fiscal agent of the state;

(2) "average tax payment" means the total amount of taxes paid with respect to a group of taxes listed under Subsection A of this section during a calendar year divided by the number of months in that calendar year containing a due date on which the taxpayer was required to pay one or more taxes in the group; and

(3) "financial institution" means any state or nationally chartered federally insured depository institution."

Section 6

Section 6. Section 7-1-16 NMSA 1978 (being Laws 1965, Chapter 248, Section 19, as amended) is amended to read:

"7-1-16. DELINQUENT TAXPAYER.--

A. Any taxpayer to whom taxes have been assessed as provided in Section 7-1-17 NMSA 1978 or upon whom demand for payment has been made as provided in Section 7-1-63 NMSA 1978 who does not within thirty days after the date of assessment or demand for payment make payment, protest the assessment or demand for payment as provided by Section 7-1-24 NMSA 1978 or furnish security for payment as provided by Section 7-1-54 NMSA 1978 becomes a delinquent taxpayer and remains such until:

(1) payment of the total amount of all such taxes is made;

(2) a retroactive extension of time to file a protest is granted pursuant to Section 7-1-24 NMSA 1978; provided, however, that the taxpayer again

becomes a delinquent taxpayer if the taxpayer does not pay, protest or furnish security within the time allowed by the retroactive extension of time;

(3) security is furnished for payment; or

(4) no part of the assessment remains unabated.

B. Any taxpayer who fails to provide security as required by Subsection D of Section 7-1-54 NMSA 1978 shall be deemed to be a delinquent taxpayer.

C. If a taxpayer files a protest as provided in Section 7-1-24 NMSA 1978, the taxpayer nevertheless becomes a delinquent taxpayer upon failure of the taxpayer to appear, in person or by authorized representative, at the hearing set or upon failure to perfect an appeal from any decision or part thereof adverse to the taxpayer to the next higher appellate level, as provided in that section, unless the taxpayer makes payment of the total amount of all taxes assessed and remaining unabated or furnishes security for payment."

Section 7

Section 7. Section 7-1-18 NMSA 1978 being Laws 1965, Chapter 248, Section 21, as amended) is amended to read:

"7-1-18. LIMITATION ON ASSESSMENT BY DEPARTMENT.--

A. Except as otherwise provided in this section, no assessment of tax may be made by the department after three years from the end of the calendar year in which payment of the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

B. In case of a false or fraudulent return made by a taxpayer with intent to evade tax, the amount thereof may be assessed at any time within ten years from the end of the calendar year in which the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

C. In case of the failure by a taxpayer to complete and file any required return, the tax relating to the period for which the return was required may be assessed at any time within seven years from the end of the calendar year in which the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

D. If a taxpayer in a return understates by more than twenty-five percent the amount of his liability for any tax for the period to which the return relates, appropriate assessments may be made by the department at any time within six years from the end of the calendar year in which payment of the tax was due.

E. If any adjustment in the basis for computation of any federal tax is made that results in liability for any tax, the amount thereof may be assessed at any time but not after one year after the date of the receipt of the amended return or not after the end of the period limited by Subsection A of this section, whichever is later.

F. If the taxpayer has signed a waiver of the limitations on assessment imposed by this section, an assessment of tax may be made or a proceeding in court begun without regard to the time at which payment of the tax was due."

Section 8

Section 8. Section 7-1-24 NMSA 1978 (being Laws 1965, Chapter 248, Section 26, as amended) is amended to read:

"7-1-24. ADMINISTRATIVE HEARING--PROCEDURE.--

A. Any taxpayer may dispute the assessment to the taxpayer of any amount of tax, the application to the taxpayer of any provision of the Tax Administration Act or the denial of or failure to either allow or deny a claim for refund made in accordance with Section 7-1-26 NMSA 1978 by filing with the secretary a written protest against the assessment or against the application to the taxpayer of the provision or against the denial of or the failure to allow or deny the amount claimed to have been erroneously paid as tax. Every protest shall identify the taxpayer and the tax or taxes involved and state the grounds for the taxpayer's protest and the affirmative relief requested. The statement of grounds for protest shall specify individual grounds upon which the protest is based and a summary statement of the evidence expected to be produced supporting each ground asserted, if any; provided that the taxpayer may supplement the statement at any time prior to any hearing conducted on the protest under Subsection E of this section. The secretary may, in appropriate cases, provide for an informal conference before setting a hearing of the protest or acting on any claim for refund.

B. Any protest by a taxpayer shall be filed within thirty days of the date of the mailing to the taxpayer by the department of the notice of assessment or mailing to, or service upon, the taxpayer of other peremptory notice or demand, or the date of mailing or filing a return. Upon written request of the taxpayer made within the time permitted for filing a protest, the secretary may grant an extension of time, not to exceed sixty days, within which to file the protest. If a protest is not filed within the time required for filing a protest or, if an extension has not been granted within the extended time, the secretary may proceed to enforce collection of any tax if the taxpayer is delinquent within the meaning of Section 7-1-16 NMSA 1978. Upon written request of the taxpayer made after the time for filing a protest but not more than sixty days after the expiration of the time for filing a protest, the secretary may grant a retroactive extension of time, not to exceed sixty days, within which to file the protest provided that the taxpayer demonstrates to the secretary's satisfaction that the taxpayer was not able to file a

protest or to request an extension within the time to file the protest and that the grounds for the protest have substantial merit. The fact that the department did not mail the assessment or other
peremptory notice or demand by certified or registered mail or otherwise demand and receive acknowledgement of receipt by the taxpayer shall not be deemed to demonstrate the taxpayer's inability to protest or request an extension within the time for filing a protest within the required time. The secretary shall not grant a retroactive extension if a levy has already been served under Sections 7-1-31, 7-1-33 and 7-1-34 NMSA 1978 or a jeopardy assessment under Section 7-1-59 NMSA 1978. No proceedings other than those to enforce collection of any amount assessed as tax and to protect the interest of the state by injunction, as provided in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53,
7-1-56 and 7-1-58 NMSA 1978, are stayed by timely filing of a protest under this section.

C. Claims for refund shall be filed as provided for in Section 7-1-26 NMSA 1978.

D. Upon timely receipt of a protest, the department or hearing officer shall promptly set a date for hearing and on that date hear the protest or claim.

E. A hearing officer shall be designated by the secretary to conduct the hearing. Taxpayers may appear at a hearing for themselves or be represented by a bona fide employee, an attorney, certified public accountant or registered public accountant. Hearings shall not be open to the public except upon request of the taxpayer and may be postponed or continued at the discretion of the hearing officer.

F. In hearings before the hearing officer, the technical rules of evidence shall not apply, but in ruling on the admissibility of evidence, the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

G. In hearings before the hearing officer, the Rules of Civil Procedure for the District Courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, the hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted.

H. In the case of the hearing of any protest, the hearing officer shall make and preserve a complete record of the proceedings. At the beginning of the hearing, the hearing officer shall inform the taxpayer of the taxpayer's right to representation. The hearing officer, within thirty days of the hearing, shall inform the protestant in writing of the decision, informing the protestant at the same time of the right to, and the requirements for perfection of, an
appeal from the decision to the court of appeals and of the consequences of a failure to

appeal. The written decision shall embody an order granting or denying the relief requested or granting such part thereof as seems appropriate.

I. Nothing in this section shall be construed to authorize any criminal proceedings hereunder or to authorize an administrative protest of the issuance of a subpoena or summons."

Section 9

Section 9. Section 7-1-26 NMSA 1978 (being Laws 1965, Chapter 248, Section 28, as amended) is amended to read:

"7-1-26. CLAIM FOR REFUND.--

A. Any person who believes that an amount of tax has been paid by or withheld from that person in excess of that for which the person was liable, who has been denied any credit or rebate claimed or who claims a prior right to property in the possession of the department pursuant to a levy made under authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a refund by directing to the secretary, within the time limited by the provisions of Subsections B, C and D of this section, a written claim for refund. Every claim for refund shall state the nature of the person's complaint and contain information sufficient to allow processing of the claim; provided, however, that the filing of a fully completed original income tax return, corporate income tax return, corporate income and franchise tax return or estate tax return that shows a balance due the taxpayer or a fully completed amended income tax return, an amended corporate income tax return, an amended corporate income and franchise tax return, an amended estate tax return or an amended oil and gas tax return that shows a lesser tax liability than the original return constitutes the filing of a claim for refund for the difference in tax due shown on the original and amended returns. The secretary or the secretary's delegate may allow the claim in whole or in part or may deny the claim. If the claim is denied in whole or in part in writing, the claim may not be refiled. If the claim is not granted in full, the person, within ninety days after either the mailing of the denial of all or any part of the claim may elect to pursue one, but not more than one, of the remedies in Paragraphs (1) and (2) of this subsection. If the department has neither granted nor denied any portion of a claim for refund within one hundred twenty days of the date the claim was mailed or delivered to the department, the taxpayer may refile it within the time limits set forth in Subsection B of this section or may within ninety days elect to pursue one, but only one, of the remedies in Paragraphs (1) and (2) of this subsection. In any case, if a person does timely pursue more than one remedy, the person shall be deemed to have elected the first remedy invoked. The remedies are as follows:

(1) the taxpayer may direct to the secretary a written protest against the denial of, or failure to either allow or deny, the claim, which shall be set for hearing by a hearing officer designated by the secretary promptly after the receipt of the protest in accordance with the provisions of Section 7-1-24 NMSA 1978 and pursue the

remedies of appeal from decisions adverse to the protestant as provided in Section 7-1-25 NMSA 1978; or

(2) the taxpayer may commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the claimed overpayment, alleging that on account thereof the state is indebted to the plaintiff in the amount stated, together with any interest allowable, demanding the refund to the plaintiff of that amount and reciting the facts of the claim for refund. The taxpayer or the secretary may appeal from any final decision or order of the district court to the court of appeals.

B. Except as otherwise provided in Subsections C and D of this section, no credit or refund of any amount may be allowed or made to any person unless as the result of a claim made by that person as provided in this section:

(1) within three years of the end of the calendar year in which:

(a) the payment was originally due or the overpayment resulted from an assessment by the department pursuant to Section 7-1-17 NMSA 1978, whichever is later;

(b) the final determination of value occurs with respect to any overpayment that resulted from a disapproval by any agency of the United States or the state of New Mexico or any court of increase in value of a product subject to taxation under the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act or the Natural Gas Processors Tax Act; or

(c) property was levied upon pursuant to the provisions of the Tax Administration Act;

(2) within one year of the date an assessment of tax is made or a proceeding begun in court by the department with respect to any period that is covered by a waiver signed on or after July 1, 1993 by the taxpayer pursuant to Subsection F of Section 7-1-18 NMSA 1978; or

(3) for assessments made on or after the effective date of this act, within one year of the date of an assessment of tax made under Subsection B, C or D of Section 7-1-18 NMSA 1978 when the assessment applies to a period ending at least three years prior to the beginning of the year in which the assessment was made, but the claim for
refund shall not be made with respect to any period not covered by the assessment.

C. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-11 NMSA 1978 unless notice of the destruction of the gasoline was given the department within thirty days of the actual

destruction and the claim for refund is made within six months of the date of destruction. No credit or refunds shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-1314 NMSA 1978 unless the refund is claimed within six months of the date of purchase of the gasoline and the gasoline has been used at the time the claim for refund is made.

D. If, as a result of an audit by the internal revenue service or the filing of an amended federal return changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code, any adjustment of federal tax is made with the result that there would have been an overpayment of tax if the adjustment to federal tax had been applied to the taxable period to which it relates, claim for credit or refund of only that amount based on the adjustment may be made as provided in this section within one year of the date of the internal revenue service audit adjustment or payment of the federal refund or within the period limited by Subsection B of this section, whichever expires later. Interest, computed at the rate specified in Subsection B of Section 7-1-68 NMSA 1978, shall be allowed on any such claim for refund from the date one hundred twenty days after the claim is made until the date the final decision to grant the credit or refund is made.

E. Any refund of tax paid under any tax or tax act administered under Subsection B of Section 7-1-2 NMSA 1978 may be made, at the discretion of the department, in the form of credit against future tax payments if future tax liabilities in an amount at least equal to the credit amount reasonably may be expected to become due.

F. For the purposes of this section, the term "oil and gas tax return" means a return reporting tax due with respect to oil, natural gas, liquid hydrocarbons or carbon dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act."

Section 10

Section 10. Section 7-1-67 NMSA 1978 (being Laws 1965, Chapter 248, Section 68, as amended) is amended to read:

"7-1-67. INTEREST ON DEFICIENCIES.--

A. If any tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state on such amount from the first day following the day on which the tax becomes due, without regard to any extension of time or installment agreement, until it is paid except that:

(1) for any income tax imposed on a member of the armed services of the United States serving in a combat zone under orders of the president of the

United States, interest shall accrue only for the period beginning the day after any applicable extended due date if the tax is not paid;

(2) if the amount of interest due at the time payment is made is less than one dollar ($1.00), then no interest shall be due; and

(3) if demand is made for payment of any tax including accrued interest, and if such tax is paid within ten days after the date of such demand, no interest on the amount so paid shall be imposed for the period after the date of the demand.

B. Interest due to the state under Subsection A or D of this section shall be at the rate of fifteen percent a year, computed at the rate of one and one-fourth percent per month or any fraction thereof.

C. Nothing in this section shall be construed to impose interest on interest or interest on the amount of any penalty.

D. If any tax required to be paid in accordance with Section 7-1-13.1 NMSA 1978 is not paid in the manner required by that section, interest shall be paid to the state on the amount required to be paid in accordance with Section 7-1-13.1 NMSA 1978. If interest is due under this subsection and is also due under Subsection A of this section, interest shall be due and collected only pursuant to Subsection A of this section."

Section 11

Section 11. REPEAL.--Section 7-1-67.1 NMSA 1978 (being Laws 1982, Chapter 18, Section 25) is repealed.

Section 12

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 44

CHAPTER 6

RELATING TO LIENS; AMENDING SECTIONS OF THE OIL AND GAS LIEN ACT; EXTENDING THE TIME OF FILING.

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

Section 1

Section 1. Section 70-4-4 NMSA 1978 (being Laws 1931, Chapter 11, Section 4, as amended) is amended to read:

"70-4-4. CLAIM OF LIEN--CONTENTS AND FILING.--Every original contractor, within two hundred ten days after the performance of the last labor or the furnishing or hauling of the last item of material, tools, machinery, equipment or supplies, and every person, except the original contractor, claiming the benefits of the Oil and Gas Lien Act within one hundred eighty days after the performance of the last labor or the furnishing or hauling of the last item or material, tools, machinery, equipment or supplies shall file for record with the county clerk of the county in which the property upon which the lien is claimed or situated, a claim setting forth the name and residence of the claimant, the amount and the items claimed, the name of the person to whom the materials, tools, machinery, equipment or supplies were furnished or hauled or for whom the labor was performed, the name of the owner and a description of the property upon which the lien is claimed, verified by affidavit."

Section 2

Section 2. Section 70-4-6 NMSA 1978 (being Laws 1931, Chapter 11, Section 6, as amended) is amended to read:

"70-4-6. LIABILITY OF OWNER LIMITED TO CONTRACT PRICE.--Nothing in the Oil and Gas Lien Act shall be deemed to fix a greater liability upon an owner than the amount contracted by the owner to be paid the original contractor; provided that the risk of all payments made to the original contractor shall be upon the owner until the expiration of the one hundred eighty days specified in Section 70-4-4 NMSA 1978 within which persons other than the original contractor may fix their liens by the filing of the claim as provided in that section, and no owner shall be liable to an action by the contractor until the expiration of the one hundred eighty day period. Owners may pay subcontractors the specific contract or agreed upon charge due them from the original contractor for work, labor, material, tools, machinery, equipment and supplies, and the amount so paid shall be held and deemed a payment of that amount to the original contractor." SB 25

CHAPTER 7

RELATING TO VETERANS; ESTABLISHING THE FORT BAYARD MEDICAL CENTER VETERANS' UNIT; REVISING THE MEMBERSHIP OF THE VETERANS' ADVISORY BOARD; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 23-4-1 NMSA 1978 (being Laws 1974 (S.S.), Chapter 2, Section 1, as amended) is amended to read:

"23-4-1. VETERANS' CENTER CREATED--ADVISORY BOARD.--

A. The "New Mexico veterans' center" located near Truth or Consequences, New Mexico is declared to be a state home for veterans of service in the armed forces of the United States.

B. The "Fort Bayard medical center veterans' unit", a separate and distinct unit of the Fort Bayard medical center, located near Silver City, New Mexico, is declared to be a state home for veterans of service in the armed forces of the United States.

C. There is created the "New Mexico veterans' advisory board". The advisory board shall consist of seven members as follows:

(1) the chairman of the veterans' service commission or his designee;

(2) the director of veteran affairs;

(3) a veteran of World War II;

(4) the administrator of a private nursing home;

(5) a registered nurse who is employed by a public or private nursing home;

(6) a veteran of the Korean conflict; and

(7) a veteran of the Vietnam conflict.

D. The governor shall appoint the members designated in Paragraphs (3), (4), (5), (6) and (7) of Subsection C of this section, and their terms shall be for three years each.

E. The New Mexico veterans' center shall be under the control of the department of health.

F. The New Mexico veterans' advisory board shall provide advice to the secretary of health and the administrators of the New Mexico veterans' center and the Fort Bayard medical center regarding veterans' services."

Section 2

Section 2. Section 23-4-3 NMSA 1978 (being Laws 1974 (S.S.), Chapter 2, Section 4, as amended) is amended to read:

"23-4-3. ELIGIBILITY FOR CARE--STANDARDS.--

A. Occupancy in the New Mexico veterans' center and the Fort Bayard medical center veterans' unit shall be for veterans of service in the armed forces of the United States who have served on active duty pursuant to rules and regulations adopted by the secretary of health consistent with federal guidelines. The following requirements for veterans' admission and continued occupancy shall prevail:

(1) a citizen of the United States who enlisted or was drafted, inducted or commissioned in the armed forces of the United States, who was accepted for and assigned to active duty in the armed forces and was not separated from the armed forces under circumstances amounting to a dishonorable discharge from the armed forces; and

(2) a resident of New Mexico at the time of entering or discharge from the armed forces or, in the alternative, a resident of New Mexico at the date of admission.

B. Additionally, no more than twenty-five percent of the occupancy in the New Mexico veterans' center shall consist of nonveterans from the following categories:

(1) spouses;

(2) surviving spouses; and

(3) gold star parents.

C. Whenever a law, rule or regulation of the veterans' administration of the federal government or any other law permits the state to receive federal funds for the use and benefit of the New Mexico veterans' center, upon
acceptance of a veteran of the armed forces of the United States not meeting the requirements of Subsection A of this section, the board of trustees may adopt rules and regulations to authorize such veteran's acceptance."

Section 3

Section 3. Section 23-4-4.1 NMSA 1978 (being Laws 1983, Chapter 329, Section 5, as amended) is amended to read:

"23-4-4.1. DONATIONS--GIFTS--BEQUESTS.--The New Mexico veterans' center may accept donations, gifts and bequests of land, money or other things of value for the purposes of Sections 23-4-1 through 23-4-4 NMSA 1978. The title to such lands, together with all improvements thereon, shall vest in the state, and the deeds thereto, all

insurance policies, certificates of water rights and other evidences of ownership of the land or improvements of the New Mexico veterans' center shall be filed as provided by law. Except as provided by the conditions of such donations, gifts and bequests, all donations and gifts of money shall be deposited by law."

Section 4

Section 4. Section 23-4-7 NMSA 1978 (being Laws 1983, Chapter 329, Section 7, as amended) is amended to read:

"23-4-7. FUTURE TRANSFER OF LANDS--RESTRICTIONS.--

A. The secretary of health shall designate not more than thirty acres of land immediately surrounding the old Carrie Tingley crippled children's hospital building, including the support buildings and three adjoining houses, which may not be designated as surplus property by the department of finance and administration pursuant to this section. Subsequent to such a designation, the department of finance and administration may determine, after the New Mexico veterans' center has been established, that there exists acreage that is surplus to the needs of the center.

B. The departmnt of finance and administration, with approval of the state board of finance, may transfer a portion of the designated surplus property not to exceed twenty-five acres to the Truth or Consequences school board to be used for a site for construction of a middle school.

C. Subsequent to the official decision of the Truth or Consequences school board to proceed or not to proceed with the construction of a middle school on property adjacent to the New Mexico veterans' center, the department of finance and administration may transfer, with approval of the state board of finance, part or all of the remaining surplus property to the city of Truth or Consequences for use in future economic development projects.

D. All transfers of land provided for in this section shall be subject to the following conditions:

(1) the governor, or his designee, shall approve any plans for development of any part of the original site before commencement of any construction under such plans;

(2) if the Truth or Consequences school board has not developed a master plan for use of any property transferred to it by January 1, 1987 or has not substantially initiated this plan by January 1, 1993, the surplus property transferred to that school board shall revert to the state;

(3) if the city of Truth or Consequences has not develop0ed a master plan for use of any property transferred to it by January 1, 1987 or has not

substantially initiated this plan by January 1, 1993, the surplus property transferred to that city shall revert to the state;

(4) the department of finance and administration shall not transfer as surplus property either the access to any well already existing on the site or any buildings on the site without the consent of the board of trustees; and

(5) no commitment on any parcel of land at the original site shall be made to the Truth or Consequences school board or to the city of Truth or Consequences until after such time as the New Mexico veterans' center is approved by the legislature."
HB 52

CHAPTER 8

RELATING TO TAXATION; EXEMPTING CERTAIN PERSONAL PROPERTY FROM THE PROPERTY TAX; AMENDING AND REPEALING CERTAIN SECTIONS OF THE PROPERTY TAX CODE.

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

Section 1

Section 1. Section 7-36-8 NMSA 1978 (being Laws 1973, Chapter 373, Section 1, as amended) is amended to read:

"7-36-8. CERTAIN PERSONAL PROPERTY EXEMPT FROM PROPERTY TAX.--Tangible personal property owned by a person is exempt from property taxation except for:

A. livestock;

B. manufactured homes;

C. aircraft not registered under the Aircraft Registration Act;

D. private railroad cars, the earnings of which are not taxed under the provisions of the Railroad Car Company Tax Act;

E. personal property inventories held for sale or resale at wholesale, retail or on consignment by a person whose property used in connection with the maintenance of those personal property inventories is subject to valuation under Sections 7-36-22 through 7-36-25 and 7-36-27 through 7-36-32 NMSA 1978; and

F. vehicles, other than motor vehicles registered under the provisions of the Motor Vehicle Code, and other tangible personal property not otherwise exempt

under the federal or state constitutions or laws that is used, produced, manufactured, held for sale, leased or maintained by a person for purposes of the person's profession, business or occupation, and for which the owner has claimed a deduction for depreciation for federal income tax purposes during any federal income taxable year occurring in whole or in part during the twelve months immediately preceding the first day of the property tax year."

Section 2

Section 2. REPEAL.--Sections 7-36-9, 7-36-10, 7-36-12 and 7-36-13 NMSA 1978 (being Laws 1973, Chapter 374, Section 2, Laws 1973, Chapter 11, Section 1, Laws 1973, Chapter 10,
Section 1 and Laws 1973, Chapter 9, Section 1, as amended) are repealed.

Section 3

Section 3. APPLICABILITY.--The provisions of this act apply to the 1993 and subsequent property tax years.
HB 217

CHAPTER 9

RELATING TO AREA VOCATIONAL SCHOOLS; AMENDING A CERTAIN SECTION OF THE NMSA 1978 PERTAINING TO ASSOCIATE DEGREES.

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

Section 1

Section 1. Section 21-17-4.1 NMSA 1978 (being Laws 1988, Chapter 34, Section 1) is amended to read:

"21-17-4.1. ASSOCIATE DEGREES--AUTHORIZATION.--Area vocational schools are authorized to grant associate of applied science and associate of arts and science degrees, provided that the associate degree curriculum is approved by the commission on higher education." HB 236

CHAPTER 10

RELATING TO ELECTIONS; AMENDING A CERTAIN SECTION OF THE NMSA 1978 PERTAINING TO CHANGE OF RESIDENCE WITHIN THE SAME COUNTY BY A VOTER.

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

Section 1

Section 1. Section 1-4-17 NMSA 1978 (being Laws 1969, Chapter 240, Section 73, as amended) is amended to read:

"1-4-17. AFFIDAVIT OF REGISTRATION--CHANGE OF RESIDENCE WITHIN SAME COUNTY.--

A. A voter who has changed his residence within the same county shall apply to a registration officer to change his registered residence address or file a change of residence notification with the county clerk on a postcard-type form, approved by the secretary of state.

B. No change of registered residence address shall be made in any period during which registration is closed; however, the county clerk may accept applications for or notifications of such change but shall not process them until the registration period is open.

C. The application for or notification of change of registered residence shall be filed with the county clerk, and the previous registration shall be retained for six years in a file established for that purpose."

HB 252

CHAPTER 11

RELATING TO BANKING; PROVIDING FOR CONSUMER CREDIT BANKS; ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Consumer Credit Bank Act".

Section 2

Section 2. DEFINITIONS.--As used in the Consumer Credit Bank Act:

A. "consumer credit bank" means a national bank located in the state or a bank organized pursuant to the laws of this state that has those powers and limitations provided for pursuant to the Consumer Credit Bank Act;

B. "credit card" means an arrangement or loan agreement under which a domestic bank or consumer credit bank gives a borrower the privilege of using a credit card or other credit confirmation or device of any type in transactions out of which debt is created by:

(1) the domestic bank or consumer credit bank honoring a draft or similar order for the payment of money created, authorized, issued, or accepted by the borrower; or

(2) the domestic bank or consumer credit bank paying or agreeing to pay the borrower's obligation;

C. "credit card account" means an arrangement between a domestic bank or consumer credit bank and a borrower for the creation of debt pursuant to a credit card and under which:

(1) the domestic bank or consumer credit bank may permit the borrower to create either revolving or non-revolving debt from time to time;

(2) the unpaid balance of principal of the created debt and the loan, finance or other appropriate charges are debited to the account;

(3) a loan finance charge is computed or an interest rate is imposed upon the outstanding debt balances of the borrower's account from time to time; and

(4) a domestic bank or consumer credit bank is to render bills or statements to the borrower at regular intervals stating the amount that is payable by and due from the borrower on a specified date stated in the bill or statement or, at the option of the borrower but subject to the terms and conditions of the credit card account, stating that the amount may be paid by the borrower in installments;

D. "director" means the director of the financial institutions division of the regulation and licensing department;

E. "domestic bank" means a bank having its principal place of business in this state and chartered under the laws of this state or the United States;

F. "foreign bank" means a bank chartered under the laws of the United States, any state other than New Mexico or the District of Columbia that has its principal place of business outside of New Mexico; and

G. "holding company" means a corporation that controls a domestic or foreign bank.

Section 3

Section 3. ORGANIZATION OF CONSUMER CREDIT BANK.--With the approval of the director, a domestic bank, foreign bank or holding company may organize, own and control a consumer credit bank in accordance with the following terms and conditions:

A. in connection with the application to organize or to own and control a consumer credit bank, the applicant shall pay to the director a filing fee of six thousand dollars ($6,000) and a non-refundable investigation fee of one thousand dollars ($1,000);

B. the shares of a consumer credit bank shall be owned solely by a domestic bank, foreign bank or a holding company;

C. a consumer credit bank shall accept deposits only at a single location in this state;

D. a consumer credit bank shall maintain capital stock and paid-in surplus of not less than four million dollars ($4,000,000);

E. a consumer credit bank may engage in the business of soliciting, processing and making loans pursuant to credit card accounts and conducting other necessarily incidental activities, including the taking of a security interest in any property to secure a loan;

F. a consumer credit bank may accept deposits only of one hundred thousand dollars ($100,000) or more and only from affiliates of the consumer credit bank or from persons having their principal place of business or residence outside New Mexico; but the limitation provided pursuant to this subsection shall not apply to deposits made for the purpose of security taken pursuant to Subsection E of this section;

G. a consumer credit bank must, prior to commencing business, obtain and thereafter maintain insurance of its deposits by the federal deposit insurance corporation;

H. a consumer credit bank may not engage in the business of making commercial loans but may issue credit cards and create credit card accounts for commercial customers;

I. a consumer credit bank shall have no less than twenty-five employees located in this state engaged in credit card activities on or before the first anniversary of its commencement of operations; and

J. a consumer credit bank shall provide the following services in this state:

(1) the initial distribution of credit cards or other devices, or both, designed and effective to access credit card accounts;

(2) the preparation of periodic statements of amounts due under credit card accounts; and

(3) the maintenance of financil records reflecting the status of credit card accounts from time to time.

Section 4

Section 4. DOMESTIC BANKS--EXEMPTION.--A domestic bank shall not be required to establish a consumer credit bank to issue credit cards and create credit card accounts.

Section 5

Section 5. CREDIT CARD ACCOUNT--TERMS AND CONDITIONS.--A credit card account between a domestic bank or consumer credit bank and a borrower, wherever the borrower's place of residence, shall be governed solely by the laws of New Mexico and federal law, where applicable, unless otherwise expressly agreed in writing by the parties. A domestic bank or consumer credit bank may, as provided in the written agreement governing the credit card account, modify the terms or conditions of the credit card account upon prior written notice of the modification as specified by credit card account agreement or by the federal Truth in Lending Act.

Section 6

Section 6. REGULATION OF CONSUMER CREDIT BANKS.--

A. A consumer credit bank organized under the laws of New Mexico shall be subject to the supervision, regulation and examination of the director.

B. The director shall adopt and promulgate rules and regulations implementing the provisions of the Consumer Credit Bank Act.

Section 7

Section 7. SUPERVISION FEES.--

A. Each consumer credit bank shall annually pay to the director a supervision fee. The amount of the supervision fee paid by each consumer credit bank shall be seven thousand five hundred dollars ($7,500). The fee shall be paid on or before March 1 of each year. For failure to pay the supervisor fee when due unless excused for cause by the director, the consumer credit bank shall pay to the financial

institutions division of the regulation and licensing department one hundred dollars ($100) for each day of delinquency.

B. The director of the financial institutions division of the regulation and licensing department shall examine the condition of the consumer credit bank. A report of examination shall be sent to the board of directors of the consumer credit bank. There shall be paid to the director for each consumer credit bank examination a fee at the rate of two hundred dollars ($200) per day, or fraction thereof, for each authorized representative engaged in the examination.

Section 8

Section 8. APPLICABILITY.--A consumer credit bank shall be subject to the laws governing financial institutions except when the rights, powers, privileges or provisions of those laws are inconsistent with the rights, powers, privileges, provisions or limitations of the Consumer Credit Bank Act, in which case the latter shall control.

Section 9

Section 9. SEVERABILITY.--If any part or application of the Consumer Credit Bank Act is held invalid, the remainder or its application to other situations or persons shall not be affected. HB 322

CHAPTER 12

RELATING TO PROFESSIONAL LICENSES; AMENDING THE DEFINITION AND SCOPE OF PSYCHOLOGIST PRACTICE; AMENDING THE PROFESSIONAL PSYCHOLOGIST ACT.

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

Section 1

Section 1. Section 61-9-3 NMSA 1978 (being Laws 1963, Chapter 92, Section 3, as amended) is amended to read:

"61-9-3. DEFINITIONS.--As used in the Professional Psychologist Act:

A. "board" means the New Mexico state board of psychologist examiners;

B. "person" includes an individual, firm, partnership, association or corporation;

C. "psychologist" means any person who engages in the practice of psychology or holds himself out to the public by any title or description of services

representing himself as a psychologist, which incorporates the words "psychological", "psychologist", "psychology", or when a person describes himself as above and, under such title or description, offers to render or renders services involving the application of principles, methods and procedures of the science and profession of psychology to persons for compensation or other personal gain;

D. "practice of psychology" means the observation, description, evaluation, interpretation and modification of human behavior by the application of psychological principles, methods and procedures for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health, and further means the rendering of such psychological services to individuals, families or groups regardless of whether payment is received for services rendered. The practice of psychology includes, but is not limited to, psychological testing or neuropsychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, behavior analysis and therapy; diagnosis and treatment of any mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct and the psychological aspects of physical illness, accident, injury and disability; and psychoeducational evaluation, therapy, remediation and consultation; and

E. "school" or "college" means any university or other institution of higher learning offering a full-time graduate course of study in psychology, which is regionally accredited or whose accreditation as an institution of higher learning is recognized by the state department of public education or is satisfactory to the board."

Section 2

Section 2. Section 61-9-4.1 NMSA 1978 (being Laws 1989, Chapter 41, Section 4) is amended to read:

"61-9-4.1. LICENSE REQUIRED.--

A. Unless licensed to practice psychology under the Professional Psychologist Act, no person shall engage in the practice of psychology or use the title or represent himself as a psychologist or psychologist associate or use any other title, abbreviation, letters, signs or devices that indicate the person is a psychologist or psychologist associate.

B. Any person currently certified as a psychologist or psychologist associate on July 1, 1989 shall be deemed to be licensed as a psychologist or psychologist associate."

Section 3

Section 3. Section 61-9-14 NMSA 1978 (being Laws 1963, Chapter 92, Section 13, as amended) is amended to read:

"61-9-14. VIOLATION AND PENALTIES.--

A. It is a misdemeanor:

(1) for any person not licensed under the Professional Psychologist Act to practice psychology or to represent himself as a psychologist or a psychologist associate;

(2) for any person to practice psychology during the time that his license as a psychologist or psychologist associate is suspended, revoked or lapsed; or

(3) for any person otherwise to violate the provisions of the Professional Psychologist Act.

B. Such misdemeanor shall be punishable upon conviction by imprisonment for not more than three months or by a fine of not more than one thousand dollars ($1,000) or by both such fine and imprisonment. Each violation shall be deemed a separate offense.

C. Such misdemeanor shall be prosecuted by the attorney general of the state or any district attorney he designates."

Section 4

Section 4. Section 61-9-16 NMSA 1978 (being Laws 1963, Chapter 92, Section 15, as amended) is amended to read:

"61-9-16. SCOPE OF ACT.--

A. Nothing in the Professional Psychologist Act shall be construed to limit:

(1) the activities, services and use of an official title on the part of a person in the employ of a federal, state, county or municipal agency or of other political subdivisions or any educational institution chartered by the state insofar as such activities, services and use of any official title are a part of the duties of his office or position with the agency or institution; or

(2) the activities and services of a student, intern or resident in psychology pursuing a course of study in psychology at a school or college if these activities and services constitute a part of his supervised course of study and no fee is charged directly by the student, intern or resident.

B. Nothing in the Professional Psychologist Act shall in any way restrict the use of the term "social psychologist" by any person who has received a doctoral degree in sociology or social psychology from an institution whose credits in sociology or social psychology are acceptable by a school or college and who has passed comprehensive examinations in the field of social psychology as a part of the requirements for the doctoral degree or has had equivalent specialized training in social psychology and who has notified the board of his intention to use the term "social psychologist" and filed a statement of the fact demonstrating his compliance with this subsection. A social psychologist shall not practice in any psychological specialty outside that of social psychology without complying with the provisions of the Professional Psychologist Act.

C. Lecturers in psychology from any school or college may utilize their academic or research titles when invited to present lectures to institutions or organizations.

D. Nothing in the Professional Psychologist Act prohibits qualified members of other professional groups who are licensed or regulated under the laws of this state from engaging in activities within the scope of practice of their respective licensing or regulation statutes, but they shall not hold themselves out to the public by any title or description of services that would lead the public to believe that they are psychologists, and they shall not state or imply that they are licensed to practice psychology.

E.

(1) Nothing in the Professional Psychologist Act shall be construed to prevent an alternative, metaphysical or holistic practitioner from engaging in non-clinical activities consistent with the standards and codes of ethics of that practice.

(2) Specifically exempted from this act are:

(a) alcohol or drug abuse counselors working under appropriate supervision for a nonprofit corporation, association or similar entity;

(b) peer counselors of domestic violence or independent-living peer counselors working under appropriate supervision in a nonprofit corporation, association or similar entity;

(c) duly ordained, commissioned or licensed ministers of a church; lay pastoral-care assistants; science of mind practitioners providing uncompensated counselor or therapist services on behalf of a church; and Christian science practitioners;

(d) students enrolled in a graduate-level counselor and therapist training program and rendering services under supervision;

(e) hypnotherapists certified by the American council of hypnotist examiners or the southwest hypnotherapists examining board, providing nonclinical services from July 1, 1994 to June 30, 1998;

(f) pastoral counselors with master's or doctoral degrees, who are certified by the American association of pastoral counselors, from July 1, 1994 to June
30, 1998; and

(g) practitioners of Native American healing arts.

Section 5

Section 5. EFFECTIVE DATE--CONTINGENCY.--The effective date of the provisions of this act is contingent upon the enactment into law of House Bill 234 of the forty-first legislature, first session, or a substitute for that bill. If Hous Bill 234 of the forty-first legislature, first session, or a substitute for that bill is enacted into law, then the provisions of this act shall become effective. If House Bill 234 of the forty-first legislature, first session, or a substitute for that bill is not enacted into law, then the provisions of this act shall not become effective.
HB 540

CHAPTER 13

RELATING TO FEES OF THE SECRETARY OF STATE; ADDING, DELETING AND INCREASING CERTAIN FEES.

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

Section 1

Section 1. Section 8-4-4 NMSA 1978 (being Laws 1969, Chapter 272, Section 1, as amended) is amended to read:

"8-4-4. FEES OF SECRETARY OF STATE.--The secretary of state shall collect the following fees to be deposited with the state treasurer for credit to the general fund:

A. photocopies of records, per page. . . . . .
.twenty-five cents ($.25);
B. each certification. . . . . three dollars ($3.00);
C. filing each official oath . . . . . three dollars ($3.00);
D. search of records where another fee is not prescribed, per hour of search . . . . . .

. . . . . ten dollars ($10.00);

E. duplicate commission of office or certificate . . . . . three dollars ($3.00);

F. service of process where another fee is not prescribed . . . . . twenty-five dollars ($25.00);

G. computer printout of Uniform Commercial Code records, per page . . . . . one dollar ($1.00);

and

H. computer generated records other than voter registration records, per record. . . . . ten cents ($.10)."

HB 564

CHAPTER 14

RELATING TO ELECTIONS; PROVIDING AUTHORITY TO PURCHASE PREVIOUSLY OWNED VOTING MACHINES; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 1-9-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 188, as amended) is amended to read:

"1-9-5. REQUIREMENT TO PURCHASE AND USE VOTING MACHINES.--

A. Voting machines shall be used in all precincts in all statewide elections.

B. The county clerk of each county shall provide one voting machine in each precinct for use in the general and primary elections when the total number of registered voters in that precinct amounted to less than four hundred at the close of registration.

C. At least one additional voting machine shall be provided in such precinct for every four hundred registered voters in that precinct.

D. When authorized by the state board of finance, the board of county commissioners may acquire new or previously owned voting or electronic vote tabulating machines, as tested and approved by the secretary of state pursuant to the

provisions of Section 1-9-14 NMSA 1978, which machines may be used in any election for public office. The acquisition of these machines may be in excess of the number provided in this section.

E. Except for intercounty acquisitions of equipment approved by the secretary of state, a previously owned voting or electronic vote tabulating machine shall have a warranty equal to the warranty required of a new voting or electronic vote tabulating machine.
HB 574

CHAPTER 15

RELATING TO SEARCH AND RESCUE; PROVIDING FOR A DESIGNEE FOR THE CHIEF OF THE NEW MEXICO STATE POLICE; AMENDING A SECTION OF THE SEARCH AND RESCUE ACT.

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

Section 1

Section 1. Section 24-15A-6 NMSA 1978 (being Laws 1978, Chapter 107, Section 6, as amended) is amended to read:

"24-15A-6. STATE SEARCH AND RESCUE REVIEW BOARD CREATED--MEMBERSHIP--DUTIES AND RESPONSIBILITIES--TERMS.--

A. There is created a policy advisory committee, to be known as the "state search and rescue review board", whose duty it is to evaluate the operation of the New Mexico search and rescue plan; evaluate problems of specific missions; and make findings of fact and recommendations to the chief, director and other appropriate authorities. The board shall consist of the state search and rescue resource officer, who shall be a nonvoting member, and seven members appointed by the governor as follows:

(1) the secretary of public safety or his designee;

(2) the secretary of health or his designee;

(3) a representative of the civil air patrol division of the department of military affairs;

(4) a representative of the New Mexico emergency services council;

(5) a member certified as a search and rescue person;

(6) a member of the New Mexico sheriff's association;

(7) the chief of the New Mexico state police division of the department of public safety or his designee; and

(8) a member of the general public who shall act as chairman of the board and who shall vote only in case of a tie.

B. The board shall have the duty and responsibility to:

(1) meet at least quarterly or more frequently at the call of the chairman;

(2) evaluate the operation and effectiveness of the state SAR plan and make recommendations to the director;

(3) evaluate the operational effectiveness of specific missions, make findings of fact and recommendations to the chief and other appropriate authorities for the elimination of problems and the improvement of overall conduct of the mission;

(4) hold hearings and invite individuals to appear and testify before the board and reimburse such witnesses for travel expenses incurred;

(5) prepare a report for the attorney general's office in cases of victim hospitalization or death; and

(6) with the approval of the chief, certify field coordinators and confirm certification of SAR persons.

C. The governor shall appoint the seven appointed members for staggered terms of three years each made in such a manner that the terms of not more than three members expire on January 1 of 1979, 1980 and 1981. Thereafter, appointments shall be made so that the terms of not more than three members expire on January 1 of each year. Vacancies shall be filled by appointment by the governor for the unexpired term. Any member of the board who misses more than two consecutive meetings shall automatically be removed as a member of the board." HB 579

CHAPTER 16

RELATING TO THE LABOR DEPARTMENT; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 9-18-1 NMSA 1978 (being Laws 1987, Chapter 342, Section 1) is amended to read:

"9-18-1. SHORT TITLE.-- Chapter 9, Article 18 NMSA 1978 may be cited as the "Labor Department Act"."

Section 2

Section 2. A new section of the Labor Department Act, Section 9-18-15 NMSA 1978, is enacted to read:

"9-18-15. DISCLOSURE OF INFORMATION.--To the extent permitted by federal law, upon the request of a corporation organized pursuant to the Educational Assistance Act, the department shall furnish the last known address and the date of that address of every person certified to the department as being an absent obligor of an educational debt that is due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use such information only for the purpose of enforcing the educational debt obligation of such absent obligors and shall not disclose that information or use it for any other purpose."HB 677

CHAPTER 17

RELATING TO EDUCATION; PROVIDING FOR OFF-CAMPUS INSTRUCTION; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 21-14A-3 NMSA 1978 (being Laws 1982, Chapter 42, Section 3) is amended to read:

"21-14A-3. ESTABLISHMENT AUTHORIZED--BOARD--DETERMINATION OF NEED--AGREEMENTS.--

A. An off-campus instruction program may be established in a school district upon the showing of need by the local board of education. An off-campus instruction program may be established to include more than one school district, in which instance the two or more local boards of education shall act as a single board and, if the off-campus instruction program is established, shall continue to act as a single board.

B. As used in the Off-Campus Instruction Act, "off-campus board" means the local board of education, or the combined local boards of education acting as a single board, of the school district.

C. The duties of the off-campus board are to:

(l) initiate and conduct the survey provided for in Subsection D of this section;

(2) select one or more parent institutions which shall be one of the state educational institutions as specified in Article l2, Section ll of the constitution of New Mexico or one of the state educational institutions established pursuant to Chapter 21 NMSA 1978;

(3) request approval of the off-campus instruction program by the commission on higher education;

(4) enter into written agreements with the board of regents of the selected parent institution, which agreements shall be subject to biennial review of all parties concerned and to the review and commentary of the commission on higher education;

(5) act in advisory capacity to the board of regents of the parent institution in all matters relating to the conduct of the off-campus instruction program;

(6) approve an annual budget for the off-campus instruction program for recommendation to the board of regents of the parent institution;

(7) certify to the board of county commissioners the tax levy; and

(8) conduct the election for tax levies for the off-campus instruction program.

D. Upon evidence of a demand for an off-campus instruction program, the off-campus board shall cause a survey to be made. The commission on higher education shall develop criteria for the establishment of an off-campus instruction program, and no such program shall be established without the written authorization of the commission.

E. If need is established, the off-campus board, in accordance with the commission on higher education criteria for initiating an off-campus instruction program, shall consult with the board of regents of the state educational institution selected to be a parent institution, and, if the off-campus board and the board of regents agree to conduct an off-campus instruction program in the area, they shall transmit a proposal to establish an off-campus instruction program to the commission. The commission shall

evaluate the need and shall notify the off-campus board and the board of regents of approval or disapproval of the proposal.

F. If the proposal is approved, the off-campus board and the board of regents of the parent institution shall enter into a written agreement whichshall include provisions for:

(l) the state educational institution to have full authority and responsibility in relation to all academic matters;

(2) the state educational institution to honor all credits earned by students as though they were earned on the parent campus;

(3) the course of study and program approved by the board of educational finance and offered to the students;

(4) the cooperative use of physical facilities and teaching staff; and

(5) the detailed agreement of financing and financial control of the off-campus instruction program.

G. The agreement shall be binding upon both the off-campus board and the board of regents of the parent institution; however, it may be terminated by mutual consent or it may be terminated by either board upon six months' notice.

H. For the purpose of relating off-campus instruction programs to existing laws, off-campus instruction program districts or off-campus instruction programs:

(l) shall not be considered a part of the uniform system of free public schools pursuant to Article l2, Section l and Article 2l, Section 4 of the constitution of New Mexico;

(2) shall not benefit from the permanent school fund and from the current school fund under Article l2, Sections 2 and 4 of the constitution of New Mexico;

(3) shall not be subject, except as it relates to technical and vocational education, to the control, management and direction of the state board of education under Article l2, Section 6 of the constitution of New Mexico;

(4) shall not be considered school districts insofar as the restrictions of Article 9, Section ll of the constitution of New Mexico are concerned; and

(5) shall not include the major attendance center of northern New Mexico community college at Espanola.

I. All elections held pursuant to the Off-Campus Instruction Act shall be as follows:

(l) the off-campus board calling the election shall give notice of the election in a newspaper of general circulation in the off-campus instruction program district at least once a week for three consecutive weeks, the last insertion to be not less than thirty days prior to the proposed election;

(2) the election shall be conducted and canvassed in the same manner as municipal school district
elections unless otherwise provided in the Off-Campus Instruction Act; and

(3) any person or corporation may institute in the district court of any county in which the off-campus instruction program district affected lies an action or suit to contest the validity of any proceedings held under the Off-Campus Instruction Act, but no such suit or action shall be maintained unless it is instituted within ten days after the issuance by the proper officials of a certificate or notification of the results of the election and the canvassing of the election returns by the board.

J. The tax rolls of the school districts comprising the off-campus instruction program district shall be adopted as the tax rolls of the off-campus instruction program district."
HB 893

CHAPTER 18

RELATING TO AREA VOCATIONAL SCHOOLS; AMENDING A CERTAIN SECTION OF THE NMSA 1978 PERTAINING TO ASSOCIATE DEGREES.

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

Section 1

Section 1. Section 21-17-4.1 NMSA 1978 (being Laws 1988, Chapter 34, Section 1) is amended to read:

"21-17-4.1. ASSOCIATE DEGREES--AUTHORIZATION.--Area vocational schools are authorized to grant associate of applied science and associate of arts and science degrees, provided that the associate degree curriculum is approved by the commission on higher education."SB 272

CHAPTER 19

RELATING TO ELECTIONS; AMENDING CERTAIN SECTIONS OF THE ELECTION CODE PERTAINING TO ABSENTEE VOTING.

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

Section 1

Section 1. Section 1-6-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 129, as amended) is amended to read:

"1-6-3. RIGHT TO ABSENTEE BALLOT--RIGHT TO VOTE.--

A. Any voter may vote by absentee ballot for all candidates and on all questions appearing on the ballot at his precinct poll as if he were able to cast his ballot in person at the precinct poll.

B. Any federal qualified elector may register absentee and vote by an absentee ballot for any federal office."

Section 2

Section 2. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended by Laws 1989, Chapter 66, Section 1 and by Laws 1989, Chapter 105, Section 1 and also by Laws 1989, Chapter 392, Section 11) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION.--

A. Application by a federal qualified elector for an absentee ballot shall be made on the official postcard form prescribed or authorized by the federal government to the county clerk of the county of his residence.

B. Application by a voter for an absentee ballot shall be made on a form prescribed by the secretary of state to the county clerk of the county in which he resides. The form shall identify the applicant and contain such information as is necessary for issuance of an absentee ballot under the Absent Voter Act.

C. Each application for an absentee ballot by a registered voter other than a federal qualified elector shall be subscribed by the applicant before a person authorized to administer oaths or a deputy registration officer or witnessed by the signature of another registered voter of this state.

D. Each application for an absentee ballot by a federal qualified elector shall be either witnessed by a
person other than the applicant, indicating the witness's name and address, or it shall be subscribed and sworn to before a person authorized to administer oaths or a deputy registration officer."SB 51

CHAPTER 20

RELATING TO ELECTIONS; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 PERTAINING TO ABSENTEE BALLOTS; REMOVING THE REQUIREMENT THAT VOTER SIGNATURES BE MADE UNDER OATH OR BEFORE A WITNESS.

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

Section 1

Section 1. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended by Laws 1989, Chapter 66, Section 1 and by Laws 1989, Chapter 105, Section 1 and also by Laws 1989, Chapter 392, Section 11) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION.--

A. Application by a federal qualified elector for an absentee ballot shall be made on the official postcard form prescribed or authorized by the federal government to the county clerk of the county of his residence.

B. Application by a voter for an absentee ballot shall be made on a form prescribed by the secretary of state to the county clerk of the county in which he resides. The form shall identify the applicant and contain information to establish his qualification for issuance of an absentee ballot under the Absent Voter Act.

C. Each application for an absentee ballot shall be subscribed by the applicant."

Section 2

Section 2. Section 1-6-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 134, as amended) is amended to read:

"1-6-8. ABSENTEE BALLOT ENVELOPES.--

A. The secretary of state shall prescribe the form of, procure and distribute to each county clerk a supply of:

(1) official inner envelopes for use in sealing the completed absentee ballot;

(2) official mailing envelopes for use in returning the official inner envelope to the county clerk;

(3) absentee ballot instructions, describing proper methods for completion of the ballot and returning it; and

(4) official transmittal envelopes for use by the county clerk in mailing absentee ballot materials.

B. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the county clerk and federal qualified electors shall be printed in red in the form prescribed by the federal Uniformed and Overseas Citizens Absentee Voting Act. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the county clerk and voters shall be printed in black in substantially similar form. All official inner envelopes shall be printed in black.

C. The reverse of each official mailing envelope shall contain a form to be executed by the person completing the absentee ballot. The form shall identify the person and shall contain the following statement: "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."."

Section 3

Section 3. Section 1-6-9 NMSA 1978 (being Laws 1969, Chapter 240, Section 135, as amended) is amended to read:

"1-6-9. MANNER OF VOTING.--

A. Any person voting under provisions of the Absent Voter Act shall secretly mark his ballot in the manner provided in the Election Code for marking emergency paper ballots, place it in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope which shall include an affirmation by the voter under penalty of perjury that the facts stated in the form are true.

B. Federal qualified electors shall either deliver or mail the official mailing envelope to the county clerk of their county of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the county clerk of the county of residence or former residence as the case may be. Voters shall either deliver or mail the official mailing envelope to the county clerk of their county of residence."

Section 4

Section 4. Section 1-6-9.1 NMSA 1978 (being Laws 1991, Chapter 105, Section 13) is amended to read:
"1-6-9.1. USING THE MARKSENSE BALLOT.--Any person voting on the marksense ballot shall secretly mark the ballot by completing the arrow (□□) (□□) in pencil directly to the right of the candidate's name or the proposed question. The voter shall then place

the marked ballot in the official inner envelope and securely seal the envelope and then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope."

Section 5

Section 5. Section 1-6-14 NMSA 1978 (being Laws 1971, Chapter 317, Section 11, as amended) is amended to read:

"1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER PRECINCT BOARDS.--

A. Before opening any official mailing envelope, the presiding judge and the election judges shall determine that the required information has been completed on the reverse side of the official mailing envelope.

B. If the voter's signature is missing, the presiding judge shall write "Rejected" on the front of the official mailing envelope. The election clerks shall enter the voter's name in the signature rosters and shall write the notation "Rejected--Mising Signature" in the "Notations" column of the signature rosters. The presiding judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope and write the voter's name on the front of the envelope and deposit it in the locked ballot box.

C. The accredited challengers may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

(1) the official mailing envelope has been opened prior to being received by the precinct board; or

(2) the person offering to vote is not a federal voter, federal qualified elector, overseas citizen voter or voter as provided in the Election Code.

Upon the challenge of an absentee ballot, the election judges and the presiding judge shall follow the same procedure as when ballots are challenged when a person attempts to vote in person. If a challenge is upheld, the official mailing envelope shall not be opened but shall be placed in an envelope provided for challenged ballots. The same procedure
shall be followed in canvassing and determining the validity of challenged absentee ballots as with other challenged ballots.

D. If the official mailing envelopes have been properly subscribed and the voters have not been challenged:

(1) the election judges shall open the official mailing envelopes and deposit the ballots in their still sealed official inner envelopes in the locked ballot box; and

(2) the election clerks shall enter the absent voter's name and residence address as shown on the official mailing envelope in the signature rosters and shall mark the notation "AB" opposite the voter's name in the "Notations" column of the signature rosters.

E. Prior to the closing of the polls, the election judges and the presiding judge may either remove the absentee ballots from the official inner envelopes and count and tally the results of absentee balloting or, under the personal supervision of the presiding judge and one election judge from each party, register the results of each absentee ballot on a voting machine the same as if the absent voter had been present and voted in person. It shall be unlawful for any person to disclose the results of such count and tally or such registration on a voting machine of absentee ballots prior to the closing of the polls.

F. Absentee ballots shall be counted and tallied or registered on a lever voting machine or an electronic voting machine as provided in the Election Code; provided that any county with a population in excess of one hundred thousand shall count and tally or register absentee ballots on an electronic voting machine.

G. Absent voter precinct polls shall close at the time prescribed by the Election Code for other polling places, and the results of the election shall be certified as prescribed by the secretary of state."SB 234

CHAPTER 21

RELATING TO ELECTIONS; AMENDING CERTAIN SECTIONS OF THE ELECTION CODE PERTAINING TO ABSENTEE VOTING.

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

Section 1

Section 1. Section 1-6-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 129, as amended) is amended to read:

"1-6-3. RIGHT TO ABSENTEE BALLOT--RIGHT TO VOTE.--

A. Any voter may vote by absentee ballot for all candidates and on all questions appearing on the ballot at his precinct poll as if he were able to cast his ballot in person at the precinct poll.

B. Any federal qualified elector may register absentee and vote by an absentee ballot for any federal office."

Section 2

Section 2. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended by Laws 1989, Chapter 66, Section 1 and by Laws 1989, Chapter 105, Section 1 and also by Laws 1989, Chapter 392, Section 11) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION.--

A. Application by a federal qualified elector for an absentee ballot shall be made on the official postcard form prescribed or authorized by the federal government to the county clerk of the county of his residence.

B. Application by a voter for an absentee ballot shall be made on a form prescribed by the secretary of state to the county clerk of the county in which he resides. The form shall identify the applicant and contain such information as is necessary for issuance of an absentee ballot under the Absent Voter Act.

C. Each application for an absentee ballot by a registered voter other than a federal qualified elector shall be subscribed by the applicant before a person authorized to administer oaths or a deputy registration officer or witnessed by the signature of another registered voter of this state.

D. Each application for an absentee ballot by a federal qualified elector shall be either witnessed by a
person other than the applicant, indicating the witness's name and address, or it shall be subscribed and sworn to before a person authorized to administer oaths or a deputy registration officer."HB 251

CHAPTER 22

RELATING TO MUNICIPALITIES; AMENDING THE MUNICIPAL ELECTION CODE TO CONFORM TO THE STATE ELECTION CODE.

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

Section 1

Section 1. Section 3-8-14 NMSA 1978 (being Laws 1985, Chapter 208, Section 22, as amended) is amended to read:

"3-8-14. VOTING MACHINES--ORDERING--PREPARATION--CERTIFICATION--DELIVERY.--

A. If voting machines are to be used, the municipal clerk shall order the machines from the county clerk within fifteen days of the adoption of the election resolution, and the county clerk shall supply such voting machines pursuant to Section 1-9-6 NMSA 1978. The county shall provide voting machine technicians, voting machine programming and voting machine transportation and the municipality shall pay the reasonable fee charged by the county for such services and the use of the voting machines, but in no case in an amount which exceeds the actual cost to the county pursuant to Section 1-9-12 NMSA 1978.

B. If voting machines are to be used, the municipal clerk shall order at least one voting machine for every polling place, provided that the clerk shall order a sufficient number of voting machines to assure that the eligible voters in that polling place shall be able to vote in a timely manner.

C. The municipal clerk shall deliver the printer packs and voting machine strips to the county clerk within two days after receipt. The county clerk, within fifteen days of receipt of the printer packs and voting machine strips, shall:

(1) insert the voting machine strips;

(2) program the voting machines;

(3) test each counter for accuracy by casting votes upon it until it correctly registers each vote cast;

(4) set all counters at zero; and

(5) notify the municipal clerk of the date, time and place for inspection and certification of the voting
machines, which notification shall be not less than twelve hours prior to the time for inspection and certification.

D. Immediately upon receipt of the notice of date, time and place of inspection and certification, the municipal clerk shall post such notice in the office of the municipal clerk and attempt to telephone the candidates at the phone number listed on the declaration of candidacy to give each candidate notice of the date, time and place of inspection and certification.

E. Inspection and certification shall occur not later than seven days prior to the election and shall be open to the public.

F. At the date, time and place for inspection and certification, in the presence of the county clerk and those municipal candidates present, if any, the municipal clerk shall:

(1) test each counter for accuracy by casting votes upon it until it correctly registers each vote cast;

(2) test each voting machine to assure that it has been correctly programmed; and

(3) inform the county clerk when each machine is satisfactory and ready to be certified.

G. If the municipal clerk informs the county clerk that a machine is satisfactory and ready to be certified, then:

(1) the county clerk shall reset each counter at zero;

(2) the county clerk shall insert the printer pack into the machine;

(3) the voting machine shall be immediately sealed with a numbered metal seal so as to prevent operation of the machine or its registering counters without breaking the seal;

(4) the municipal clerk shall prepare a certificate in triplicate for each machine that shall:

(a) show the serial number of the voting machine;

(b) state that the voting machine has all of its resettable registering counters set at zero;

(c) state that the machine has been tested by voting on each registered counter to prove the counter is in perfect condition;

(d) show the number of the metal seal that has sealed the machine; and

(e) show the number registered on the protective counter;

(5) a copy of the certificate shall be delivered to the county clerk, the original certificate shall be filed in the office of the municipal clerk and one copy shall be posted on the voting machine; and

(6) the keys to the voting machine shall be enclosed in a sealed envelope on which shall be written:

(a) the number of the precinct and polling place to which the machine is assigned;

(b) the serial number of that voting machine;

(c) the number of the metal seal that has sealed the voting machine;

(d) the number registered on the protective counter; and

(e) across the seal of the envelope, the signatures of the county clerk, the municipal clerk and all candidates present, if any, at the inspection and certification.

H. After certification of the voting machines, the county clerk shall keep the keys to the voting machines in his custody and shall deliver the keys to the municipal clerk when the voting machines are delivered for election. The municipal clerk shall secure in the office of the municipal clerk all the envelopes containing the keys to the voting machines until delivered to the presiding judge of the election.

I. An objection to the use of a particular voting machine shall be filed in the district court within two days after the machine has been certified. Any objection so filed shall specify the number of the voting machine objected to and the reason for the objection. Each voting machine shall be conclusively presumed to be properly prepared for the election if it has been certified, unless a timely objection has been filed.

J. Voting machines certified in accordance with this section shall be delivered to the assigned precinct polling place no earlier than five days prior to the election and no later than noon on the day prior to the election.

K. The municipal clerk shall refuse to certify any voting machine that the municipal clerk determines is not programmed properly, is not working properly or will not fairly or accurately record votes. Only voting machines that have been certified by the municipal clerk shall be used in the election."

Section 2

Section 2. Section 3-8-17 NMSA 1978 (being Laws 1985, Chapter 208, Section 25) is amended to read:

"3-8-17. SAMPLE BALLOTS.--

A. At the same time official ballots are printed for voting with machines or paper ballots, the municipal clerk shall cause sample ballots to be printed, which shall:

(1) be printed in both English and Spanish;

(2) be printed in a total number equal to at least ten percent of the number of qualified electors in each precinct or consolidated precinct;

(3) be the same in all respects as the official ballots, except that they shall be printed on colored paper and shall not contain the facsimile signature of the municipal clerk or any endorsement on the sample ballot or the back thereof;

(4) be marked in large black capital letters, "SAMPLE BALLOT"; and

(5) be made available in reasonable quantities to all interested persons for distribution to the voters;

B. Nothing in this section shall prevent any person from having printed at his expense sample ballots, of a different color than the official sample ballot, which comply
with the provisions of this subsection, so long as no marks, notations, words or other material are added to, taken from or deface, change or hide the information on or the appearance of the sample ballot as authorized by the municipal clerk."

Section 3

Section 3. Section 3-8-38 NMSA 1978 (being Laws 1985, Chapter 208, Section 46) is amended to read:

"3-8-38. CONDUCT OF ELECTION--SWEARING IN--DELIVERY OF SUPPLIES--OPENING AND CLOSING OF POLLS--PRECINCT BOARD ATTENDANCE.--

A. Not earlier than 3:00 p.m. on the day before the election and not later than one hour prior to the opening of the polls, the municipal clerk shall swear in the presiding judge and cause the election supplies, voting machine keys, ballot box and other election materials to be delivered to the presiding judge.

B. The presiding judge shall cause all materials delivered to him to be delivered to the polling place not later than 6:00 a.m. on election day.

C. The presiding judge shall swear in all precinct board members upon their arrival at the polling place.

D. Polls shall be opened at 7:00 a.m. on the date of the election and shall be closed at 7:00 p.m. on the same day.

E. Precinct board members shall present themselves at the polling place not later than 6:00 a.m. on the day of the election and shall remain at the polling place until all duties of the precinct board are properly completed."

Section 4

Section 4. Section 3-9-3 NMSA 1978 (being Laws 1973, Chapter 375, Section 1, as amended) is amended to read:

"3-9-3. ABSENTEE VOTING--REGULAR OR SPECIAL MUNICIPAL ELECTIONS--RIGHT TO VOTE.--

A. Any voter or any federal voter or federal qualified elector entitled to vote in the municipal election
may vote by absentee ballot for all candidates and on all questions appearing on the ballot at such regular or special election at his polling place, as if he were able to cast his ballot in person at such polling place.

B. The provisions of this section shall also apply
to a regular or special municipal election held in conjunction with any other political subdivision."

Section 5

Section 5. Section 3-9-4 NMSA 1978 (being Laws 1973, Chapter 375, Section 3, as amended) is amended to read:

"3-9-4. ABSENTEE BALLOT APPLICATION--REJECTION--ACCEPTANCE.--

A. Application by a federal qualified elector or federal voter shall be made on the federal postcard application form to the municipal clerk.

B. The municipal clerk shall prescribe the form of the absentee ballot application.

C. Upon receipt of a properly completed and delivered application for an absentee ballot, the municipal clerk shall contact the county clerk to determine if the applicant is a qualified elector of the municipality.

D. The municipal clerk shall reject an absentee ballot application for any of the following reasons:

(1) the application does not set forth the applicant's full name and address;

(2) the application is not signed by the applicant; or

(3) the applicant:

(a) has no valid affidavit of registration on file with the county clerk and is not a federal qualified elector or federal voter; or

(b) has a valid affidavit of registration on file with the county clerk, but is not a resident of the municipality; or

(c) is a federal qualified elector or federal voter, but is not entitled to vote in the municipal election; and

(d) cannot comply with Subparagraph (a), (b) or (c) of this paragraph pursuant to Subsection C of Section 3-8-40 NMSA 1978.

E. If the municipal clerk rejects the absentee ballot application pursuant to Subsection D of this section, then the municipal clerk shall refuse to issue an absentee ballot and shall mark the application "rejected" and enter "rejected" in the absentee ballot register and file the application in a separate file. The municipal clerk shall, within twenty-four hours of rejection of the application, notify the applicant in writing by certified mail, return receipt requested, by telephone or in person of the reasons for rejection of the application. In addition, if the application is incomplete, the clerk shall mail immediately a new application for absentee ballot. Notwithstanding any provisions of this section to the contrary, the only method of notification pursuant to rejection of an absentee ballot under the provisions of Paragraph (3) of Subsection D of this section shall be by certified mail, return receipt requested. The person whose application has been rejected shall have ten days from receipt of notice to appeal or show cause why the application should be accepted.

F. If the application for absentee ballot is accepted, the municipal clerk shall:

(1) mark the application "accepted";

(2) enter the required information in the absentee ballot register; and

(3) issue to the applicant an absentee ballot.

G. The municipal clerk shall hand deliver or mail an absentee ballot to any qualified elector, federal qualified elector or federal voter whose application for an absentee ballot has been accepted. The municipal clerk shall notify the county clerk who shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. Names of individuals which have been labeled "absentee ballot" shall appear on a separate list called the "absentee voter list". This list shall be submitted to the municipal clerk by the county clerk in the same manner as provided in Subsection B of Section 3-8-7 NMSA 1978.

H. It is the duty of the municipal clerk to verify the signature roster and absentee voter list to ensure that all names of individuals who have been issued absentee ballots have been labeled "absentee ballot" on the signature roster and their names listed on the absentee voter list. If not, then the municipal clerk shall write

"absentee ballot" on the
signature line of the signature roster next to the name of the person who has been sent an absentee ballot. The municipal clerk shall then enter the name and all required information on the absentee voter list.

I. If the application for an absentee ballot is delivered in person to the municipal clerk during regular hours and days of business and is accepted, the municipal clerk shall deliver the absentee ballot and it shall be marked by the applicant in a voting booth in the municipal clerk's office, sealed in the proper envelopes and otherwise properly executed and returned to the municipal clerk or the clerk's authorized representative before the applicant leaves the office of the municipal clerk. Absentee ballots may be cast in person at the municipal clerk's office until 5:00 p.m. on the Thursday immediately prior to the date of election.

J. The act of marking the absentee ballot in the office of the municipal clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the municipal clerk a polling place subject to the requirements of a polling place in the Municipal Election Code other than is provided in this subsection. During the period of time between the date a person may first apply in person for an absentee ballot and the final date for such application and marking of the ballot in the office of the municipal clerk, it is unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office.

K. Absentee ballots shall be air mailed to federal qualified electors and federal voters whose applications have been accepted not earlier than thirty-five days prior to the election and not later than 5:00 p.m. on the Thursday immediately prior to the date of the election.

L. Absentee ballots shall be mailed to voters whose applications have been approved not earlier than thirty-five days prior to the election and not later than 5:00 p.m. on Thursday immediately prior to the date of the election.

M. No absentee ballot shall be delivered or mailed to any person other than the applicant for such ballot."

Section 6

Section 6. Section 3-9-6 NMSA 1978 (being Laws 1973, Chapter 375, Section 7, as amended) is amended to read:

"3-9-6. FORM OF ABSENTEE BALLOT--FORM OF ABSENTEE BALLOT ENVELOPES.--

A. The form of the absentee ballot shall be, as nearly as practicable, in the same form as prescribed by the municipal clerk for emergency paper ballots or paper

ballots used in lieu of voting machines. However, to reduce weight and bulk for transport of absentee ballots, the size and weight of the paper for envelopes, ballots and instructions shall be reduced as much as is practicable. The ballots shall provide for sequential numbering.

B. Absentee ballots and envelopes shall be delivered by the printer to the municipal clerk not later than thirty-five days prior to the date of the election to be held.

C. The municipal clerk shall prescribe the form of:

(1) official inner envelopes for use in sealing the completed absentee ballot;

(2) official mailing envelopes for use in returning the official inner envelope to the municipal clerk;

(3) absentee ballot instructions, describing proper methods for completion of the ballot and returning it; and

(4) official transmittal envelopes for use by the municipal clerk in mailing absentee ballot materials.

D. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk and federal voters and federal qualified electors shall be printed in blue in the form prescribed by postal regulations and the Federal Voting Assistance Act of 1955. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk shall be printed in green in substantially similar form. All official inner envelopes shall be printed in green.

E. The reverse of each official mailing envelope shall contain a form to be executed under oath by the person completing the absentee ballot. The form shall identify the person and shall contain the following statement: "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."."

Section7. REPEAL.--Section 3-8-42 NMSA 1978 (being Laws 1985, Chapter 208, Section 50) is repealed.HB 943

CHAPTER 23

RELATING TO SPECIAL HOSPITAL DISTRICTS; PROVIDING FOR STAGGERED TERMS FOR MEMBERS OF THE BOARD OF TRUSTEES OF CERTAIN SPECIAL HOSPITAL DISTRICTS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 4-48A-6 NMSA 1978 (being Laws 1978, Chapter 29, Section 6, as amended) is amended to read:

"4-48A-6. BOARD OF TRUSTEES--TERMS--VACANCIES--REMOVAL.--

A. Subject to the requirements of Section 4-48A-3 NMSA 1978, the board of trustees of a special hospital district shall consist of the greater of five members or a number of members equal to the number of counties which agree to form a special hospital district:

(1) in the case of a special hospital district included wholly within a county, the members shall be elected at large or from single-member districts as provided in the Special Hospital District Act; or

(2) in the case of a special hospital district that includes all or a portion of two or more counties, one member of the board shall be elected from each subdistrict by the qualified electors who reside in that subdistrict and the remainder shall be elected at large by the qualified electors who reside in the special hospital district.

B. Members shall be elected as follows:

(1) for the purposes of the first election of a board of trustees, the board of county commissioners shall designate in its proclamation five positions to be filled so that:

(a) two members shall be elected for an initial term of two years;

(b) two members shall be elected for an initial term of four years; and

(c) one member shall be elected for an initial term of five years.
Thereafter, all members shall be elected for five-year terms; and

(2) for the purposes of staggering the terms of any nonstaggered terms of a board of trustees elected under the provisions of the Special Hospital District Act, the board of county commissioners may call an election to provide for five positions to be filled so that:

(a) two members shall be elected for an initial term of two years;

(b) two members shall be elected for an initial term of four years; and

(c) one member shall be elected for an initial term of five years.
Thereafter, all members shall be elected for five-year terms.

C. Vacancies on the board of trustees created by a member elected from a subdistrict or a single-member district shall be filled by the board of county commissioners of the county in which the subdistrict or single-member district is located, and vacancies created by a member elected at large shall be filled by the remaining members of the board of trustees for the remainder of the unexpired term of the member creating the vacancy.

D. Members of the board of trustees shall be suspended or removed from office only as provided in Sections 10-4-1 through 10-4-29 NMSA 1978 or as provided in Section 4-8A-7 NMSA 1978."

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.SB 70

CHAPTER 24

RELATING TO EDUCATION; AMENDING CERTAIN SECTIONS OF THE VARIABLE SCHOOL CALENDAR ACT.

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

Section 1

Section 1. Section 22-22-4 NMSA 1978 (being Laws 1972, Chapter 16, Section 4) is amended to read:

"22-22-4. VARIABLE SCHOOL CALENDAR--REQUEST.--The local school board of any school district may adopt by resolution a request to the state board for approval to operate under a variable school calendar. The state board shall develop criteria for the establishment of a variable school calendar in a school district. Those criteria shall include a requirement that the local school board demonstrate substantial community support for implementation of the variable school calendar. The state board shall consider the request for approval at an open public hearing held in the school district making the request."

Section 2

Section 2. Section 22-22-5 NMSA 1978 (being Laws 1972, Chapter 16, Section 5) is amended to read:

"22-22-5. VARIABLE SCHOOL CALENDAR--ACTION BY BOARD.--

A. The state board shall make rules and regulations pursuant to the Variable School Calendar Act necessary to establish procedures for making application, requiring reports and maintaining supervision of operations of a district under a variable school calendar. In addition, the state board may make rules and regulations necessary to implement the provisions of the Variable School Calendar Act.

B. The state board may suspend or modify existing rules and regulations pertaining to school district operations upon recommendation of the state superintendent, when those rules and regulations prevent or impede the implementation of the Variable School Calendar Act."

Section 3

Section 3. Section 22-22-6 NMSA 1978 (being Laws 1972, Chapter 16, Section 6) is amended to read:

"22-22-6. VARIABLE SCHOOL CALENDAR--EFFECT OF APPROVAL OF REQUEST.--Upon approval of the state board of the request of a local school board for operation under a variable school calendar, such calendar for that school or school district
shall be in lieu of any other school calendar provided by law, and all requirements for reporting or operating under existing school calendars shall be suspended for the school or school district upon the initiation of operations under a variable school calendar and the rules and regulations made pursuant thereto. The school or school district shall continue to operate under the approved variable school calendar until the local school board requests the state board by resolution for approval of the discontinuance of the variable school calendar and the request is approved by the state board."SB 233

CHAPTER 25

RELATING TO THE LABOR DEPARTMENT; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 9-18-1 NMSA 1978 (being Laws 1987, Chapter 342, Section 1) is amended to read:

"9-18-1. SHORT TITLE.--Chapter 9, Article 18 NMSA 1978 may be cited as the "Labor Department Act"."

Section 2

Section 2. A new section of the Labor Department Act, Section 9-18-15 NMSA 1978 is enacted to read:

"9-18-15. DISCLOSURE OF INFORMATION.-- to the extent permitted by federal law, upon the written request of a corporation organized pursuant to the Educational Assistance Act, the department shall furnish the last known address and date of that address of every person certified to the department as being an absent obligor of an educational debt that is due and owed to the corporation or that the corporation had lawfully contracted to collect. The corporation and its officers and employees shall use such information only for the purpose of enforcing the educational debt obligation of such absent obligor and shall not disclose that information or use it for any other purpose."SB 301

CHAPTER 26

RELATING TO LABOR CONDITIONS; REQUIRING EMPLOYERS TO PROVIDE EMPLOYEES WITH WRITTEN RECEIPTS; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 50-4-2 NMSA 1978 (being Laws 1937, Chapter 109, Section 2, as amended) is amended to read:

"50-4-2. SEMIMONTHLY AND MONTHLY PAY DAYS.--

A. Every employer in this state shall designate regular pay days, not more than sixteen days apart, as days fixed for the payment of wages to all employees paid in this state. The employer shall pay for services rendered from the first to the fifteenth days, inclusive, of any calendar month by the twenty-fifth day of the month during which services are rendered, and for all services rendered from the sixteenth to the last day of the month, inclusive, of any calendar month by the tenth day of the succeeding month. Where computation of earnings and of amounts due, preparation of payrolls and issuance of paychecks are at a central location outside New Mexico, the employer shall pay for services rendered from the first to the fifteenth days, inclusive, of any calendar month by the last of the month during which services are rendered, and for all services

rendered from the sixteenth to the last day of the month, inclusive, of any calendar month by the fifteenth day of the succeeding month.

B. Employers shall pay such wages in full, less lawful deductions and less payroll deductions authorized by the employer and employee, in lawful money of the United States or in checks, payroll vouchers or drafts on banks, convertible into cash on demand at full face value or, with the voluntary authorization of the employer, employee and financial institution, by deposit to the account of the employee in any bank, savings and loan association, credit union or other financial institution authorized by the United States or one of the several states to receive deposits in the United States, without any reduction or deduction, except such as may be specifically stated in the written contract of hiring entered into at the time of hiring. Every employer shall provide his employee with a written receipt that identifies the employer and sets forth the employee's gross pay, the number of hours worked by the employee, the total wages and benefits earned by the employee and an itemized
listing of all deductions withheld from the employee's gross pay. Nothing contained in Sections 50-4-1 through 50-4-12 NMSA 1978 shall in any way limit or prohibit the payment of wages or compensation at more frequent intervals than those set forth in this section. Where the labor or service to be rendered to an employer is recompensed on a task, piece or commission basis or other method of calculating the amount of wages to be paid, other than a definite and fixed amount in cash, the employer and the employee may agree in writing at the time of hiring that the wages shall be paid on a monthly basis, but in all such cases, payment shall be made on or before the tenth day of the succeeding calendar month.

C. Notwithstanding the provisions of Subsection A of this section, every employer may pay professional, administrative or executive employees or employees employed in the capacity of outside salesman, as those terms are defined under the federal Fair Labor Standards Act, one time per month, excluding those employees whose salaries are subject to provisions of collective bargaining agreements."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 444

CHAPTER 27

RELATING TO PUBLIC SCHOOLS; PROVIDING FOR STUDENT EXCUSES FOR EXTRACURRICULAR ACTIVITIES; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 22-12-2.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 27, as amended) is amended to read:

"22-12-2.1. EXTRACURRICULAR ACTIVITIES--STUDENT PARTICIPATION.--

A. A student shall have a 2.0 grade point average on a 4.0 scale, or its equivalent, either cumulatively or for the grading period immediately preceding participation, in order to be eligible to participate in any extracurricular activity. For purposes of this section, "grading period" is a period of time not less than six weeks. The provisions of this subsection shall not apply to special education students placed in class C and class D programs.

B. No student shall be absent from school for school-sponsored extracurricular activities in excess of fifteen days per semester, and no class may be missed in excess of fifteen times per semester.

C. The provisions of Subsections A and B of this section apply to all extracurricular activities.

D. The state superintendent may issue a waiver relating to the number of absences for participation in any state or national competition. The state superintendent shall develop a procedure for petitioning cumulative provision eligibility cases, similar to other eligibility situations.

E. Student standards for participation in extracurricular activities shall be applied beginning with a student's second semester of grade eight."SB 681

CHAPTER 28

RELATING TO TECHNICAL AND VOCATIONAL INSTITUTES; PROVIDING FOR REFUNDING BONDS; ENACTING A NEW SECTION OF THE TECHNICAL AND VOCATIONAL INSTITUTE ACT.

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

Section 1

Section 1. A new section of the Technical and Vocational Institute Act is enacted to read:

"ADOPTION OF RESOLUTION BY BOARD--PROVIDING FOR REFUNDING BONDS.--

A. The board of a technical and vocational institute district may issue refunding bonds with the approval of the state board of finance for the purpose of refunding any of the general obligation bonded indebtedness of the district. The board

shall adopt a resolution stating the facts that make the issuance of the refunding bonds necessary or advisable, including the determination of the necessity or advisability by the board and the amount of refunding bonds that the board concludes are necessary and advisable to issue. The resolution shall further establish:

(1) the form of the bonds;

(2) the interest rate of the bonds, but the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act;

(3) the date of the refunding bonds;

(4) the denominations of the refunding bonds;

(5) the maturity dates, the last of which shall not be more than twenty years from the date of the refunding bonds; and

(6) the place of payment of both principal and interest.

B. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form. They shall bear:

(1) the signature or the facsimile signature of the president and secretary of the board;

(2) the seal of the board; and

(3) the seal of the technical and vocational institute district.

C. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or sold as directed by the board. The proceeds of the sale shall be applied only to the purpose for which the bonds were issued and for the payment of any incidental expenses incurred."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 173

CHAPTER 29

RELATING TO RETIREMENT PROGRAMS; PROVIDING FOR THE ACQUISITION OF SERVICE CREDIT BY EMPLOYEES OF A FIREFIGHTING UNIT OF A LOCAL

GOVERNMENTAL ENTITY BY PURCHASE; REPEALING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. A new section of the Public Employees Retirement Act is enacted to read:

"PURCHASE OF SERVICE CREDIT.--An affiliated public employer that assumes a firefighting function previously provided by the United States government may, at the time of the assumption of the firefighting function, provide credited service for retirement board purposes to any employees who were previously employed by a firefighting unit of the United States government in connection with the assumed firefighting function. The credited service may be provided by the affiliated public employer subject to the following conditions:

A. the employee shall pay to the public employees' retirement board the difference between the actuarial present value of association benefits likely to be paid the employee computed with and without the United States government service;

B. the employee, within one year of the assumption of the governmental function, irrevocably forfeits all rights based upon employee contributions in and to the immediate vested or nonvested retirement benefits under the retirement program of the United States government in which the employee was participating immediately prior to the assumption of the governmental function; and

C. the payments made under Subsections A and B of this section shall be made in a lump sum or by entering into an installment contract for up to thirty-six months with the retirement board at the regular interest rates and under the standard conditions set for such installment contracts by that board. The employee may purchase service credit equivalent to the employee's service in the United States government department of energy of a firefighting unit. The employee shall make a written election concerning payment not later than December 1, 1993 and any election made thereafter shall be void."

Section 2. REPEAL.--Section 10-11-139 NMSA 1978 (being Laws 1987, Chapter 176, Section 1) is repealed.HB 512

CHAPTER 30

RELATING TO TAXATION; MAKING TECHNICAL CORRECTIONS TO THE TAX ADMINISTRATION ACT AND TO CERTAIN TAXES, FEES AND TAX ACTS; AMENDING AND REPEALING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-1-6.12 NMSA 1978 (being Laws 1983, Chapter 211, Section 17, as amended) is amended to read:

"7-1-6.12. TRANSFER--REVENUES FROM MUNICIPAL LOCAL OPTION GROSS RECEIPTS TAXES.--A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality for which the department is collecting a local option gross receipts tax imposed by that municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax imposed by that municipality, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that municipality of the local option gross receipts tax."

Section 2

Section 2. Section 7-1-6.13 NMSA 1978 (being Laws 1983, Chapter 211, Section 18, as amended) is amended to read:

"7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION GROSS RECEIPTS TAXES.--A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a local option gross receipts tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax imposed by that county, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that county of the local option gross receipts tax."

Section 3

Section 3. Section 7-1-6.15 NMSA 1978 (being Laws 1983, Chapter 211, Section 20, as amended) is amended to read:

"7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO MUNICIPALITIES OR COUNTIES.--

A. The provisions of this section apply to:

(1) any distribution to a municipality of gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or of interstate telecommunications gross receipts tax pursuant to Section 7-1-6.36 NMSA 1978;

(2) any transfer to a municipality with respect to any local option gross receipts tax imposed by that municipality;

(3) any transfer to a county with respect to any local option gross receipts tax imposed by that county;

(4) any distribution to a county pursuant to Section 7-1-6.16 NMSA 1978;

(5) any distribution to a municipality or a county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

(6) any transfer to a county with respect to any tax imposed in accordance with the Local Liquor Excise Tax Act; and

(7) any distribution to a municipality or a county of cigarette taxes pursuant to Sections 7-1-6.11, 7-12-15 and 7-12-16 NMSA 1978.

B. If the secretary determines that any prior distribution or transfer to a municipality or county was erroneous, the secretary shall increase or decrease the next distribution or transfer amount for that municipality or county after the determination, except as provided in Subsection C, D or E of this section, by the amount necessary to correct the error. Subject to the provisions of Subsection E of this section, the secretary shall notify the municipality or county of the amount of each increase or decrease.

C. No decrease shall be made to current or future distributions or transfers to a municipality or a county for any excess distribution or transfer made to that municipality or county more than one year prior to the calendar year in which the determination of the secretary was made.

D. The secretary, in lieu of recovery from the next distribution or transfer amount, may recover an excess distribution or transfer of one hundred dollars ($100) or more to the municipality or county in installments from current and future distributions or transfers to that municipality or county pursuant to an agreement with the officials of the municipality or county whenever the amount of the distribution or transfer decrease for the municipality or county exceeds ten percent of the average distribution or transfer amount for that municipality or county for the twelve months preceding the month in which the secretary's determination is made; provided that for the purposes of this subsection, the "average distribution or transfer amount" shall be the arithmetic mean of the distribution or transfer amounts within the twelve months immediately preceding the month in which the determination is made.

E. Except for the provisions of this section, if the amount by which a distribution or transfer would be adjusted pursuant to Subsection B of this section is one hundred dollars ($100) or less, no adjustment or notice need be made.

F. The secretary is authorized to decrease a distribution to a municipality or county upon being directed to do so by the secretary of finance and administration pursuant to the State Aid Intercept Act. Upon direction to decrease a distribution to a

municipality or county, the secretary shall decrease the next designated distribution, and succeeding distributions as necessary, by the amount of the state distributions intercept authorized by the secretary of finance and administration pursuant to the State Aid Intercept Act. The secretary shall transfer the state distributions intercept amount to the municipal or county treasurer or other person designated by the secretary of finance and administration to pay the debt service to avoid default on qualified local revenue bonds."

Section 4

Section 4. Section 7-1-6.35 NMSA 1978 (being Laws 1992, Chapter 108, Section 2) is amended to read:

"7-1-6.35. DISTRIBUTION--CONTRIBUTIONS TO STATE POLITICAL PARTY.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state treasurer in an amount equal to the money designated pursuant to Section 7-2-31 NMSA 1978 as contributions to a state political party, as that term is defined in Section 7-2-31 NMSA 1978. The state treasurer within ten days of receipt of the money from the department shall remit the amount designated for each state political party to that party."

Section 5

Section 5. Section 7-1-10 NMSA 1978 (being Laws 1965, Chapter 248, Section 15, as amended) is amended to read:

"7-1-10. RECORDS REQUIRED BY STATUTE--TAXPAYER RECORDS--ACCOUNTING METHODS--REPORTING METHODS--INFORMATION RETURNS.--

A. Every person required by the provisions of any statute administered by the dpartment to keep records and documents and every taxpayer shall maintain books of account or other records in a manner that will permit the accurate computation of state taxes or provide information required by the statute under which he is required to keep records.

B. Methods of accounting shall be consistent for the same business. A taxpayer engaged in more than one business may use a different method of accounting for each business.

C. Prior to changing his method of accounting in keeping his books and records for tax purposes, a taxpayer shall first secure the consent of the secretary or the secretary's delegate. If consent is not secured, the department upon audit may require the taxpayer to compute the amount of tax due on the basis of the accounting method earlier used.

D. Prior to changing his method of reporting taxes, other than for changes required by law, a taxpayer shall first secure the consent of the secretary or the secretary's delegate. Consent shall be granted or withheld pursuant to the provisions of Section 7-4-19 NMSA 1978. If consent is not secured, the secretary or the secretary's delegate upon audit may require the taxpayer to compute the amount of tax due on the basis of the reporting method earlier used.

E. The secretary may, by regulation, require any person doing business in the state to submit to the department information reports that are considered reasonable and necessary for the administration of any provision of law to which the Tax Administration Act applies."

Section 6

Section 6. Section 7-1-11 NMSA 1978 (being Laws 1965, Chapter 248, Section 16, as amended) is amended to read:

"7-1-11. INSPECTION OF BOOKS OF TAXPAYERS--CREDENTIALS.--

A. The department shall cause the records and books of account of taxpayers to be inspected or audited at such times as the department deems necessary for the effective execution of the department's responsibilities.

B. Auditors and other officials of the department designated by the secretary are authorized to request and require the production for examination of the records and books of account of a taxpayer. Those auditors and officials of the department so designated by the secretary shall be furnished with credentials identifying them as such, which they shall display to any taxpayer whose books are sought to be examined.

C. Taxpayers shall upon request make their records and books of account available for inspection at reasonable hours to the secretary or the secretary's delegate who properly identifies himself to the taxpayer."

Section 7

Section 7. Section 7-1-12.1 NMSA 1978 (being Laws 1985, Chapter 65, Section 12) is amended to read:

"7-1-12.1. DEPARTMENT TO DESIGNATE PRODUCTION UNIT--INDEX--IDENTIFICATION BY NUMBER OR SYMBOL.--

A. The department shall have the power to designate the property that shall constitute a production unit; provided, a production unit shall be a unit of property from which products of common ownership are severed.

B. The department shall compile and keep current an index of all production units by description sufficient to properly identify such production units.

C. The department shall assign to each production unit a number or symbol, and the number or symbol shall serve as a means of identification for the purpose of reporting, tax payment and tax collection of the taxes administered by the department."

Section 8

Section 8. Section 7-1-12.2 NMSA 1978 (being Laws 1985, Chapter 65, Section 13) is amended to read:

"7-1-12.2. NOTICE OF IDENTIFICATION NUMBER ASSIGNED--OPERATOR MAY REQUEST IDENTIFICATION NUMBER.--The department shall inform each operator of a production unit by mail as to the identification number or symbol assigned to such production unit. Such number or symbol may be changed or revised and information regarding such change or revision shall likewise be given the operator by mail. In the creation of a new production unit or in the event of a change of ownership or revision in a production unit, the operator may request the department to assign a new identification number or symbol, and the department shall notify the operator of the identification number or symbol to be used."

Section 9

Section 9. Section 7-1-59 NMSA 1978 (being Laws 1965, Chapter 248, Section 60, as amended) is amended to read:

"7-1-59. JEOPARDY ASSESSMENTS.--

A. If the secretary at any time reasonably believes that the collection of any tax for which a taxpayer is liable will be jeopardized by delay, the secretary may immediately make a jeopardy assessment of the amount of tax the payment of which to the state the secretary believes to be in jeopardy.

B. A jeopardy assessment is effective upon the delivery, in person or by certified mail, to the taxpayer against whom the liability for tax is asserted, of a document entitled "notice of jeopardy assessment of taxes", issued in the name of the secretary, stating the nature and amount of the taxes assertedly owed by the taxpayer to the state, demanding of the taxpayer the immediate payment of that amount of tax and briefly informing the taxpayer of the steps that may be taken against the taxpayer as well as of the remedies available to the taxpayer.

C. Notwithstanding any other provision of the Tax Administration Act, if any taxpayer against whom a jeopardy assessment has been made neglects or refuses either to pay the amount of tax demanded of the taxpayer or furnish satisfactory security

therefor within five days of the service upon the taxpayer of the notice of jeopardy assessment, the secretary may immediately proceed to collect the tax by levy, as provided in Section 7-1-31 NMSA 1978, on sufficient property of the taxpayer to satisfy the deficiency, protect the interests of the state by, as provided in Section 7-1-53 NMSA 1978, enjoining the taxpayer from doing business in New Mexico or both.

D. A taxpayer to whom a jeopardy assessment has been made may cause the procedure of levy or injunction as set forth in Subsection C of this section to be stayed by filing with the department acceptable security in an amount equal to the amount of taxes assessed, as provided in Section 7-1-54 NMSA 1978. A taxpayer to whom a jeopardy assessment has been made may dispute the jeopardy assessment either by furnishing security and otherwise following the procedures set forth in Section 7-1-24 NMSA 1978 or by paying the tax and claiming a refund as provided by Section 7-1-26 NMSA 1978."

Section 10

Section 10. Section 7-1-60 NMSA 1978 (being Laws 1965, Chapter 248, Section 61, as amended) is amended to read:

"7-1-60. ESTOPPEL AGAINST STATE.--In any proceeding pursuant to the provisions of the Tax Administration Act, the department shall be estopped from obtaining or withholding the relief requested if it is shown by the party adverse to the department that the party's action or inaction complained of was in accordance with any regulation effective during the time the asserted liability for tax arose or in accordance with any ruling addressed to the party personally and in writing by the secretary, unless the ruling had been rendered invalid or had been superseded by regulation or by another ruling similarly addressed at the time the asserted liability for tax arose."

Section 11

Section 11. Section 7-1-80 NMSA 1978 (being Laws 1965, Chapter 248, Section 83, as amended) is amended to read:

"7-1-80. DISSOLUTION OR WITHDRAWAL OF CORPORATION.--The state corporation commission shall not issue any certificate of dissolution to any taxpayer or allow any corporate taxpayer to withdraw from the state until:

A. the taxpayer files with the state corporation commission a certificate signed by the secretary or the secretary's delegate stating that as of a certain date the taxpayer is not liable for any tax and containing a statement verified by a responsible official of the corporation to the effect that the taxpayer has not engaged in business after the date above specified. If the taxpayer has so engaged in business, any certificate of dissolution or withdrawal shall be of no effect and all liabilities of the corporation shall continue as if no certificate had been granted;

B. a successor, acceptable to the secretary or the secretary's delegate, to any corporation requesting dissolution or withdrawal enters into a binding agreement by provision of which the successor assumes full liability for payment of all taxes due or expected to become due from the corporation and certification thereof is given by the secretary or the secretary's delegate; or

C. satisfactory security for payment of the taxes due or expected to become due from the corporation is furnished in accordance with the provisions of Section 7-1-54 NMSA 1978 and certification thereof is given by the secretary or the secretary's delegate."

Section 12

Section 12. Section 7-2C-1 NMSA 1978 (being Laws 1985, Chapter 106, Section 1) is amended to read:

"7-2C-1. SHORT TITLE.-- Chapter 7, Article 2C NMSA 1978 may be cited as the "Tax Refund Intercept Program Act"."

Section 13

Section 13. Section 7-7-15 NMSA 1978 (being Laws 1983, Chapter 209, Section 1) is amended to read:

"7-7-15. SHORT TITLE.-- Sections 7-7-15 through 7-7-20 NMSA 1978 may be cited as the "Art Acceptance Act"."

Section 14

Section 14. Section 7-9B-1 NMSA 1978 (being Laws 1992, Chapter 47, Section 1) is amended to read:

"7-9B-1. SHORT TITLE.-- Chapter 7, Article 9B NMSA 1978 may be cited as the "Filmmaker's Credit Act"."

Section 15

Section 15. Section 7-9C-1 NMSA 1978 (being Laws 1992, Chapter 50, Section 1 and also Laws 1992, Chapter 67, Section 1) is amended to read:

"7-9C-1. SHORT TITLE.-- Chapter 7, Article 9C NMSA 1978 may be cited as the "Interstate Telecommunications Gross Receipts Tax Act"."

Section 16

Section 16. Section 7-9C-2 NMSA 1978 (being Laws 1992, Chapter 50, Section 2 and also Laws 1992, Chapter 67, Section 2) is amended to read:

"7-9C-2. DEFINITIONS.--As used in the Interstate Telecommunications Gross Receipts Tax Act:

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

B. "engaging in interstate telecommunications business" means carrying on or causing to be carried on the business of providing interstate telecommunications service;

C. "interstate telecommunications gross receipts" means the total amount of money or the value of other consideration received from providing interstate telecommunications services that either originate or terminate in New Mexico and are charged to a telephone number or account in New Mexico, regardless of where the bill for such services is actually delivered, but excludes cash discounts allowed and taken, and interstate telecommunications gross receipts tax payable for the reporting period. Also excluded from "interstate telecommunications gross receipts" are any gross receipts or sales taxes imposed by any Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

D. "interstate telecommunications service" means the service of originating or receiving in New Mexico interstate and international telephone and telegraph service, including but not limited to the transmission of voice, messages and data by way of electronic or similar means between or among points by wire, cable, fiber-optic, laser, microwave, radio, satellite or similar facilities;

E. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, joint venture, syndicate or other entity; the United States or any agency or instrumentality of the United States; or the state of New Mexico or any political subdivision of the state;

F. "private communications service" means a dedicated service for a single customer that entitles the customer to exclusive or priority use of a communications channel or group of channels between a location within New Mexico and one or more specified locations outside New Mexico; and

G. "wide-area telephone service" means a telephone service that entitles the subscriber, upon payment of a flat rate charge dependent on the total duration of all

such calls and the geographic area selected by the subscriber, to either make or receive a large volume of telephonic communications to or from persons located in specified geographical areas."

Section 17

Section 17. Section 7-9C-6 NMSA 1978 (being Laws 1992, Chapter 50, Section 6 and also Laws 1992, Chapter 67, Section 6) is amended to read:

"7-9C-6. DEDUCTION--CERTAIN TELEPHONE SERVICES.-- Receipts from the provision of wide-area telephone service and private communications service in this state may be deducted from interstate telecommunications gross receipts."

Section 18. Section 7-9C-8 NMSA 1978 (being Laws 1992, Chapter 50, Section 8 and also Laws 1992, Chapter 67, Section 8) is amended to read:

"7-9C-8. DEDUCTIONS--TELECOMMUNICATIONS PROVIDERS.--

A. Receipts from interstate telecommunications services that are provided by a corporation to itself or to an affiliated corporation may be deducted from interstate telecommunications gross receipts.

B. For the purposes of this section:

(1) "affiliated corporation" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation; and

(2) "control" means ownership of stock in a corporation that represents at least eighty percent of the total voting power of the corporation and has a value equal to at least eighty percent of the total value of the stock of that corporation."

Section 19

Section 19. Section 7-12-3 NMSA 1978 (being Laws 1971, Chapter 77, Section 3, as amended) is amended to read:

"7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

A. For the privilege of selling, giving or consuming cigarettes in New Mexico, there is levied an excise tax at the rate of seventy-five one-hundredths of one cent ($.0075) for each cigarette sold, given or consumed in this state.

B. The tax imposed by this section shall be referred to as the "cigarette tax"."

Section 20

Section 20. Section 7-14A-1 NMSA 1978 (being Laws 1991, Chapter 197, Section 5) is amended to read:

"7-14A-1. SHORT TITLE.-- Chapter 7, Article 14A NMSA 1978 may be cited as the "Leased Vehicle Gross Receipts Tax Act"."

Section 21

Section 21. Section 7-15-3.1 NMSA 1978 (being Laws 1943, Chapter 125, Section 12, as amended) is amended to read:

"7-15-3.1. TRIP TAX--COMPUTATION.--
A. For the purpose of providing funds for the construction, maintenance, repair and reconstruction of this state's public highways, a use fee, to be known as the "trip tax", is imposed in lieu of registration fees and the weight distance tax on the registrant, owner or operator of any foreign-based commercial motor carrier vehicle that is:

(1) not registered in this state under interstate registration;

(2) not registered in this state under proportional registration;

(3) not subject to a valid reciprocity agreement;

(4) not registered as a foreign commercial motor carrier vehicle under short-term registration;

(5) not registered under an allocation of one-way rental fleet vehicles; and

(6) not exempted from registration and the payment of any registration fees and not exempted from the payment of the trip tax under Section 65-5-3 NMSA 1978.

B. Except as provided otherwise in Subsection C of this section, the trip tax shall be computed as follows:

(1) when the gross vehicle weight or combination gross vehicle weight exceeds twelve thousand pounds but does not exceed twenty-six thousand pounds, five cents ($.05) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state;

(2) when the gross vehicle weight or combination gross vehicle weight exceeds twenty-six thousand pounds and does not exceed fifty-four thousand pounds, nine cents ($.09) a mile for mileage to be traveled on the public highways

within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state;

(3) when the gross vehicle weight or combination gross vehicle weight exceeds fifty-four thousand pounds and does not exceed seventy-two thousand pounds, eleven cents ($.11) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state; and

(4) when the gross vehicle weight or combination gross vehicle weight exceeds seventy-two thousand pounds, twelve cents ($.12) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state.

C. The department, by regulation, may authorize flat fee permits for trips by a single vehicle within a definite period of time, not to exceed seven days. If the department establishes such a permit, the fee shall be sixty-five dollars ($65.00) per day and the fee so paid shall be in lieu of paying the trip tax based on the computations specified in Subsection B of this section and the special fuel excise tax imposed pursuant to Section 7-16A-3 NMSA 1978."

Section 22

Section 22. Section 7-18A-1 NMSA 1978 (being Laws 1989, Chapter 327, Section 2) is amended to read:

"7-18A-1. SHORT TITLE.-- Chapter 7, Article 18A NMSA 1978 may be cited as the "Controlled Substance Tax Act"."

Section 23

Section 23. Section 7-24-8 NMSA 1978 (being Laws 1989, Chapter 326, Section 1) is amended to read:

"7-24-8. SHORT TITLE.--Sections 7-24-8 through 7-24-16 NMSA 1978 may be cited as the "Local Liquor Excise Tax Act"."

Section 24

Section 24. Section 7-24B-7 NMSA 1978 (being Laws 1987, Chapter 45, Section 16, as amended) is amended to read:

"7-24B-7. REFERENDUM REQUIREMENTS.--

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

favor of imposing the special county hospital gasoline tax. The governing body shall provide for an election on the question of imposing the tax within sixty days after the date the ordinance is adopted. The question may be submitted to the qualified electors and voted upon as a separate question in a general election or in any special election called for that purpose by the governing body. A special election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general
elections. If the question of imposing a special county hospital gasoline tax fails, the governing body shall not again propose a special county hospital gasoline tax for a period of one year after the election.

B. A single election may be held on the question of imposing a special county hospital gasoline tax as authorized in the Special County Hospital Gasoline Tax Act, on the question of imposing a special county hospital gross receipts tax as authorized in the Special County Hospital Gross Receipts Tax Act and on the question of imposing a mill levy pursuant to the Hospital Funding Act."

Section 25

Section 25. Section 7-25-6 NMSA 1978 (being Laws 1966, Chapter 48, Section 6) is amended to read:

"7-25-6. RATE AND MEASURE OF TAX--DENOMINATION AS "SERVICE TAX".--

A. For the privilege of severing or processing in New Mexico natural resources that are owned by another person and are not otherwise taxed by Sections 7-25-4 and 7-25-5 NMSA 1978, there is imposed on the service charge of any person severing or processing natural resources that are owned by another person an excise tax at the same rate that would be imposed on an owner of natural resources for performing the same function.

B. The tax imposed by this section shall be
referred to as the "service tax"."

Section 26

Section 26. Section 7-29A-1 NMSA 1978 (being Laws 1992, Chapter 38, Section 1) is amended to read:

"7-29A-1. SHORT TITLE.-- Chapter 7, Article 29A NMSA 1978 may be cited as the "Enhanced Oil Recovery Act"."

Section 27

Section 27. Laws 1992, Chapter 39, Section 9 is amended to read:

"Section 9. TEMPORARY PROVISION--ISSUANCE OF NONTAXABLE TRANSACTION CERTIFICATES.--If the appropriate fee had been paid and the taxation and revenue department had approved the application of the buyer or lessee, any "Series 1992" nontaxable transaction certificate issued by the department prior to January 1, 1992 is valid for the ten-year period beginning January 1, 1992, provided that the buyer or lessee remains qualified for the certificates and has not had the right to use the certificates suspended under Section 7-9-44 NMSA 1978."

Section 28

Section 28. REPEAL.--Section 7-9-72 NMSA 1978 (being Laws 1970, Chapter 77, Section 2, as amended) is repealed.HB 27

CHAPTER 31

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 AND REPEALING CERTAIN SECTIONS OF LAWS 1989, 1990, 1991 AND 1992.

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

Section 1

Section 1. Section 7-9-3 NMSA 1978 (being Laws 1978, Chapter 46, Section 1, as amended by Laws 1992, Chapter 39, Section 1 and by Laws 1992, Chapter 50, Section 14 and also by Laws 1992, Chapter 67, Section 14) is amended to read:

"7-9-3. DEFINITIONS.--As used in the Gross Receipts and Compensating Tax Act:

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

B. "buying" or "selling" means any transfer of property for consideration or any performance of service for consideration;

C. "construction" means building, altering, repairing or demolishing in the ordinary course of business any:

(1) road, highway, bridge, parking area or related project;

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(7) sewerage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or other mining appurtenance;

(12) microwave station or similar facility; or

(13) similar work; "construction" also means:

(14) leveling or clearing land;

(15) excavating earth;

(16) drilling wells of any type, including seismograph shot holes or core drilling; or

(17) similar work;

D. "financial corporation" means any savings and loan association or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

E. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

F. "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing property employed in New Mexico, from selling services performed outside New Mexico the product of which is initially used in New Mexico or from performing services in New Mexico. In an exchange in which the money or other consideration received does not

represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged.

(1) "Gross receipts" includes:

(a) any receipts from sales of tangible personal property handled on consignment;

(b) the total commissions or fees derived from the business of buying, selling or promoting the purchase, sale or leasing, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

(c) amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization; and

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services.

(2) "Gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) New Mexico gross receipts tax, governmental gross receipts tax and leased vehicle gross receipts tax payable on transactions for the reporting period;

(c) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions; and

(e) any type of time-price differential.

(3) When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers his interest in any such contract to a third person, the seller or lessor shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential;

G. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include construction;

H. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) any national, federal, state, Indian or other governmental unit or subdivision, or any agency, department or instrumentality of any of the foregoing;

I. "property" means real property, tangible personal property, licenses, franchises, patents, trademarks and copyrights. Tangible personal property includes electricity and manufactured homes;

J. "leasing" means any arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property, except that the granting of a license to use property is the sale of a license and not a lease;

K. "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling.

"Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property;

L. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state;

M. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

N. "manufactured home" means a moveable or portable housing structure that exceeds either a width of eight feet or a length of forty feet constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy;

O. "initial use" or "initially used" means the first employment for the intended purpose and does not include the following activities:

(1) observation of tests conducted by the performer of services;

(2) participation in progress reviews, briefings, consultations and conferences conducted by the performer of services;

(3) review of preliminary drafts, drawings and other materials prepared by the performer of the services;

(4) inspection of preliminary prototypes developed by the performer of services; or

(5) similar activities;

P. "research and development services" means any activity engaged in for other persons for consideration, for one or more of the following purposes:

(1) advancing basic knowledge in a recognized field of natural science;

(2) advancing technology in a field of technical endeavor;

(3) the development of a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or
improved product, process or system is offered for sale, lease or other transfer;

(4) the development of new uses or applications for an existing product, process or system, whether or not the new use or application is offered as the rationale for purchase, lease or other transfer of the product, process or system;

(5) analytical or survey activities incorporating technology review, application, trade-off study, modeling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer; or

(6) the design and development of prototypes or the integration of systems incorporating advances, developments or improvements included in Paragraphs (1) through (5) of this subsection; and

Q. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Gross Receipts Tax Act, Supplemental Municipal Gross Receipts Tax Act, Special Municipal Gross Receipts Tax Act, Municipal Environmental Services Gross Receipts Tax Act, Municipal Infrastructure Gross Receipts Tax Act, County Gross Receipts Tax Act, County Fire Protection Excise Tax Act, Special County Hospital Gross Receipts Tax Act, County Environmental Services Gross Receipts Tax Act, Local Hospital Gross Receipts Tax Act, County Health Care Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department."

Section 2

Section 2. Section 7-9-7 NMSA 1978 (being Laws 1966, Chapter 47, Section 7, as amended) is amended to read:

"7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS "COMPENSATING TAX".--

A. For the privilege of using tangible property in New Mexico, there is imposed on the person using the property an excise tax equal to five percent of the value of tangible property that was:

(l) manufactured by the person using the property in the state;

(2) acquired outside this state as the result of a transaction that would have been subject to the gross receipts tax had it occurred within this state; or

(3) acquired as the result of a transaction which was not initially subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax but which transaction, because of the buyer's subsequent use of the property, should have been subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax.

For the purpose of this subsection, value of tangible property shall be determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later.

B. For the privilege of using services rendered in New Mexico, there is imposed on the person using such services an excise tax equal to five percent of the value of the services at the time they were rendered. The services, to be taxable under this subsection, must have been rendered as the result of a transaction which was not initially subject to the gross receipts tax but which transaction, because of the buyer's subsequent use of the services, should have been subject to the gross receipts tax.

C. The tax imposed by this section shall be eferred to as the "compensating tax"."

Section 3

Section 3. Section 7-9-13 NMSA 1978 (being Laws 1969, Chapter 144, Section 6, as amended) is amended to read:

"7-9-13. EXEMPTION--GROSS RECEIPTS TAX--GOVERNMENTAL AGENCIES.--

A. Except as provided in Subsection B of this section, exempted from the gross receipts tax are the receipts of the United States, any state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, any Indian nation, tribe or pueblo or other domestic governmental unit or subdivision, or any agency, department or instrumentality of any of the foregoing.

B. Receipts from the sale of gas or electricity by a utility owned or operated by a county, municipality or other political subdivision of the state are not exempted from the
gross receipts tax."

Section 4. Section 7-9-13.2 NMSA 1978 (being Laws 1992, Chapter 100, Section 3) is amended to read:

"7-9-13.2. EXEMPTION--GOVERNMENTAL GROSS RECEIPTS TAX--RECEIPTS SUBJECT TO CERTAIN OTHER TAXES.--Exempted from the governmental gross receipts tax are receipts from transactions involving tangible personal property or services on which receipts or transactions the gross receipts tax, compensating tax, motor vehicle excise tax, gasoline tax, special fuel tax, special fuel excise tax, oil and gas emergency school tax, resources tax, processors tax, service tax or the excise tax imposed under Section 66-12-6.1 NMSA 1978 is imposed."

Section 5

Section 5. Section 7-9-14 NMSA 1978 (being Laws 1969, Chapter 144, Section 7, as amended) is amended to read:

"7-9-14. EXEMPTION--COMPENSATING TAX--GOVERNMENTAL AGENCIES--INDIANS.--

A. Except as otherwise provided in this subsection, there is exempted from the compensating tax the use of property by the United States or the state of New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof. The exemption provided by this subsection does not apply to:

(1) the use of property that is or will be incorporated into a metropolitan redevelopment project under the Metropolitan Redevelopment Code; or

(2) the use of tangible personal property that becomes an ingredient or component part of a construction project.

B. Exempted from the compensating tax is the use of property by any Indian nation, tribe or pueblo or any governmental unit, subdivision, agency, department or instrumentality thereof on Indian reservations or pueblo grants."

Section 6

Section 6. Section 7-9-18 NMSA 1978 (being Laws 1969, Chapter 144, Section 11, as amended) is amended to read:

"7-9-18. EXEMPTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--AGRICULTURAL PRODUCTS.--Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling livestock and receipts of growers, producers, trappers or nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, hides or pelts. Persons engaged in the business of buying and selling wool or mohair or of buying and selling livestock on their own account are producers for the purposes of this section.

Receipts from selling dairy products at retail are not exempted from the gross receipts tax."

Section 7

Section 7. Section 7-9-26 NMSA 1978 (being Laws 1969, Chapter 144, Section 19, as amended) is amended to read:

"7-9-26. EXEMPTION--GROSS RECEIPTS AND COMPENSATING TAX--FUEL.--Exempted from the gross receipts and compensating tax are the receipts from selling and the use of gasoline or special fuel on which the tax imposed by Section 7-13-3, 7-16-3 or 7-16A-3 NMSA 1978 has been paid and not refunded."

Section 8

Section 8. Section 7-9-38.1 NMSA 1978 (being Laws 1992, Chapter 50, Section 12 and also Laws 1992, Chapter 67, Section 12) is amended to read:

"7-9-38.1. EXEMPTION--GROSS RECEIPTS TAX--INTERSTATE TELECOMMUNICATIONS SERVICES.--Exempted from the gross receipts tax are receipts from the sale or provision of interstate telecommunications services subject to the Interstate Telecommunications Gross Receipts Tax Act."

Section 9

Section 9. Section 7-9-43 NMSA 1978 (being Laws 1966, Chapter 47, Section 13, as amended) is amended to read:

"7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS--FEE--RENEWAL.--

A. The provisions of this subsection apply to transactions occurring on or after July 1, 1992. All nontaxable transaction certificates of the appropriate series executed by buyers or lessees shall be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transactions. If the seller or lessor does not demonstrate possession of required nontaxable transaction certificates to the department at the commencement of an audit or demonstrate within sixty days from the date that the notice requiring possession of these nontaxable transaction certificates is given the seller or lessor by the department that the seller or lessor was in possession of such certificates at the time receipts from the transactions were required to be reported, deductions claimed by the seller or lessor that require delivery of these nontaxable transaction certificates shall be disallowed. The nontaxable transaction certificates shall contain the information and be in a form prescribed by the department. Only buyers or lessees who have a registration number or have applied for a registration number and have not been refused one under Subsection C of Section 7-1-12 NMSA 1978 shall execute nontaxable transaction certificates. If the seller or lessor has been given an identification number for tax purposes by the department, the seller or lessor shall disclose that identification number to the buyer or lessee prior to or upon acceptance of a nontaxable transaction certificate. When the seller or lessor accepts a nontaxable transaction certificate within the required time and in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's or lessor's gross receipts.

B. The provisions of this subsection apply only to transactions occurring on or after July 1, 1992. Properly executed documents required to support the deductions provided in Sections 7-9-57, 7-9-58 and 7-9-74 NMSA 1978 shall be in the possession of the seller at the time the return is due for receipts from the transactions. If the seller does not demonstrate possession of required documents to the department at the commencement of an audit or demonstrate within sixty days from the date that the notice requiring possession of these documents is given to the seller by the department that the seller was in possession of such documents at the time receipts from the transactions were required to be reported, deductions claimed by the seller or lessor that require delivery of these documents shall be disallowed. These documents shall contain the information and be in a form prescribed by the department. When the seller accepts these documents within the required time and in good faith that the buyer will employ the property or service transferred in a nontaxable manner, the properly

executed documents shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's gross receipts.

C. Notice, as used in this section, is sufficient if the notice is mailed or served as provided in Subsection A of Section 7-1-9 NMSA 1978. Notice by the department under
this section shall not be given prior to the commencement of an audit of the seller required to be in possession of the documents.

D. On January 1, 1992, every nontaxable transaction certificate, except for nontaxable transaction certificates of the series applicable to the ten-year period beginning January 1, 1992 and issued by the department prior to that date, is void with respect to transactions after December 31, 1991. The department shall issue separate series of nontaxable transaction certificates for the ten-year period beginning January 1, 1992 and for each ten-year period beginning on January 1 of every tenth year succeeding calendar year 1992. A series of nontaxable transaction certificates issued by the department for any ten-year period may be executed by buyers or lessees for transactions occurring within that ten-year period but are not valid for transactions occurring before or after that ten-year period, except that certificates issued by the department with respect to the ten-year period beginning January 1, 1992 are also valid for transactions prior to January 1, 1992. For administrative convenience, the department may accept and approve qualifying applications for the privilege of executing nontaxable transaction certificates and pre-issue certificates of any series within the six-month period immediately preceding the beginning of the ten-year period to which the series of nontaxable transaction certificates applies.

E. To exercise the privilege of executing appropriate nontaxable transaction certificates that may be effective on or after January 1, 1992, a buyer or lessee shall apply to the department for permission to execute nontaxable transaction certificates and pay a one-time application fee of one hundred dollars ($100). The provisions of the Tax Administration Act apply to the administration and enforcement of this fee. The department shall not approve any application for which a fee is required and not paid. On and after July 1, 1993, if a person is shown on the department's records to be a delinquent taxpayer, the department may refuse to approve the application of the person until the person is no longer shown to be a delinquent taxpayer, and the taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. Upon the department's approval of the application, the buyer or lessee may request appropriate nontaxable transaction certificates for execution by the buyer or lessee; provided that, on and after July 1, 1993, if a person is shown on the department's records to be a delinquent taxpayer, the department may refuse to issue nontaxable transaction certificates to the person until the person is no longer shown to be a delinquent taxpayer, and the taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. The department may require any buyer or lessee requesting and receiving nontaxable transaction certificates for execution by that buyer or lessee to report to the department annually the name, address and identification number assigned by the department of the sellers and lessors to whom they have delivered

nontaxable transaction certificates. The department may require any seller or lessor engaged in business in New Mexico to report to the department annually the name, address and federal employer identification number or state identification number for tax purposes issued by the department of the buyers or lessees from whom the seller or lessor has accepted a nontaxable transaction certificate."

Section 10

Section 10. Section 7-9-44 NMSA 1978 (being Laws 1969, Chapter 144, Section 34, as amended) is amended to read:

"7-9-44. SUSPENSION OF THE RIGHT TO USE A NONTAXABLE TRANSACTION CERTIFICATE.--

A. The secretary may suspend for not more than one year the privilege of a person to use nontaxable transaction certificates if that person fails to pay, within one year of the date the tax is due, the compensating tax on the subsequent use of property or services purchased through the use of a nontaxable transaction certificate.

B. The secretary may suspend for not more than six months the privilege of a person to use nontaxable transaction certificates, to claim deductions on the basis of nontaxable transaction certificates accepted by that person or both if that person fails to account in the manner and time required by the department, in accordance with Subsection E of Section 7-9-43 NMSA 1978, for the certificates executed or accepted by that person.

C. A suspension under this section voids the department's approval of the person's application for the privilege of executing nontaxable transaction certificates and, prior to resumption of use of such certificates, the person whose privilege to use nontaxable transaction certificates has been suspended shall reapply for the privilege of executing such certificates in accordance with Section 7-9-43 NMSA 1978 and shall pay the application fee.

D. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the department may notify the public or provide for notice to the public of the suspension of a person's privilege
to use nontaxable tansaction certificates."

Section 11

Section 11. Section 7-9-54 NMSA 1978 (being Laws 1969, Chapter 144, Section 44, as amended) is amended to read:

"7-9-54. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS--SALES TO GOVERNMENTAL AGENCIES.--

A. Except as provided otherwise in Subsection C of this section, receipts from selling tangible personal property to the United States or the state of New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts.

B. Except as provided otherwise in Subsection C of this section, receipts from selling tangible personal property to an Indian tribe, nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof for use on Indian reservations or pueblo grants may be deducted from gross receipts or from governmental gross receipts.

C. Unless contrary to federal law, the deduction provided by this section does not apply to:

(1) receipts from selling nonfissionable metalliferous mineral ore;

(2) receipts from selling tangible personal property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code;

(3) receipts from selling tangible personal property that will become an ingredient or component part of a construction project; or

(4) that portion of the receipts from performing a "service", as defined in Subsection K of Section 7-9-3 NMSA 1978, that reflects the value of tangible personal property utilized or produced in performance of such service."

Section 12

Section 12. Section 7-9-55 NMSA 1978 (being Laws 1969, Chapter 144, Section 45, as amended by Laws 1986, Chapter 20, Section 65 and also by Laws 1986, Chapter 52, Section 2) is amended to read:

"7-9-55. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL GROSS RECEIPTS TAX--TRANSACTION IN INTERSTATE COMMERCE.--

A. Receipts from transactions in interstate commerce may be deducted from gross receipts to the extent that the imposition of the gross receipts tax would be unlawful under the United States constitution.

B. Receipts from transactions in interstate commerce may be deducted from governmental gross receipts.

C. Receipts from transmitting messages or conversations by radio other than from one point in this state to another point in this state and receipts from the sale of radio or television broadcast time when the advertising message is supplied by or on

behalf of a national or regional seller or advertiser not having its principal place of business in or being incorporated under the laws of this state, may be deducted from gross receipts. Commissions of advertising agencies from performing services in this state may not be deducted from gross receipts under this section."

Section 13

Section 13. REPEAL.--

A. Laws 1989, Chapter 262, Sections 7 and 11 are repealed.

B. Laws 1990, Chapter 27, Sections 1 and 3 are repealed.

C. Laws 1991, Chapter 197, Section 2 and Chapter 203, Section 2 are repealed.

D. Laws 1992, Chapter 39, Section 2, Chapter 40, Sections 2 and 3, Chapter 50, Section 15 and Chapter 67, Section 15 are repealed.

Section 14

Section 14. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX--RAILWAY ROADBED MATERIALS.--Receipts from the sale of materials necessary for the construction or reconstruction of railway roadbeds may be deducted from gross receipts."

Section 15

Section 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 193

CHAPTER 32

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE GASOLINE TAX ACT; AMENDING AND REPEALING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-13-2 NMSA 1978 (being Laws 1971, Chapter 207, Section 2, as amended) is amended to read:

"7-13-2. DEFINITIONS.--As used in the Gasoline Tax Act:

A. "gasoline" means any flammable liquid used primarily as fuel for the propulsion of motor vehicles, motorboats or aircraft. "Gasoline" does not include diesel-engine fuel, kerosene, liquefied petroleum gas, natural gas and products specially prepared and sold for use in the turbo-prop or jet-type engines;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

D. "motor vehicle" means any self-propelled vehicle suitable for operation on highways;

E. "highway" means every way or place, including toll roads, generally open to or intended to be used for public travel by motor vehicles, regardless of whether it is temporarily closed;

F. "distributor" means any person, but not including the United States of America or any of its agencies except to the extent now or hereafter permitted by the constitution and laws thereof, who receives gasoline within the meaning of "received" as defined in this section;

G. "wholesaler" means any person not a distributor who sells gasoline in quantities of thirty-five gallons or more and does not deliver such gasoline into the fuel supply tanks of motor vehicles;

H. "retailer" means any person who sells gasoline in quantities of thirty-five gallons or less and delivers such gasoline into the fuel supply tanks of motor vehicles;

I. the definitions of "distributor", "wholesaler" and "retailer" shall be construed so that a person may at the same time be a retailer and a distributor or a retailer and a wholesaler;

J. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof;

K. "received" means:

(1)

(a) gasoline which is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person is "received" by such person when it is loaded there into tank cars, tank trucks, tank wagons or other types of transportation equipment, or when it is placed into any tank or other container from which sales or deliveries not involving transportation are made;

(b) when, however, such gasoline is shipped or delivered to another person registered as a distributor under the Gasoline Tax Act, then it is "received" by the distributor to whom it is so shipped or delivered; and

(c) further, when such gasoline is shipped or delivered to another person not registered as a distributor under the Gasoline Tax Act for the account of a person that is so registered, it is "received" by the distributor for whose account it is shipped;

(2) notwithstanding the provisions of Paragraph (1) of this subsection, when gasoline is shipped or delivered from a refinery or pipeline terminal to another refinery or pipeline terminal, such gasoline is not "received" by reason of such shipment or delivery;

(3) any product other than gasoline that is blended to produce gasoline other than at a refinery or pipeline terminal in this state is "received" by a person who is the owner thereof at the time and place the blending is completed; and

(4) except as otherwise provided, gasoline is "received" at the time and place it is first unloaded in this state and by the person who is the owner thereof immediately preceding the unloading, unless the owner immediately after the unloading is a registered distributor, in which case such registered distributor is considered as having received the gasoline;

L. "drip gasoline" means a combustible hydrocarbon liquid formed as a product of condensation from either associated or nonassociated natural or casing-head gas which remains a liquid at existing atmospheric temperature and pressure;

M. "gallon" means the quantity of liquid necessary to fill a standard United States gallon liquid measure or that same quantity adjusted to a temperature of sixty degrees fahrenheit at the election of any distributor, but a distributor shall report on the same basis for a period of at least one year; and

N. "ethanol blended fuel" means gasoline received in New Mexico containing a minimum of ten percent by volume of denatured ethanol, of at least one hundred ninety-nine proof, exclusive of denaturants."

Section 2

Section 2. Section 7-13-3 NMSA 1978 (being Laws 1971, Chapter 207, Section 3, as amended) is amended to read:

"7-13-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS "GASOLINE TAX".--

A. For the privilege of receiving gasoline in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of gasoline received in New Mexico. Except as provided in the County and Municipal Gasoline Tax Act and in the Special County Hospital Gasoline Tax Act, no municipality or other political subdivision of the state may impose an excise or occupation tax upon, or measured by, gasoline received, sold, used,
stored or handled therein.

B. The tax imposed by Subsection A of this section shall be sixteen cents ($.16) per gallon received in New Mexico.

C. The tax imposed by this section may be called the "gasoline tax"."

Section 3

Section 3. Section 7-13-3.1 NMSA 1978 (being Laws 1979, Chapter 166, Section 7) is amended to read:

"7-13-3.1. GASOLINE INVENTORY TAX--IMPOSITION OF TAX--DATE PAYMENT OF TAX DUE.--

A. A gasoline inventory tax is imposed measured by the quantity of gallons of gasoline in the possession of a distributor or wholesaler on the day in which an increase in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The taxable event is the existence of an inventory in the possession of a distributor or wholesaler on the day prior to the day in which an increase in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The rate of the gasoline inventory tax to apply on each gallon of gasoline held in inventory by a distributor or wholesaler, as provided in Section 7-13-3.2 NMSA 1978, shall be the difference between the gasoline excise tax rate imposed on the day prior to the day in which the gasoline excise tax is increased subtracted from the gasoline excise tax rate imposed on the day that the gasoline excise tax rate increase is effective, expressed in cents per gallon.

B. The gasoline inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxale event occurs."

Section 4

Section 4. Section 7-13-3.2 NMSA 1978 (being Laws 1979, Chapter 166, Section 8, as amended) is amended to read:

"7-13-3.2. GASOLINE INVENTORIES.--

A. On the day prior to the day that the excise tax imposed by Section 7-13-3 NMSA 1978 is increased or decreased, each distributor, wholesaler and retailer shall take inventory of the gallons of gasoline on hand.

B. Distributors and wholesalers shall report total gallons of gasoline in inventory on the day prior to the day that an increase or decrease in the gasoline excise tax rate is effective and pay any tax due imposed by Section 7-13-3.1 NMSA 1978.

C. Retailers shall maintain a record of the total gallons of gasoline in inventory on the day prior to the day that an increase in the gasoline excise tax rate is effective and shall not increase or reduce the price of the gasoline sold until the inventory is disposed of in the ordinary course of business.

D. The department shall promulgate regulations required to administer this section."

Section 5

Section 5. Section 7-13-3.3 NMSA 1978 (being Laws 1979, Chapter 166, Section 9) is amended to read:

"7-13-3.3. GASOLINE INVENTORY TAX REBATE.--A gasoline inventory tax rebate is established measured by the quantity of gallons of gasoline in the possession of a distributor or wholesaler on the day of the calendar year in which a decrease in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The rebate event is the existence of an inventory in the possession of a distributor or wholesaler on the day prior to the day that a decrease in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The rebate is to be calculated by determining the difference between the gasoline excise tax rate imposed on the day prior to the day that the gasoline excise tax is decreased, subtracted from the gasoline excise tax rate imposed on the day that the gasoline excise tax rate decrease is effective, expressed in cents per gallon. The rebate rate so determined is then multiplied by each gallon in inventory as determined under Section 7-13-3.2 NMSA 1978."

Section 6

Section 6. Section 7-13-5 NMSA 1978 (being Laws 1971, Chapter 207, Section 5, as amended) is amended to read:

"7-13-5. TAX RETURNS--PAYMENT OF TAX.--Distributors shall file gasoline tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which gasoline is received in New Mexico. Such returns shall be accompanied by payment of the amount of gasoline tax due."

Section 7

Section 7. Section 7-13-6 NMSA 1978 (being Laws 1971, Chapter 207, Section 6, as amended) is amended to read:

"7-13-6. RETURNS BY WHOLESALERS--EXCEPTION.--Wholesalers shall file information
returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. Sales of gasoline in quantities of thirty-five gallons or more delivered into the fuel tanks of aircraft are not wholesale sales for the purposes of this section, and information returns on such sales need not be filed with the department."

Section 8

Section 8. Section 7-13-11 NMSA 1978 (being Laws 1971, Chapter 207, Section 10, as amended) is amended to read:

"7-13-11. CLAIM FOR REFUND OR CREDIT OF GASOLINE TAX PAID ON GASOLINE DESTROYED BY FIRE, ACCIDENT OR ACTS OF GOD BEFORE RETAIL SALE.--Upon the submission of proof satisfactory to the department, the department shall allow a claim for refund or credit as provided in Sections 7-1-26 and 7-1-29 NMSA 1978 for tax paid on gasoline destroyed by fire, accident or acts of God while in the possession of a distributor, wholesaler or retailer."

Section 9

Section 9. Section 7-13-12 NMSA 1978 (being Laws 1971, Chapter 207, Section 11, as amended) is amended to read:

"7-13-12. MANIFEST OR BILL OF LADING REQUIRED WHEN TRANSPORTING GASOLINE.--Every person transporting gasoline from a refinery or pipeline terminal in this state, importing gasoline into this state or exporting gasoline from this state, other than by pipeline or in the fuel supply tanks of motor vehicles, shall carry a manifest or bill of lading in form and content as prescribed by or acceptable to the department. The manifest or bill of lading shall be signed by the consignor and by every person accepting the gasoline or any part of it, with a notation as to the amount accepted. If a manifest or bill of lading is not required to be carried by the terms of this

section, any person transporting gasoline without such a manifest or bill of lading shall, upon demand, furnish proof acceptable to the department that the gasoline so transported was legally acquired by a registered distributor who assumed liability for payment of the tax imposed by the Gasoline Tax Act."

Section 10

Section 10. Section 7-13-13 NMSA 1978 (being Laws 1971, Chapter 207, Section 12, as amended) is amended to read:

"7-13-13. PERMIT TO PURCHASE DYED GASOLINE AND APPLY FOR REFUND OF GASOLINE TAX ON GASOLINE NOT USED IN MOTOR BOATS OR IN MOTOR VEHICLES OPERATED ON HIGHWAYS OF THIS STATE.--

A. Each person who wishes to purchase gasoline dyed in accordance with the provisions of Section 7-13-15 NMSA 1978 and to claim a refund of gasoline tax paid on such gasoline under the provisions of Section 7-13-14 NMSA 1978 shall apply for and obtain a permit to do so from the department. The application for the permit shall be in form and content as prescribed by the department.

B. The secretary may, upon notice and after hearing, suspend the gasoline tax refund permit of any person who makes any false statement on an application for a permit or on a claim for refund made under Section 7-13-14 NMSA 1978 who uses gasoline dyed in accordance with Section 7-13-15 NMSA 1978 in a motor boat or in a vehicle licensed to operate on the highways of this state or who violates any other provision of the Gasoline Tax Act. Such suspension may be, in the discretion of the secretary, for a period of up to one year."

Section 11

Section 11. Section 7-13-14 NMSA 1978 (being Laws 1971, Chapter 207, Section 13, as amended) is amended to read:

"7-13-14. CLAIM FOR REFUND OF GASOLINE TAX PAID ON GASOLINE NOT USED IN MOTOR BOATS OR IN MOTOR VEHICLES LICENSED TO OPERATE ON HIGHWAYS OF THIS STATE.--Upon submission of proof satisfactory to the department, the department shall allow a claim for refund of gasoline tax paid on dyed gasoline purchased and used within six months prior to the filing of the claim by holders of permits issued under Section 7-13-13 NMSA 1978. The individual purchases of such gasoline, other than that to be used as aviation fuel, must have been made in quantities of fifty gallons or more. Purchasers of aviation fuel may accumulate invoices to reach the minimum required for filing a claim for refund. No claim for refund may be presented on less than one hundred gallons so purchased. The secretary may, by regulation, prescribe the documents necessary to support a claim for refund and the invoice and sales procedure to be followed by sellers and purchasers of gasoline not intended to be

used in motor boats or in motor vehicles licensed to operate on the highways of this state by the motor vehicle division of the department."

Section 12

Section 12. Section 7-13-15 NMSA 1978 (being Laws 1971, Chapter 207, Section 14, as amended) is amended to read:

"7-13-15. GASOLINE WHOLESALERS OR DISTRIBUTORS MAY SELL GASOLINE TO BE USED OTHER THAN IN MOTOR BOATS OR IN VEHICLES LICENSED TO BE OPERATED ON THE HIGHWAYS--IDENTIFYING DYE SHALL BE ADDED TO SUCH GASOLINE.--Gasoline wholesalers or distributors who are registered as such with the department may sell gasoline to be used other than in motor boats or in vehicles licensed to operate on the highways. Such persons shall mix with the gasoline identifying dye, which shall be furnished without cost by the department. Gasoline so dyed shall be sold only to persons who present a refund gasoline permit issued by the department under the provisions of Section 7-13-13 NMSA 1978. Any person using gasoline in the operation of a clothes cleaning establishment, in stoves or other appliances burning gasoline, or operators of aircraft using aviation gasoline exclusively in the operation of aircraft may, upon proper showing, purchase gasoline to which dye has not been added and may claim a refund thereon under the provisions of Section 7-13-14 NMSA 1978."

Section 13

Section 13. REPEAL.--Sections 7-13-4.1 through 7-13-4.3 NMSA 1978 (being Laws 1980, Chapter 105, Section 3, Laws 1983, Chapter 225, Section 3 and Laws 1980, Chapter 105, Section 1, as amended) are repealed.HB 194

CHAPTER 33

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE ENTERPRISE ZONE ACT; ENACTING SECTIONS OF THE NMSA 1978 TO PROVIDE TAX AND OTHER INCENTIVES.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 15 of this act may be cited as the "Enterprise Zone Act".

Section 2

Section 2. PURPOSE.--It is the purpose of the Enterprise Zone Act to provide for the establishment of enterprise zones in a wide variety of geographic areas in order to stimulate the creation of new jobs, particularly for economically disadvantaged workers and long-term unemployed individuals, and to promote revitalization of economically distressed areas by providing or encouraging:

A. tax relief at the state and local levels;

B. zoning relief at the local level; and

C. improvement of local services and betterment of the economic status of enterprise zone residents in their own community, particularly through the increased involvement of private, local and neighborhood organizations.

Section 3

Section 3. DEFINITIONS.--As used in the Enterprise Zone Act:

A. "business facility" means the place of business within an enterprise zone of a business that is established within or begins operations in an enterprise zone;

B. "economically disadvantaged worker" means an employed person whose income as an unrelated individual or whose family income is less than the federally established poverty level and is below seventy percent of the lower living-standard-income level as determined and published by the United States department of labor;

C. "enterprise zone" means any geographical area that is designated as an enterprise zone in accordance with the provisions of the Enterprise Zone Act;

D. "local government" means:

(1) the governing body of any county, incorporated municipality or Indian nation, tribe or pueblo; or

(2) the entity designated as a governing body in a joint powers agreement entered into between or among the entities described in Paragraph (1) of this subsection for the purpose of creating and administering an enterprise zone;

E. "long-term unemployed worker" means a person with limited opportunity for employment or reemployment in the same or similar occupation in the same area in which an individual resides, including any older individuals who may have substantial barriers to employment by reason of age; and

F. "project" means an activity, undertaking or series of activities or undertakings designed to create new jobs, encourage business development and

eliminate slums or blighted areas in enterprise zones that conform to an approved enterprise zone plan for job and business development, slum clearance and redevelopment, rehabilitation and preservation in the enterprise zone.

Section 4

Section 4. DESIGNATION OF ENTERPRISE ZONES--REVOCATION OF DESIGNATION.--

A. No area shall be designated an enterprise zone until the local goernment has promulgated an ordinance governing:

(1) the parameters relating to the size and population characteristics of an enterprise zone; and

(2) the contents of an enterprise zone plan.

B. The local government may designate an enterprise zone by duly enacted resolution on or after January 1, 1994.

C. The designation by the local government of an area as an enterprise zone shall remain in effect from the date of the designation until the earliest of:

(1) December 31 of the fifteenth calendar year following the year in which the designation was made;

(2) the termination date specified in the designating resolution; or

(3) the date upon which the local government revokes the designation pursuant to Subsection D of this section.

D. The local government may revoke the designation of an area as an enterprise zone if it determines after notice and a public hearing that the operation and administration of the enterprise zone is not in substantial compliance with the law, ordinance, resolution or the approved enterprise zone plan for that enterprise zone.

E. The secretary of economic development shall have the authority to make performance audits at any time of any designated enterprise zone to determine whether the enterprise zone is in compliance with the Enterprise Zone Act, local zone ordinances, resolutions, joint powers agreements and the enterprise zone plan. If an enterprise zone is determined to be out of compliance, the secretary may immediately revoke the designation of the area as an enterprise zone.

F. Automatic state revocation shall be made by the secretary of economic development if the annual reporting requirements required in Section 8 of the Enterprise Zone Act are not made.

G. If state revocation of an enterprise zone occurs, the local government responsible for the enterprise zone loses its right to designate successor enterprise zones for forty-eight months after the date of the secretary's revocation letter to the local government, and:

(1) all tax increment financing agreements and tax credits then in force shall cease at the end of the calendar year in which revocation occurred; and

(2) all accumulated money in the enterprise zone fund of the revoked enterprise shall revert back proportionately to the units of government originally impacted by the tax increment authorization agreement.

Section 5

Section 5. ELIGIBILITY REQUIREMENTS.--

A. An area may be designated an enterprise zone if the area meets the requirements of this section.

B. The local government may designate as an enterprise zone an area within a municipality:

(1) that has a population not exceeding twenty-five percent of the population of the municipality and a land area not exceeding twenty-five percent of the land area of the municipality;

(2) that, when combined with the population and land area of any existing enterprise zones within that municipality, produces a combined population less than twenty-five percent of the population of the municipality and a combined land area less than twenty-five percent of the land area of the municipality; and

(3) in which there is widespread poverty, unemployment and general distress in the area, as evidenced by substantial deterioration, abandonment or demolition of commercial or residential structures and as evidenced by one or more of the following criteria:

(a) the average rate of unemployment in the area under consideration as an enterprise zone for the most recent eighteen-month period for which data is available exceeds the average rate of unemployment for the state for that period by at least one percentage point; or

(b) at least sixty percent of the households living in the area under consideration as an enterprise zone have income below eighty percent of the median income of households of the municipality as determined pursuant to Section 119 of the federal Housing and Community Development Act of 1974, as that section may be amended or renumbered.

C. The local government may designate as an enterprise zone an area within a county:

(1) that has a population not exceeding twenty-five percent of the population within the unincorporated portion of the county and a land area not exceeding twenty-five percent of the unincorporated land area of the county;

(2) that, when combined with the population and land area of any existing enterprise zones within that county, produces a combined population less than twenty-five percent of the population within the unincorporated portion of the county and a combined land area less than twenty-five percent of the unincorporated land area of the county; and

(3) in which there is widespread poverty, unemployment and general distress in the area under consideration as an enterprise zone, as evidenced by substantial deterioration, abandonment or demolition of commercial or residential structures and one or more of the following criteria:

(a) the average rate of unemployment in the area under consideration as an enterprise zone for the most recent eighteen-month period for which data is available exceeds the average rate of unemployment for the state for that period by at least one percentage point; or

(b) at least sixty percent of the households living in the area under consideration as an enterprise zone have incomes below eighty percent of the median income of households of the county as determined pursuant to Section 119 of the federal Housing and Community Development Act of 1974, as that section may be amended or renumbered.

D. The local government may designate as an enterprise zone an area within an Indian nation, tribe or pueblo:

(1) that has a population not exceeding twenty-five percent of the population of the Indian nation, tribe or pueblo and a land area not exceeding twenty-five percent of the land area of the Indian nation, tribe or pueblo;

(2) that, when combined with the population and land area of any existing enterprise zones within that Indian nation, tribe or pueblo, produces a combined population less than twenty-five percent of the population of the Indian nation, tribe or pueblo and a combined land area less than twenty-five percent of the land area of the Indian nation, tribe or pueblo; and

(3) in which there is widespread poverty, unemployment and general distress in the area under consideration as an enterprise zone, as evidenced by substantial deterioration, abandonment or demolition of commercial or residential structures and as evidenced by one or more of the following criteria:

(a) the average rate of unemployment in the area under consideration as an enterprise zone for the most recent eighteen-month period for which data is available exceeds the average rate of unemployment for the state for that period by at least one percentage point; or

(b) at least sixty percent of the households living in the area under consideration as an enterprise zone have incomes below eighty percent of the median income of households of the Indian nation, tribe or pueblo as determined pursuant to Section 119 of the federal Housing and Community Development Act of 1974, as that section may be amended or renumbered.

E. Copies of all ordinances, resolutions, joint powers agreements and enterprise zone plans of a local government made under the Enterprise Zone Act shall be mailed within ten days after their adoption to the secretary of economic development, the secretary of finance and administration and the secretary of taxation and revenue.

F. An enterprise zone plan shall have been developed and approved by the local government after public hearing and prior to the designation of an area as an enterprise zone.

G. The business assistance and incentives provided under the provisions of the Enterprise Zone Act are prohibited to intrastate business relocations. This limitation does not apply to the expansion of an in-state business entity through the establishment of a new branch, affiliate or subsidiary if:

(1) the establishment of the new branch, affiliate or subsidiary will not result in an increase in unemployment in the area of original location or any other area in New Mexico where the existing business entity conducts business operations; and

(2) there will not be a closing down of operations of the existing business entity in the area of its original in-state location or in any other in-state areas where the existing business entity conducts business operations.

Section 6

Section 6. ENTERPRISE ZONE PLAN--INCENTIVES AND INITIATIVES.--

A. The enterprise zone plan shall include:

(1) a map of the enterprise zone;

(2) a narrative describing how the enterprise zone will eliminate economic distress in the enterprise zone;

(3) a description of local incentives and initiatives to be implemented in the enterprise zone;

(4) the concurrences of any other local government or nongovernmental entity involved in providing local incentives and initiatives;

(5) the termination date for the enterprise zone;

(6) a listing of properties within the enterprise zone to which the tax increment procedures authorized by the Enterprise Zone Act are to be applied;

(7) a boundary description of the enterprise zone;

(8) a list of street addresses contained in the enterprise zone; and

(9) any other information the local government requires by ordinance to be included in the plan.

B. The local incentives and initiatives to be implemented may use local funds and, to the extent permitted by law, funds from federal or state programs and may include:

(1) a reduction of taxes or fees applying within the enterprise zone when the reduction is permitted by law;

(2) programs to increase the level of efficiency of local services provided within the enterprise zone;

(3) preferences to be granted to businesses operating within the enterprise zone;

(4) mechanisms to increase the equity ownership of residents and employees of businesses operating within the enterprise zone; and

(5) methods to involve private entities, organizations, neighborhood associations and community groups in the enterprise zone.

C. At any time after an enterprise zone is designated, the local government may change the enterprise zone plan after public hearing on the proposed changes.

Section 7

Section 7. ADMINISTRATION.--The local government that created the enterprise zone shall organize, coordinate and direct the administration of the enterprise zone in accordance with law, applicable ordinances, resolutions, any joint powers agreements

and the enterprise zone plan. It may enter into a contract with an appropriate organization to provide the management of the activities of the zone. The local government is solely responsible for meeting the reporting requirements listed in Section 8 of the Enterprise Zone Act.

Section 8

Section 8. EVALUATION AND REPORTING REQUIREMENTS.--The local government that designated an enterprise zone shall make an annual progress report to the secretary of economic development due on the second Friday of January in the next calendar year including the following:

A. the number of new jobs created within the enterprise zone;

B. the percentage of jobs filled by economically disadvantaged workers and the percentage of long-term unemployed workers within the enterprise zone;

C. the local and private entity commitments and degree of compliance;

D. compliance with the enterprise zone plan;

E. the impact of the creation of the enterprise zone on the level of distress in the zone; and

F. new dollar investments in the enterprise zone for new or expanded business opportunities.

Section 9

Section 9. STATE AGENCY COOPERATION--BUSINESS INCENTIVES.--

A. State agencies shall cooperate with, assist, and where possible, give preference in selection to a business located within an enterprise zone for any statutorily authorized state-administered grant and loan programs including, but not limited to, investments and loans through the severance tax permanent fund at market rates, in-plant training program instruction and job training through the federal Job Training Partnership Act, matching funds through community development block grants and such other incentives that are or become available through the economic development department or through any other sources at the state level.

B. The economic development department shall conduct workshops throughout the state for the purpose of explaining the provisions of the Enterprise Zone Act to local governments.

Section 10

Section 10. TAX INCREMENT METHOD OF FINANCING.--

A. Effective for property tax years beginning on or after January 1, 1994, the local government administering an enterprise zone may elect by resolution to use the tax increment procedures set forth in Section 11 of the Enterprise Zone Act for financing enterprise zone projects. Such procedures may be used in addition to or in conjunction with other methods provided by law for financing such projects.

B. The tax increment method of financing enterprise zone projects is the dedication for further use in enterprise zone projects of that increase in property tax revenue directly resulting from the increased net taxable value of a parcel of project property attributable to its rehabilitation, redevelopment or other improvement because of its inclusion within an enterprise zone project.

Section 11

Section 11. TAX INCREMENT PROCEDURES.--

A. Upon approval of an enterprise zone project, the local government administering an enterprise zone shall notify the county assessor and the taxation and revenue department of the approval and of the identification of the parcels of property within the project subject to taxation under the Property Tax Code.

B. Upon receipt of notification pursuant to Subsection A of this section, the county assessor and the taxation and revenue department shall identify the parcels of project property within the enterprise zone within their respective valuation jurisdictions and at the time tax rates are certified under the Property Tax Code shall certify to the county treasurer the net taxable value of the property as of January 1 of the year in which the notification was made. This certified value is the "base value" for the distribution of property tax revenues authorized by the Property Tax Code under the tax increment method. If property within the enterprise zone becomes tax exempt because of acquisition by any local government, the county assessor and the taxation and revenue department shall note that fact on their respective records and so notify the county treasurer, but the county assessor, the taxation and revenue department and the county treasurer shall preserve the record of the base value for the purpose of distribution of property tax revenues when the parcel again becomes taxable.

C. If a property within the enterprise zone that became tax exempt because of acquisition by a local government again becomes taxable, the local government administering the enterprise zone shall notify the county assessor and the taxation and revenue department of the property which, because of improvements to the property, are to be revalued for property tax purposes. A new taxable value of this property shall then be determined by the county assessor or by the taxation and revenue department if the property is within the valuation jurisdiction of that department.

D. The amount by which the general property tax revenue received from the tax on property within an enterprise zone exceeds that which would have been received by application of the same rates to the base value before inclusion in the enterprise zone shall be credited to the local government administering the enterprise zone and deposited in the enterprise zone fund of that local government. This transfer shall take place only after the county treasurer has been notified to apply the tax increment method to a specific property included in an enterprise zone. Unless the entire enterprise zone is specifically included by the local government for purposes of tax increment financing, the payment by the county treasurer to the local government shall be limited to those properties specifically included. The remaining revenue shall be distributed to participating units of government as authorized by the Property Tax Code.

E. The procedures and methods specified in this section shall be followed annually for a maximum period of five years following the date of notification of inclusion of property as coming under the provisions of this section.

Section 12

Section 12. ENTERPRISE ZONE FUND--CREATION--USE.--

A. Every local government administering an enterprise zone shall create an "enterprise zone fund" for purposes of the Enterprise Zone Act.

B. Enterprise zone fund proceeds shall be used by a local government administering an enterprise zone to acquire property within the enterprise zone, prepare property for redevelopment, provide necessary infrastructure improvements, pay all necessary related expenses to redevelop and finance enterprise zone projects and fund the administration of the enterprise zone in an amount not to exceed ten percent of the funds available annually. None of the proceeds shall be used for the construction of buildings or other improvements that are not owned by a local government participating in an enterprise zone.

Section 13

Section 13. TAX INCREMENT METHOD APPROVAL.--The tax increment method shall be used only upon prior approval by a majority of the units of government participating in property tax revenue derived from property within an enterprise zone project. The local government administering the enterprise zone shall request in writing such approval for a period of no more than five years for property included in the tax increment funding. The governing body of each other participating unit shall approve or disapprove by ordinance or resolution the use of the method for their respective units. All participating units shall notify the local government seeking approval within thirty days of receipt of the request. Upon approval by a majority of the participating units of the tax increment method of financing, it shall be deemed approved for the period requested.

Section 14

Section 14. TAX INCREMENT METHOD--BASE VALUE FOR DISTRIBUTION.--If the tax increment method of financing enterprise zone projects is used, the base value shall be the value used in calculating the limit of general obligation indebtedness imposed by the constitution of New Mexico and the statutes of New Mexico.

Section 15

Section 15. REGULATIONS.--The secretary of finance and administration and the secretary of taxation and revenue are authorized to promulgate such rules and regulations necessary for the proper administration of Sections 10 through 14 of the Enterprise Zone Act.

Section 16

Section 16. A new Section 7-36-3.2 NMSA 1978 is enacted to read:

"7-36-3.2. ENTERPRISE ZONE PROPERTY--TAX STATUS OF LESSEE'S INTERESTS.--Property interests of a lessee in project property held under a lease with respect to a project authorized by the Enterprise Zone Act and acquired or held by a local government are exempt from property taxation for a period not to exceed ten years from the date of execution of the first lease of the project by the local government."

Section 17

Section 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 223

CHAPTER 34

RELATING TO DEVELOPMENTAL DISABILITIES; ESTABLISHING THE FAMILY, INFANT, TODDLER PROGRAM; PROVIDING EARLY INTERVENTION SERVICES FOR CERTAIN CHILDREN WITH OR AT RISK OF DEVELOPMENTAL DELAY; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 28-18-1 NMSA 1978 (being Laws 1990, Chapter 4, Section 1) is amended to read:

"28-18-1. DEPARTMENT DESIGNATION--AUTHORIZATION--PAYMENT SYSTEM.--

A. The department of health is designated as the lead state agency for the development and administration of a statewide system of comprehensive, coordinated, multidisciplinary, interagency early intervention services for eligible children with or at risk of developmental delay and their families. The program shall be known as the "family, infant, toddler program".

B. The parent may choose whether his eligible child shall participate in the family, infant, toddler program.

C. The state department of public education, the human services department, the children, youth and families department and other publicly funded services shall collaborate with the department of health and continue to provide all services within their respective statutory responsibilities to eligible children. State and local interagency agreements shall delineate responsibility for provisions of the family, infant, toddler program.

D. The department of health shall establish a payment system that shall maximize funds from appropriate federal, state, local and private sources to support the family, infant, toddler program.

E. The secretary of health shall meet the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1475(c) and 1476(a), et seq. contingent upon voluntary participation by the state, including:

(1) establishing policies and adopting regulations necessary to comply with those sections of that
act;

(2) implementing procedures to ensure that services are provided to eligible children in a timely manner;

(3) making arrangements for the provisions of the family, infant, toddler program;

(4) carrying out the general administration, supervision and monitoring of the family, infant, toddler program;

(5) resolving complaints concerning the family, infant, toddler program;

(6) maintaining and expanding state and local coordination and interagency agreements pertaining to the family, infant, toddler program;

(7) identifying and coordinating all available resources for early intervention services for the family, infant, toddler program; and

(8) establishing requirements for qualified personnel involved in the family, infant, toddler program.

F. As used in this section:

(1) "early intervention services" means services that are designed to meet the developmental needs of eligible children, including physical development, communications development, adaptive development, social and emotional development or sensory development; and

(2) "eligible child" means infants and toddlers between the ages of birth and thirty-six months with developmental delay or who are at risk of delay according to specific criteria established by the department of health."

Section 2

Section 2. Section 28-18-2 NMSA 1978 (being Laws 1990, Chapter 4, Section) is amended to read:

"28-18-2. CUSTODIAN OF FUNDS.--The department of health is designated as the custodian of all money that may be received by the state of New Mexico from any appropriation made by the congress of the United States for the purpose of implementing the Individuals with Disabilities Education Act, 20 U.S.C. 1475(c) and 1476(a), et seq."SB 185

CHAPTER 35

RELATING TO ADVERTISING; PROVIDING FOR THE SECRETARY OF GENERAL SERVICES TO SET THE RATES FOR GOVERNMENTAL LEGAL NOTICES OR ADVERTISEMENTS.

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

Section 1

Section 1. Section 14-11-7 NMSA 1978 (being Laws 1937, Chapter 167, Section 5, as amended) is amended to read:

"14-11-7. RATES FOR LEGAL NOTICE OR ADVERTISEMENT--COSTS.--For publication of all legal notices or advertisements that a governmental entity is required by law or the order of any court of record in this state to publish in newspapers, the publishers shall be paid a reasonable rate, to be set by rule or regulation of the secretary of general services. Changes in economic conditions within the newspaper industry, the general economy and inflation shall be considered in determining a reasonable rate.

The clerk of any court in the state or any public trustee, county treasurer or other public officer required by law to publish legal notices or advertisements shall tax the cost of publishing notices or advertisements, as prescribed in this section, as part of the costs of the cause or proceeding and shall collect for publication before the cause or proceeding is closed and shall remit to the publisher the proper cost of the legal notices or advertisements."SB 271

CHAPTER 36

RELATING TO AGRICULTURE; AMENDING SECTION 76-21-15 NMSA 1978 (BEING LAWS 1983, CHAPTER 231, SECTION 15) TO CHANGE THE METHOD OF ASSESSMENT AND COLLECTION OF CERTAIN ASSESSMENTS BY THE AGRICULTURAL COMMODITY COMMISSION.

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

Section 1

Section 1. Section 76-21-15 NMSA 1978 (being Laws 1983, Chapter 231, Section 15) is amended to read:

"76-21-15. LEVY OF ASSESSMENT ON COMMODITY SALES.--

A. The commission may assess, levy and collect an assessment, the amount of which shall not exceed the maximum stated in the petition for referendum, on all units, plants or animals of the commodity produced or handled within this state and sold in commercial channels. If the commission determines it is impractical to assess on units of the commodity sold into commercial channels, or on wire, twine, binding or packaging material, an assessment may be imposed on the producer. All casual sales of the commodity made by the producer direct to the consumer shall be exempt from the assessment. The amount of the assessment shall be determined by the commission and published annually.

B. The assessment shall be levied and assessed to the producer at the time of sale and shall be deducted by the first purchaser from the price paid to the producer. In the case of assessments imposed on wire, twine, binding or packaging materials, the assessment shall be added to the purchase price by the seller and paid to the commission. In the case of acreage assessments, the amount shall be imposed on the producer at a time established by the commission and the producer shall pay the assessment directly to the commission."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 274

CHAPTER 37

RELATING TO ELECTIONS; ENACTING THE ABSENTEE-EARLY VOTING ACT.

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

Section 1

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

"1-6A-1. ABSENTEE-EARLY VOTING ACT.--SHORT TITLE.--Sections 1-6A-1 through 1-6A-9 NMSA 1978 may be cited as the "Absentee-Early Voting Act"."

Section 2

Section 2. A new Section 1-6A-2 NMSA 1978 is enacted to read:

"1-6A-2. DEFINITIONS.--As used in the Absentee-Early Voter Act:

A. "election" means any statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections except as modified by the School Election Law; and

B. "marksense ballot" means a paper ballot card used on an optical-scan vote-tabulating machine."

Section 3

Section 3. A new Section 1-6A-3 NMSA 1978 is enacted to read:

"1-6A-3. RIGHT TO VOTE ABSENTEE-EARLY.--

A. Any voter may vote absentee-early for all candidates and on all questions appearing on the ballot at his precinct as if he were able to cast his ballot in person at the polling place.

B. Any federal qualified elector may register and vote absentee-early."

Section 4

Section 4. A new Section 1-6A-4 NMSA 1978 is enacted to read:

"1-6A-4. ABSENTEE-EARLY APPLICATION.--Application by a voter for absentee-early voting shall be made on a form prescribed by the secretary of state to

the county clerk of the county in which he resides. The form shall identify the applicant and contain such information as is necessary for voting under the Absentee-Early Voting Act."

Section 5

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

"1-6A-5. PROCESSING APPLICATION.--

A. The county clerk shall mark each completed absentee-early application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register.

B. If the applicant has no valid affidavit of registration on file in the county and he is not a federal qualified elector, he shall not be allowed to vote. The county clerk shall mark the application "rejected" and file the application in a separate file from those accepted.

C. If the applicant is determined to be a voter or a federal qualified elector, the county clerk shall mark the application "accepted" and deliver a marksense ballot or allow the voter to vote on the direct-recording electronic machine. Upon acceptance of the application, an appropriate designation shall be made on the absentee register.

D. Absentee-early voting may be done in person during the regular hours of business at the county clerk's office from 8:00 a.m. on the fortieth day preceding the election up until 5:00 p.m. on the Saturday immediately prior to the date of the election. In voting absentee-early, the voter may be assisted by one person of the voter's own choice."

Section 6

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

"1-6A-6. VOTING DEVICE PREPARATION.--

A. Five days before the absentee-early voting period commences, the county clerk may begin to prepare, inspect and seal the voting devices in accordance with the specifications for electronic voting machines adopted by the secretary of state.

B. One day prior to the absentee-early voting period, the county clerk shall certify to the secretary of state and all county party chairmen, the type and serial number of each voting machine to be used."

Section 7. A new Section 1-6A-7 NMSA 1978 is enacted to read:

"1-6A-7. MANNER OF VOTING.--

A. Any person voting an absentee-early paper ballot shall:

(1) receive a ballot issued by the county clerk;

(2) take the ballot to a voting booth and, with the marking instrument provided, mark it by completing the arrow to the right of the candidate's name or question on which he desires to vote; and

(3) make all selections and feed the ballot into the machine to record his vote.

B. Any person voting absentee-early on the direct-recording electronic voting machine shall:

(1) enter the machine;

(2) press the square to the right of the candidate's name or question on which he desires to vote; and

(3) make all selections and press the vote button in the lower right hand corner of the voting machine to record his vote."

Section 8

Section 8. A new section 1-6A-8 NMSA 1978 is enacted to read:

"1-6A-8. DELIVERY OF VOTING MACHINE TO PRECINCT BOARD.--At 7:00 a.m. on election day the county clerk shall deliver the absentee-early voting machine to the absentee voter precinct board. A special deputy county clerk shall receipt for the voting machine. Upon delivery of the absentee-early voting machine, the special deputy shall obtain a receipt executed by the presiding judge and each election judge specifying the serial number of the machine and the number of votes recorded on the machine, and he shall return such receipt to the county clerk for filing. Thereafter, the absentee voter precinct board shall proceed as specified in Sections 1-6-1 through 1-6-25 NMSA 1978."

Section 9

Section 9. A new Section 1-6A-9 NMSA 1978 is enacted to read:
"1-6A-9. SECURITY.--The secretary of state shall adopt rules and regulations for protecting the integrity, security and secrecy of the absentee-early ballot."HB 1011

CHAPTER 38

RELATING TO CRIMINAL LAW; AMENDING A SECTION OF THE NMSA 1978 TO INCREASE THE AMOUNT OF FINES IMPOSED FOR FELONY CONVICTIONS.

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

Section 1

Section 1. Section 31-18-15 NMSA 1978 (being Laws 1977, Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--BASIC SENTENCES AND FINES--PAROLE AUTHORITY.--

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

(1) for a first degree felony, eighteen years imprisonment;

(2) for a second degree felony, nine years imprisonment;

(3) for a third degree felony, three years imprisonment; or

(4) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted of a first, second, third or fourth degree felony unless the court alters such sentence pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

C. The court shall include in the judgment and sentence of each person convicted of a first, second, third or fourth degree felony and sentenced to imprisonment in a corrections facility designated by the corrections department, authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of te sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection
A of this section together with alterations, if any, pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

D. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

(1) for a first degree felony, one hundred thousand dollars ($100,000);

(2) for a second degree felony, fifty thousand dollars ($50,000);

(3) for a third degree felony, twenty-five thousand dollars ($25,000); or

(4) for a fourth degree felony, ten thousand dollars ($10,000)."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 151

CHAPTER 39

RELATING TO AGRICULTURE; PROVIDING FOR LIVESTOCK PRODUCTION; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-35-2 NMSA 1978 (being Laws 1973, Chapter 258, Section 2, as amended) is amended to read:

"7-35-2. DEFINITIONS.--As used in the Property Tax Code:

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

B. "director" means the secretary;

C. "livestock" means cattle, horses, mules, sheep, goats, swine, ratites and other domestic animals useful to man;

D. "manufactured home" means a manufactured home as that term is defined in Section 66-1-4.11 NMSA 1978;

E. "net taxable value" means the value of property upon which the tax is imposed and is determined by deducting from taxable value the amount of any exemption authorized by the Property Tax Code;

F. "nonresidential property" means property that is not residential property;

G. "owner" means the person in whom is vested any title to property;

H. "person" means an individual or any other legal entity;

I. "property" means tangible property, real or personal;

J. "residential property" means property consisting of one or more dwellings together with appurtenant structures, the land underlying both the dwellings and the appurtenant structures and a quantity of land reasonably necessary for parking and other uses that facilitate the use of the dwellings and appurtenant structures; as used in this subsection, "dwellings" includes both manufactured homes and other structures when used primarily for permanent human habitation, but the term does not include structures when used primarily for temporary or transient human habitation such as hotels, motels and similar structures;

K. "secretary" means the secretary of taxation and revenue and, except for purposes of Section 7-35-6 NMSA 1978 and Paragraphs (1) and (2) of Subsection B of Section 7-38-90 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

L. "tax" means the property tax imposed under the Property Tax Code;

M. "taxable value" means the value of property determined by applying the tax ratio to the value of the property determined for property taxation purposes;

N. "tax rate" means the rate of the tax expressed in terms of dollars per thousand dollars of net taxable value of property;

O. "tax ratio" means the percentage established under the Property Tax Code that is applied to the value of property determined for property taxation purposes in order to derive taxable value; and

P. "tax year" means the calendar year."SB 402

CHAPTER 40

RELATING TO PROPERTY; AMENDING A SECTION OF THE UNIFORM UNCLAIMED PROPERTY ACT.

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

Section 1

Section 1. Section 7-8-10 NMSA 1978 (being Laws 1989, Chapter 293, Section 11, as amended) is amended to read:

"7-8-10. STOCK AND OTHER INTANGIBLE INTERESTS IN BUSINESS ASSOCIATIONS.--

A. Except as provided in Subsections B and E of this section, stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder if a dividend, distribution or other sum payable as a result of the interest has remained unclaimed by the owner for seven years and the owner within seven years has not:

(1) communicated in writing with the association regarding the interest or a dividend, distribution or other sum payable as a result of the interest; or

(2) otherwise communicated with the association regarding the interest or a dividend, distribution or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

B. At the expiration of a seven-year period following the failure of the owner to claim a dividend, distribution or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least seven dividends, distributions or other sums paid during the period, none of which has been claimed by the owner. If seven dividends, distributions or other sums are paid during the seven-year period, the period leading to a presumption of abandonment commences on the date payment of the first unclaimed dividend, distribution or other sum became due and payable. If seven dividends, distributions or other sums are not paid during the presumptive period, the period continues to run until there have been seven dividends, distributions or other sums that have not been claimed by the owner.

C. The running of the seven-year period of abandonment ceases immediately upon the occurrence of a communication referred to in Subsection A of this section. If any future dividend, distribution or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution or other sum became due and payable.

D. At the time an interest is presumed abandoned under this section, any dividend, distribution or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

E. The Uniform Unclaimed Property Act shall not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions or other sums payable as a result of the interest

unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within seven years communicated in any manner described in Subsection A of this section.

F. The Uniform Unclaimed Property Act shall not apply to any patronage capital or other tangible ownership interest in a rural electric cooperative, a telephone cooperative or a water cooperative, if the bylaws of the cooperative provide for unclaimed patronage capital to be used for educational scholarships or other charitable uses."SB 407

CHAPTER 41

RELATING TO EDUCATION; AMENDING CERTAIN SECTIONS OF THE PUBLIC SCHOOL FINANCE ACT TO PROVIDE FOR PARENT INPUT IN THE BUDGETING PROCESS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 22-8-10 NMSA 1978 (being Laws 1967, Chapter 16, Section 65, as amended) is amended to read:

"22-8-10. BUDGETS--FIXING THE ESTIMATED BUDGET.--

A. Prior to June 20 of each year, each local school board shall, at a public hearing of which notice has been published by the local school board, fix the estimated budget for the school district for the ensuing fiscal year. At the discretion of the state superintendent or the local school board, the department may participate in the public hearing.

B. Prior to the public hearing held to fix the estimated budget for the school district, the local school board shall give notice to parents explaining the budget process and inviting parental involvement and input in that process prior to the date for the public hearing."

Section 2

Section 2. Section 22-8-11 NMSA 1978 (being Laws 1967, Chapter 16, Section 66, as amended) is amended to read:

"22-8-11. BUDGETS--TEMPORARY--FINAL.--

A. The department shall:

(1) on or before July 1 of each year, approve and certify to each local school board a temporary operating budget for use by the local school board pending approval by the department of a final budget;

(2) make corrections, revisions and amendments to the estimated budgets fixed by the local school boards and the state superintendent to conform the budgets to the requirements of law and to the manual of accounting and budgeting; and

(3) before the first Monday of September of each year, approve and certify to each local school board and to the board of county commissioners of the county in which
the school district is situated a final budget for use by the local school board, based upon the estimated budget fixed by the local school board and the state superintendent.

B. No school board or officer or employee of a school district shall make any expenditure or incur any obligation for the expenditure of public funds unless that expenditure or contractual obligation is made in accordance with an operating budget approved by the department but does not prohibit the transfer of funds between line items within series of a budget.

C. The department shall not approve and certify a temporary operating budget of any school district that fails to demonstrate that parental involvement in the budget process was solicited."

Section 3

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

SB 700

CHAPTER 42

RELATING TO CULTURAL AFFAIRS; AMENDING A CERTAIN SECTION OF THE NMSA 1978; ENACTING THE NEW MEXICO HISPANIC CULTURAL CENTER ACT; CREATING THE HISPANIC CULTURAL DIVISION WITHIN THE OFFICE OF CULTURAL AFFAIRS.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "New Mexico Hispanic Cultural Center Act".

Section 2

Section 2. DEFINITIONS.--As used in the New Mexico Hispanic Cultural Center Act:

A. "board" means the board of directors of the New Mexico Hispanic cultural center;

B. "center" means the New Mexico Hispanic cultural center;

C. "division" means the Hispanic cultural division of the office of cultural affairs or its uccessor agency; and

D. "executive director" means the executive director of the Hispanic cultural division.

Section 3

Section 3. HISPANIC CULTURAL DIVISION--CREATION--PROPERTY.--

A. The "Hispanic cultural division" is created within the office of cultural affairs or its successor agency. A principal facility of this division shall be known as the "New Mexico Hispanic cultural center".

B. All property, real or personal, now held or subsequently acquired for the operation of the New Mexico Hispanic cultural center shall be under the control and authority of the board.

C. Funds or other property received by gift, endowment or legacy shall remain under the control of the board and shall, upon acceptance, be employed for the purpose specified.

Section 4

Section 4. BOARD OF DIRECTORS--CREATED--APPOINTMENT--TERMS--OFFICERS.--
A. The "board of directors of the New Mexico Hispanic cultural center" is created. The board shall consist of fifteen residents of New Mexico appointed by the governor with the advice and consent of the senate. Two of the appointees shall be employees of state institutions of higher education or appropriate state agencies. In making the appointments, the governor shall give due consideration to:

(1) the ethnic, economic and geographic diversity of the state;

(2) individuals who have demonstrated an awareness of and support for traditional and contemporary Hispanic culture, arts and humanities, including a strong knowledge of New Mexico Hispanic history; and

(3) individuals who are knowledgeable in the areas of Hispanic performing, visual and oral arts, genealogy, family issues, education, business and administration.

B. Of the initial appointees, five members shall be appointed for four-year terms, five members shall be appointed for three-year terms and five members shall be appointed for two-year terms. All subsequent members shall be appointed for four-year terms.

C. A majority of the board members currently serving shall constitute a quorum at any meeting or hearing.

D. Any member failing to attend three consecutive meetings after receiving proper notice shall be recommended for removal by the governor. The governor may also remove any member of the board for neglect of any duty required by law, for incompetency, for unprofessional conduct or for violating any provisions of the New Mexico Hispanic Cultural Center Act. If a vacancy occurs on the board, the governor shall appoint another member to complete the unexpired term.

E. The executive director shall be an ex-officio nonvoting member of the board.

F. The governor shall designate the president of the board, who shall serve in that capacity at the pleasure of the governor.

Section 5

Section 5. BOARD--POWERS AND DUTIES.--The board shall:

A. exercise trusteeship over the collections of the center;

B. accept and hold title to all property for the center's use;

C. review annually the performance of the executive director and report its findings to the state cultural affairs officer;

D. enter into agreements or contracts with private or public organizations, agencies or individuals for the purpose of obtaining real or personal property for the center's use;

E. authorize the executive director to solicit and receive funds or property of any nature for the development of the center, its collections and its programs;

F. adopt such regulations as may be necessary to carry out the provisions of the New Mexico Hispanic Cultural Center Act; and

G. establish policy, determine the mission and direct the development of the center.

Section 6

Section 6. EXECUTIVE DIRECTOR--APPOINTMENT--QUALIFICATIONS.--

A. The executive director of the Hispanic cultural division shall be appointed by the state cultural affairs officer or his successor, with the approval of the governor, from a list of qualified finalists provided by the board of directors.

B. Subject to the authority of the state cultural affairs officer or his successor, the executive director of the division shall be the administrative and executive officer of the division. The executive director shall be exempt from the provisions of the Personnel Act.

Section 7

Section 7. EXECUTIVE DIRECTOR--POWERS AND DUTIES.--Subject to the policies agreed to by the board, the executive director:

A. shall be responsible for the administration of the division and for the operation of the center, in accordance with all appropriate statutes and regulations;

B. shall develop exhibits and programs displaying Hispanic culture, arts and humanities for the benefit of the public and with particular concern for the interests of the
schools of the state;

C. shall acquire by donation or other means of acquisition collections and related materials appropriate to an Hispanic cultural center and shall direct research as is appropriate to render the collections of benefit to the public;

D. shall employ such professional staff and other employees as are necessary to the operation of the center in accordance with the provisions of the Personnel Act;

E. may solicit and receive funds or property of any nature for the development of the center;

F. may enter into contracts with public or private organizations, individuals or agencies for the performance of services related to the location, preservation, development, study or salvage of Hispanic cultural materials;

G. shall cooperate with institutions of higher education and other agencies and political subdivisions of municipal, state and federal governments to establish, maintain and extend the programs of the center;

H. may, as authorized by the board, lend collection materials to qualified institutions and agencies for purposes of exhibition and study and borrow collection materials from other institutions and agencies for the same purpose;

I. shall impose and collect admission fees and conduct retail sales as are normal for the operation of the center;

J. may publish journals, books, reports and other materials as are appropriate to the operation of the center; and

K. shall perform other appropriate duties as may be delegated by the governor, the state cultural affairs officer or a successor or the board or as may be provided by law.

Section 8

Section 8. BOARD--COMPENSATION.--The members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

Section 9

Section 9. Section 9-6-9 NMSA 1978 (being Laws 1980, Chapter 151, Section 54, as amended) is amended to read:

"9-6-9. CREATION OF OFFICE.--The "office of cultural affairs" is created. The office shall consist of such divisions as are created by law or executive order, including but not limited to:

A. the administrative services division;

B. the arts division;

C. the library division;

D. the museum division;

E. the space center division;

F. the New Mexico farm and ranch heritage museum division;

G. the historic preservation division;

H. the natural history and science museum division; and

I. the Hispanic cultural division."SB 739

CHAPTER 43

RELATING TO ANIMALS; PROVIDING FOR THE STERILIZATION OF CATS AND DOGS OBTAINED FROM AN ANIMAL SHELTER; REQUIRING A STERILIZATION AGREEMENT AND DEPOSIT.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Pet Sterilization Act".

Section 2

Section 2. DEFINITIONS.--As used in the Pet Sterilization Act:

A. "animal" means a cat or dog;

B. "animal shelter" means any animal facility operated privately or by or for a municipality or county, in which stray, lost or unwanted animals are kept and released for adoption;

C. "sterilization" means rendering an animal unable to reproduce, either by the spaying of a female animal or by the neutering of a male animal; and

D. "sterilization deposit" means that portion of the adoption fee charged by the animal shelter when a person adopts an unsterilized animal; the "sterilization deposit" is refunded when the animal is sterilized.

Section 3

Section 3. STERILIZATION AGREEMENT AND STERILIZATION DEPOSIT REQUIRED.--

A. No animal shall be released from an animal shelter to an adopting person unless a sterilization agreement has been signed and a sterilization deposit has been paid, as provided in Subsections C and D of this section.

B. In addition to any adoption fee charged, a sterilization deposit of at least twenty-five dollars ($25.00) shall be imposed on the adoption of each animal from an animal shelter.

C. Animals less than six months of age shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating he will have the adopted animal sterilized when it is no older than six months of age.

D. Adult animals over the age of six months shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating he will have the animal sterilized within thirty days of the date of adoption.

E. The sterilization deposit shall be reimbursed only upon presentation of a receipt from a veterinarian that the adopted animal has been sterilized.

F. An unsterilized animal reclaimed by its owner shall be released without being sterilized upon payment of the twenty-five dollars ($25.00) for the sterilization deposit and impoundment fees imposed by the shelter, and the owner shall sign an agreement stating he will sterilize the animal within thirty days after release or will obtain a breeder permit or its equivalent. The sterilization deposit shall be reimbursed upon presentation by the owner of a receipt from a veterinarian that the animal has been sterilized.

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 133

CHAPTER 44

RELATING TO REAL PROPERTY; AMENDING PROVISIONS OF THE HOMESTEAD EXEMPTION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 42-10-9 NMSA 1978 (being Laws 1971, Chapter 215, Section 6, as amended) is amended to read:

"42-10-9. HOMESTEAD EXEMPTION.--Each person shall have exempt a homestead in a dwelling house and lan d occupied by him or in a dwelling house occupied by him although the dwelling is on land owned by another, provided that the dwelling is owned, leased or being purchased by the person claiming the exemption. Such a person has a homestead of thirty thousand dollars ($30,000) exempt from attachment, execution or foreclosure by a judgment creditor and from any proceeding of receivers or trustees in insolvency proceedings and from executors or administrators in

probate. If the homestead is owned jointly by two persons, each joint owner is entitled to an exemption of thirty thousand dollars ($30,000)."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.

Section 3

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.SB 404

CHAPTER 45

RELATING TO TAXATION; PROHIBITING CERTAIN ACTIONS TO COLLECT COMPENSATING TAX UNDER CERTAIN CIRCUMSTANCES.

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

Section 1

Section 1. TEMPORARY PROVISIONS--TAXATION AND REVENUE DEPARTMENT BARRED FROM TAKING COLLECTION ACTIONS WITH RESPECT TO CERTAIN COMPENSATING TAX LIABILITIES.--

A. The taxation and revenue department shall take no action to enforce collection of compensating tax due on purchases made by an individual if:

(1) the property purchased was received by the individual prior to July 1, 1994;

(2) the property is used only for nonbusiness purposes; and

(3) the individual is not an agent for collection of compensating tax pursuant to Section 7-9-10 NMSA 1978.

B. The prohibition in Subsection A of this section does not prevent the taxation and revenue department from enforcing collection of compensating tax on purchases prior to July 1, 1994, from persons who are not individuals, who are agents for collection pursuant to Section 7-9-10 NMSA 1978 or who use the property in the course of engaging in business in New Mexico.HB 10

CHAPTER 46

RELATING TO GOVERNMENTAL ETHICS; TIGHTENING CAMPAIGN REPORTING REQUIREMENTS; STRENGTHENING LOBBYIST REGULATION; EXPANDING FINANCIAL DISCLOSURES AND ENACTING A FINANCIAL DISCLOSURE ACT; CREATING A GOVERNMENTAL ETHICS OVERSIGHT COMMITTEE; CREATING AN INTERIM LEGISLATIVE ETHICS COMMITTEE; AMENDING, REPEALING, ENACTING AND RECOMPILING CERTAIN SECTIONS OF THE NMSA 1978; PROVIDING AND INCREASING PENALTIES.

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

Section 1

Section 1. Section 1-19-26 NMSA 1978 (being Laws 1979, Chapter 360, Section 2, as amended) is amended to read:

"1-19-26. DEFINITIONS.--As used in the Campaign Reporting Act:

A. "anonymous contribution" means a contribution the contributor of which is unknown to the candidate or his agent or the political committee or its agent who accepts the contribution;

B. "bank account" means an account in a financial institution located in New Mexico;

C. "campaign committee" means two or more persons authorized by a candidate to raise, collect or expend contributions on the candidate's behalf for the purpose of electing him to office;

D. "candidate" means an individual who seeks or considers an office in an election covered by the Campaign Reporting Act and who either has filed a declaration of candidacy or:

(1) for a non-statewide office, has received contributions or made expenditures of one thousand dollars ($1,000) or more or authorized another person or campaign committee to receive contributions or make expenditures of one thousand dollars ($1,000) or more for the purpose of seeking election to the office; or

(2) for a statewide office, has received contributions or made expenditures of two thousand five hundred dollars ($2,500) or more or authorized another person or campaign committee to receive contributions or make expenditures of two thousand five hundred dollars ($2,500) or more for the purpose of seeking election to the office or for candidacy exploration purposes in the years prior to the year of the election;

E. "contribution" means a gift, subscription, loan, advance or deposit of any money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a political purpose, including payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

F. "deliver" or "delivery" means by certified or registered mail, by telecopier, electronic mail or facsimile or by personal service;

G. "election" means any regular, primary, general or statewide special election in New Mexico and includes county and judicial retention elections but excludes municipal, school board and special district elections;

H. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value for a political purpose, including payment of a debt incurred in an election campaign, but does not include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

I. "political committee" means two or more persons, other than members of a candidate's immediate family or campaign committee or a husband and wife who make a contribution out of a joint account, who are selected, appointed, chosen, associated, organized or operated primarily for a political purpose and includes political action committees or similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for a political purpose; provided that a political committee includes a single individual who by his actions represents that he is a political committee;

J. "political purpose" means influencing or attempting to influence an election, including a constitutional amendment or other question submitted to the voters;

K. "prescribed form" means a form prepared and prescribed by the secretary of state; and

L. "reporting individual" means every candidate or treasurer of a campaign committee and every treasurer of a political committee who contributes, receives contributions or makes expenditures as defined in the Campaign Reporting Act."

Section 2

Section 2. A new section of the Campaign Reporting Act, Section 1-19-26.1 NMSA 1978, is enacted to read:

"1-19-26.1. POLITICAL COMMITTEES--REGISTRATION--DISCLOSURES.--

A. It is unlawful for any political committee that receives, contributes or expends in excess of five hundred dollars ($500) in any calendar year to continue to receive or make any contribution or expenditure for a political purpose unless that political committee appoints and maintains a treasurer and registers with the secretary of state.

B. A political committee shall register with the secretary of state no later than ten days after the effective date of this section or within ten days of receiving, contributing or expending in excess of five hundred dollars ($500) by paying a filing fee of fifty dollars ($50.00) and filing a statement of organization under oath on a prescribed form showing:

(1) the full name of the political committee, which shall fairly and accurately reflect the sponsoring organization, and its address;

(2) a statement of the purpose for which the political committee was organized;

(3) the name, address and relationship of any connected or associated organization or entity;

(4) the name and address of the officers of the committee; and

(5) an identification of the bank account used by the committee for all expenditures or contributions made or received."

Section 3

Section 3. Section 1-19-27 NMSA 1978 (being Laws 1979, Chapter 360, Section 3, as amended) is amended to read:

"1-19-27. REPORTS REQUIRED.--Each reporting individual shall file with the proper filing officer, as defined in the Election Code, a report of expenditures and contributions on a prescribed form furnished by the proper filing officer. In the case where the candidate files a report for the campaign committee, the treasurer of the committee need not file a report of expenditures and contributions for the period covered in the candidate's report."

Section 4

Section 4. Section 1-19-28 NMSA 1978 (being Laws 1979, Chapter 360, Section 4, as amended) is amended to read:

"1-19-28. FURNISHING REPORT FORMS--POLITICAL COMMITTEES--CANDIDATES.--

A. The secretary of state annually shall furnish to registered political committees the prescribed form for the reporting of expenditures and contributions and the specific dates the reports are due.

B. At the time of filing a declaration of candidacy either for nomination at a primary election or for an office not requiring a primary election, the proper filing officer shall give the candidate the prescribed reporting forms and the schedule of specific dates for filing the required reports."

Section 5

Section 5. Section 1-19-29 NMSA 1978 (being Laws 1979, Chapter 360, Section 5, as amended) is repealed and a new Section 1-19-29 NMSA 1978 is enacted to read:

"1-19-29. TIME OF FILING REPORTS.--

A. In an election year, candidates running for statewide office shall deliver the following reports to the secretary of state:

(1) a report, delivered thirty days after filing a declaration of candidacy, of all expenditures made and contributions received on or before the twenty-fifth day after filing the declaration and not previously reported;

(2) a report, delivered not later than twenty days prior to an election, of all expenditures made
and contributions received on or before the twenty-fifth day prior to the election and not previously reported;

(3) a report, received by the secretary of state not later than 5:00 p.m. on the Thursday before the election, of all expenditures made and contributions received by 5:00 p.m. of the Wednesday before the election and not previously reported; and

(4) a report, delivered thirty days after the election, of all expenditures made and contributions received on or before twenty-five days after the election and not previously reported.

B. In an election year, all other candidates covered by the Campaign Reporting Act shall deliver the following reports to the proper filing officer, except for

legislative candidates representing multi-county districts who may file the reports with the county clerk in the county in which they reside:

(1) a report, delivered fifteen days after filing a declaration of candidacy, of all expenditures made and contributions received on or before the tenth day after filing the declaration and not previously reported;

(2) a report, delivered not later than twenty days prior to the election, of all expenditures made and contributions received on or before the twenty-fifth day prior to the election and not previously reported;

(3) a report, received by the proper filing officer not later than 5:00 p.m. on the Thursday before the election, of all expenditures made and contributions received by 5:00 p.m. of the Wednesday before the election and not previously reported; and

(4) a report, delivered thirty days after the election, of all expenditures made and contributions received on or before twenty-five days after the election and not previously reported.

C. In an election year, all other reporting individuals covered by the Campaign Reporting Act shall deliver the following reports to the proper filing officer:

(1) a report, delivered not later than twenty days prior to the election, of all expenditures made and contributions received on or before the twenty-fifth day
prior to the election and not previously reported;

(2) a report, received by the proper filing officer not later than 5:00 p.m. on the Thursday before the election, of all expenditures made and contributions received by 5:00 p.m. of the Wednesday before the election and not previously reported; and

(3) a report, delivered thirty days after the election, of all expenditures made and contributions received on or before twenty-five days after the election and not previously reported.

D. Annually on the first Monday in May in nonelection years, a reporting individual shall file with the proper filing officer a report of all expenditures made or contributions received on or before April 30 of that year and not previously reported in the nonelection year, or not previously reported, and the opening and closing cash balance of the bank account. This report shall be filed annually until it is reported that the bank account is closed. Legislators representing and legislative candidates seeking to represent multi-county districts may file the report with the county clerk in the county in which they reside instead of with the proper filing officer.

E. A reporting individual who is a candidate within the meaning of the Campaign Reporting Act because of the contributions he receives or expenditures he makes pursuant to the provisions of Subsection D of Section 1-19-26 NMSA 1978 and who does not ultimately file a declaration of candidacy shall file a report of expenditures and contributions not later than thirty days after the deadline for filing a declaration of candidacy."

Section 6

Section 6. A new section of the Campaign Reporting Act, Section 1-19-29.1 NMSA 1978, is enacted to read:

"1-19-29.1. CAMPAIGN FUNDS--LIMITATION ON USE--FEDERAL CAMPAIGN FUNDS PROHIBITED IN STATE RACES.--

A. It is unlawful for any candidate, elected official or his agent to make an expenditure of contributions received except for the following purposes:

(1) expenditures of the campaign;

(2) expenditures of legislators that are reasonably related to performing the duties of the office
held, including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses;

(3) donations to the state general fund;

(4) donations to an organization to which a federal income tax deduction would be permitted under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended; and

(5) donations to a political party, donations to another candidate or donations to be used to eliminate the campaign debt of the candidate for the same or another office.

B. No contributions solicited for or received in a federal election campaign may be used in a state election campaign."

Section 7

Section 7. Section 1-19-31 NMSA 1978 (being Laws 1979, Chapter 360, Section 7, as amended) is amended to read:

"1-19-31. CONTENTS OF REPORT.--

A. Each required report of expenditures and contributions shall be typed or printed legibly, or on a computer disc or format approved by the secretary of state, and shall include:

(1) the name and address of the person or entity to whom an expenditure was made or from whom a contribution was received, except as provided for anonymous contributions or contributions received from special events as provided in Section 1-19-34 NMSA 1978; provided that, for contributors, the name of the entity or the first and last names of any individual shall be the full name of the entity or individual, and initials only shall not constitute a full name of an entity unless that is its complete legal name;

(2) the occupation or type of business of any person or entity making contributions of two hundred fifty dollars ($250) or more in the aggregate per election;

(3) the amount of the expenditure or contribution or value thereof;

(4) the purpose of the expenditure; and

(5) the date of the expenditure or contribution.

B. The report of expenditures and contributions shall be subscribed and sworn to by the candidate or treasurer of the political committee.

C. Each report shall contain an opening and closing cash balance for the bank account maintained by the reporting individual during the reporting period and the financial institution name.

D. Each report shall specify the amount of each unpaid debt and the identity of the person to whom the debt is owed, except that the debts to suppliers of goods and services that are not more than thirty days past due need not be reported."

Section 8

Section 8. Section 1-19-32 NMSA 1978 (being Laws 1979, Chapter 360, Section 8) is amended to read:

"1-19-32. PUBLIC INSPECTION OF REPORTS.--The report of expenditures and contributions is a public record that shall be retained by the state for five years and shall at all reasonable times be open to public inspection. Unless an action or prosecution is pending requiring the preservation of the report, it may be destroyed five years after the date of filing."

Section 9

Section 9. Section 1-19-32.1 NMSA 1978 (being Laws 1981, Chapter 331, Section 9) is amended to read:

"1-19-32.1. REPORTS EXAMINATION--FORWARDING OF REPORTS.--

A. In addition to reviewing all reports for accuracy and thoroughness, the bureau of elections of the secretary of state's office shall conduct an extensive examination of at least ten percent of the reports, selected at random, that are filed by candidates and reporting individuals to determine compliance with the Campaign Reporting Act, investigate any discrepancies and release a report on any unresolved discrepancies found after an examination of political committee contributions and contributions reported by candidates. A copy of this report shall also be transmitted to the attorney general.

B. A county clerk shall arrange for the secretary of state to receive within twenty-four hours of the county
clerk's receipt any required campaign contribution and expenditure report subject to the provisions of the Campaign Reporting Act. Within twenty-four hours of receipt, the secretary of state shall arrange for a county clerk in a multi-county legislative district to receive any campaign contribution and expenditure report of a legislative candidate for that county that is filed with the secretary of state pursuant to the provisions of the Campaign Reporting Act."

Section 10

Section 10. Section 1-19-33 NMSA 1978 (being Laws 1979, Chapter 360, Section 9) is amended to read:

"1-19-33. EXCLUSION OF CERTAIN CANDIDATES FROM REPORTING.--

A. Any candidate who anticipates receiving or expending less than one thousand dollars ($1,000) to influence the outcome of his election shall file a statement to that effect at the time of filing a declaration of candidacy, or at the time of filing the first report of expenditures and contributions required by Section 1-19-29 NMSA 1978, whichever is later. Upon the filing of the statement, the candidate shall not be required, except as provided in Subsection B of this section, to file a report of expenditures and contributions as required by the Campaign Reporting Act.

B. If at any time either the expenditures or contributions of a candidate who has filed a statement as provided in Subsection A of this section exceeds one thousand dollars ($1,000), the candidate shall file the next report and each succeeding report as required by the Campaign Reporting Act."

Section 11

Section 11. Section 1-19-34 NMSA 1978 (being Laws 1979, Chapter 360, Section 10, as amended) is amended to read:

"1-19-34. CANDIDATES--POLITICAL COMMITTEES--TREASURER--BANK ACCOUNT--ANONYMOUS CONTRIBUTIONS--CONTRIBUTIONS FROM SPECIAL EVENTS.--

A. It is unlawful for the members of any political committee or any candidate to make any expenditure or solicit or accept any contribution for a political purpose unless:

(1) a treasurer has been appointed and is constantly maintained; however, when a duly appointed treasurer is unable for any reason to continue as treasurer, the candidate or political committee shall appoint a successor; provided a candidate may serve as his own treasurer;

(2) all disbursements of money and receipts of contributions are authorized by and through the candidate or treasurer;

(3) a separate bank account has been established and all receipts of money contributions and all expenditures of money shall be deposited in and disbursed from the one bank account maintained by the treasurer in the name of the candidate or political committee; provided that nothing in this section shall prohibit investments from the account to earn interest as long as the investments and earnings are fully reported. All disbursements except for disbursements made from a petty cash fund of one hundred dollars ($100) or less shall be by check made payable to the person or entity receiving the disbursement and not to "cash" or "bearer"; and

(4) the treasurer upon disbursing or receiving money or other things of value shall immediately enter and thereafter keep in a proper book to be preserved by him a full, true and itemized statement and account of each sum disbursed or received, the date of such disbursal or receipt, to whom disbursed or from whom received and the object or purpose for which it was disbursed or received.

B. No anonymous contributions may be accepted in excess of one hundred dollars ($100). The aggregate amount of anonymous contributions received by a reporting individual during a primary or general election or a statewide special election shall not exceed two thousand dollars ($2,000) for statewide races and five hundred dollars ($500) for all other races.

C. Cash contributions received at special events that are unidentifiable as to specific contributor but identifiable as to the special event are not subject to the anonymous contribution limits provided for in this section so long as no single special event raises, after expenses, more than one thousand dollars ($1,000) in such cash contributions. For those contributions, due diligence and best efforts shall be made to disclose on a special prescribed form the sponsor, date, place, total amount received,

expenses incurred, estimated number of persons in attendance and other identifiable factors that describe the special event. For purposes of this subsection, "special event" includes an event such as a barbecue or similar fundraiser where tickets costing fifteen dollars ($15.00) or less are sold or an event such as a coffee, tea or similar reception.

D. Any contributions received pursuant to this section in excess of the limits established in Subsections B and C of this section shall be donated to the general fund or an organization to which a federal income tax deduction would be available under Subparagraph (A) of Paragrph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended."

Section 12

Section 12. A new section of the Campaign Reporting Act, Section 1-19-34.1 NMSA 1978, is enacted to read:

"1-19-34.1. LEGISLATIVE SESSION FUNDRAISING PROHIBITION.--

A. It is unlawful during the prohibited period for a state legislator or a candidate for state legislator, or any agent on their behalf, to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on adjournment of the regular or special session.

B. It is unlawful during the prohibited period for a person holding a state office, or any agent on his behalf, to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on the twentieth day following the adjournment of the regular or special session."

Section 13

Section 13. A new section of the Campaign Reporting Act, Section 1-19-34.2 NMSA 1978, is enacted to read:

"1-19-34.2. REGULATED INDUSTRY SOLICITATIONS PROHIBITED.--It is unlawful for an elected state official, public officer or employee who works for a regulatory office, or a candidate who seeks election to a regulatory office, or anyone authorized by a candidate to solicit funds on his behalf, to knowingly solicit a contribution from an entity,
its officers or employees, or a person that is directly regulated by the office. For purposes of this section, an entity or person is directly regulated by an office when the entity's or person's charges for services offered to the public are set or directly subject

to approval by the office or when a license to do business in the state is determined by the office."

Section 14

Section 14. A new section of the Campaign Reporting Act, Section 1-19-34.3 NMSA 1978, is enacted to read:

"1-19-34.3. CONTRIBUTIONS IN ONE NAME GIVEN FOR ANOTHER PROHIBITED--BUNDLING DISCLOSURE REQUIRED.--

A. It is unlawful for a person or political committee to make, or a candidate or his agent to accept, a contribution that is reported as coming from one person or entity when the candidate knows that the contribution is actually from another person or entity that directed that its contribution not be publicly reported.

B. No person shall deliver, in the aggregate for each election, five or more separate contributions, or contributions in excess of five hundred dollars ($500), to a candidate or anyone authorized by a candidate to receive funds on his behalf without identifying the name, address, organization represented, if any, and occupation or type of business of the person who delivers the contributions."

Section 15

Section 15. A new section of the Campaign Reporting Act, Section 1-19-34.4 NMSA 1978, is enacted to read:

"1-19-34.4. EDUCATION AND VOLUNTARY COMPLIANCE--INVESTIGATIONS--BINDING ARBITRATION--REFERRALS FOR ENFORCEMENT.--

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Campaign Reporting Act of those duties. This includes advising all known reporting individuals at least annually of the Campaign Reporting Act's deadlines for submitting required reports. The secretary of state in consultation with the attorney general shall issue advisory opinions, when requested in writing to do so, on matters concerning the Campaign Reporting Act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may initiate investigations to determine whether the Campaign Reporting
Act has been violated. Additionally, any person who believes that act has been violated may file a written complaint with the secretary of state anytime prior to ninety days after an election, except that no complaints from the public may be filed within eight days prior to an election. The secretary of state shall adopt procedures for issuing advisory opinions, processing complaints and notifications of violations.

C. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Campaign Reporting Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed; provided, however, that if a person fails to file or files late any required report of expenditures and contributions, the fines provided for in Section 1-19-35 NMSA 1978 shall be imposed immediately, unless the matter is subject to an advisory opinion request that is pending, and those fines may be reimbursed if it is determined the violation occurred for good cause.

D. If the secretary of state determines that a violation has occurred for which a penalty should be imposed, the secretary of state shall so notify the person charged with a violation and impose the penalty. If the person protests the secretary of state's determination, including an advisory opinion, the person charged may request binding arbitration. If an advisory opinion is subject to binding arbitration, no penalty shall be imposed until the arbitration decision is issued, and the penalty shall not include any fine to cover days before the arbitration decision is issued.

E. The arbitration decision shall be decided by a panel of three persons. The secretary of state shall choose one panel member within fifteen days of receipt of the request for arbitration; the person against whom the penalty has been imposed shall choose another panel member and submit the arbitrator's name with the request for arbitration; and those two members shall choose the third panel member. If no agreement is reached on a third panel member within thirty days of receipt of the request for arbitration, the presiding judge of the district court for the first judicial district shall appoint the third panel member. No panel member may be a person subject to the Campaign Reporting Act, Lobbyist Regulation Act or Financial Disclosure Act. Panel members shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act plus reimbursement for reasonable actual expenses.

F. The arbitration panel may impose any penalty the secretary of state is authorized to impose. The panel shall state the reasons for its decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within forty-five days of the conclusion of the hearing. Unless otherwise provided for in this section, the procedures for the arbitration shall be governed by the Uniform Arbitration Act, including the procedures set forth in Section 44-7-7 NMSA 1978 authorizing the issuance of subpoenas. No panel member shall be subject to liability for actions taken pursuant to this section.

G. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or for criminal enforcement."

Section 16

Section 16. Section 1-19-35 NMSA 1978 (being Laws 1979, Chapter 360, Section 11, as amended) is amended to read:

"1-19-35. REPORTS--LATE FILING PENALTY--FAILURE TO FILE.--

A. Except for the final report required to be filed and delivered the Thursday prior to the election, and subject to the provisions of Section 1-19-34.4 NMSA 1978, if any reporting individual files a report of expenditures and contributions after any deadline imposed by the Campaign Reporting Act or if the reporting individual files an incomplete or false report, such person, in addition to any other penalties or remedies prescribed by the Election Code, shall be liable and shall pay to the secretary of state fifty dollars ($50.00) per day for each regular working day after the time required by the Campaign Reporting Act for the filing of reports of expenditures and contributions until the complete report is filed, up to a maximum of five thousand dollars ($5,000).

B. If any reporting individual files a report of expenditures and contributions after the deadline for filing the report on the Thursday prior to the election or files an incomplete report, the person shall be liable and pay to the secretary of state five hundred dollars ($500) the first working day and fifty dollars ($50.00) for each subsequent working day after the time required for the filing of this report until the complete report is filed, up to a maximum of
five thousand dollars ($5,000).

C. All sums collected for the penalty shall be deposited in the general fund of the state. If sent by certified or registered mail, the report shall be deemed filed on the date three days following the date of the postmark.

D. Any candidate who fails or refuses to file a report of expenditures and contributions as required by the Campaign Reporting Act, shall, in addition to any other penalties provided by law:

(1) not have his name printed upon the ballot if the violation occurs before and through the final date for the withdrawal of candidates; or

(2) not be issued a certificate of nomination or election, if the violation occurs after the final date for withdrawal of candidates or after the election, until the candidate files the report of expenditures and contributions as required by the Campaign Reporting Act.

E. Any candidate who loses an election and who failed or refused to file a report of expenditures and contributions as required by the Campaign Reporting Act shall, in addition to any other penalties provided by law and in addition to filing a declaration of candidacy or a declaration of intent to be a write-in candidate for any future office, pay the penalty owed and file all outstanding reports of expenditures and contributions required by the Campaign Reporting Act."

Section 17

Section 17. Section 1-19-36 NMSA 1978 (being Laws 1979, Chapter 360, Section 12) is amended to read:

"1-19-36. PENALTIES--ENFORCEMENT.--

A. Any person who knowingly and willfully violates any of the provisions of the Campaign Reporting Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year or both.

B. The Campaign Reporting Act may be enforced by the attorney general or the district attorney in the county where the candidate resides, where a political committee has its principal place of business or where the violation occurred."

Section 18

Section 18. Section 2-11-1 NMSA 1978 (being Laws 1977, Chapter 261, Section 1) is amended to read:

"2-11-1. SHORT TITLE.-- Chapter 2, Article 11 NMSA 1978 may be cited as the "Lobbyist Regulation Act"."

Section 19

Section 19. Section 2-11-2 NMSA 1978 (being Laws 1977, Chapter 261, Section 2, as amended) is amended to read:

"2-11-2. DEFINITIONS.--As used in the Lobbyist Regulation Act:

A. "compensation" means any money, per diem, salary, fee or portion thereof or the equivalent in services rendered or in-kind contributions received or to be received in return for lobbying services performed or to be performed;

B. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value but does not include a lobbyist's own personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer;

C. "legislative committee" means a committee created by the legislature, including interim and standing committees of the legislature;

D. "lobbying" means attempting to influence:

(1) a decision related to any matter to be considered or being considered by the legislative branch of state government or any legislative committee or any legislative matter requiring ction by the governor or awaiting action by the governor; or

(2) an official action;

E. "lobbyist" means any individual who:

(1) is compensated for lobbying;

(2) is designated by an interest group to represent it for the purpose of lobbying; or

(3) in the course of his employment is engaged in lobbying on a substantial or regular basis, except:

(a) any elected or appointed officer of the state or Indian tribe or pueblo or their political subdivisions acting in his official capacity;

(b) a member of the legislature, the staff of any member of the legislature or the staff of any legislative committee when addressing legislation;

(c) any witness called by any legislative committee or administrative agency to appear before that legislative committee or agency on behalf of or in opposition to legislation or an official action; or

(d) any individual who merely appears for himself before a legislative committee or an administrative agency to testify in support of or in opposition to legislation or an official action;

F. "lobbyist's employer" means the person whose interests are being represented and by whom a lobbyist is directly or indirectly retained, compensated or employed;

G. "official action" means the action or nonaction of a state official or state agency, board or commission acting in a rulemaking proceeding;

H. "person" means an individual, partnership, association, committee, federal, state or local governmental entity or agency however constituted, public or private corporation, or any other organization or group of persons who are voluntarily acting in concert;

I. "political contribution" means a gift, subscription, loan, advance or deposit of any money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for the purpose of influencing a primary, general

or statewide election, including a constitutional or other question submitted to the voters, or for the purpose of paying a debt incurred in any such election;

J. "prescribed form" means a form prepared and prescribed by the secretary of state;

K. "rulemaking proceeding" means a formal process conducted by a state agency, board or commission for the
purpose of adopting a rule, regulation, standard, policy or other requirement of general applicability and does not include adjudicatory proceedings; and

L. "state public officer" means a person holding a statewide office provided for in the constitution."

Section 20

Section 20. Section 2-11-3 NMSA 1978 (being Laws 1977, Chapter 261, Section 3, as amended) is amended to read:

"2-11-3. REGISTRATION STATEMENT TO BE FILED--CONTENTS--MODIFICATION TO STATEMENT.--

A. In the month of January prior to each regular session or before any service covered by the Lobbyist Regulation Act commences, any individual who is initially employed or retained as a lobbyist shall register with the secretary of state by paying an annual filing fee of twenty-five dollars ($25.00) for each of the lobbyist's employers and by filing a single registration statement under oath on a prescribed form showing:

(1) the lobbyist's full name, permanent business address and business address while lobbying; and

(2) the name and address of each of the lobbyist's employers.

B. No registration fee shall be required of individuals receiving only reimbursement of personal expenses and no other compensation or salary for lobbying. No expenditure statement required by Section 2-11-6 NMSA 1978 shall be required if the lobbyist anticipates making or incurring and makes or incurs no expenditures or political contributions under Section 2-11-6 NMSA 1978. The lobbyist shall indicate in his registration statement whether those circumstances apply to him.

C. For each employer listed in Paragraph (2) of Subsection A of this section, the lobbyist shall file the following information:

(1) a full disclosure of the sources of funds used for lobbying;

(2) a written statement from each of the lobbyist's employers authorizing him to lobby on the employer's behalf;

(3) a brief description of the matters in reference to which the service is to be rendered; and

(4) the name and address of the person, if other than the lobbyist or his employer, who will have custody of the accounts, bills, receipts, books, papers and documents required to be kept under the provisions of the Lobbyist Regulation Act.

D. For each succeeding year that an individual is employed or retained as a lobbyist by the same employer, and for whom all the information disclosed in the initial registration statement remains substantially the same, the lobbyist shall file a simple annual registration renewal in January and pay the twenty-five dollar ($25.00) filing fee for each of the lobbyist's employers together with a short, abbreviated prescribed form for renewal.

E. Whenever there is a modification of the facts required to be set forth by this section or there is a termination of the lobbyist's employment as a lobbyist before the end of the calendar year, the lobbyist shall notify the secretary of state within one month of such occurrence and shall furnish full information concerning the modification or termination. If the lobbyist's employment terminates at the end of a calendar year, no separate termination report need be filed."

Section 21

Section 21. Section 2-11-6 NMSA 1978 (being Laws 1977, Chapter 261, Section 6, as amended) is amended to read:

"2-11-6. EXPENDITURE STATEMENT TO BE FILED--CONTENTS--REPORTING PERIODS.--

A. Each lobbyist or lobbyist's employer who makes or incurs expenditures or political contributions for the benefit of a state legislator, or candidate for the state legislature, a state public officer, or a candidate for state public office, a ballot issue, or a board or commission member or state employee who is involved in an official action affecting the lobbyist's employer, shall file with the secretary of state on a prescribed form a sworn statement that sets forth:

(1) the cumulative total of the expenditures made or incurred, separated into categories that identify the total separate amounts spent on:

(a) meals and beverages;

(b) other entertainment expenditures;

(c) gifts; and

(d) other expenditures; and

(2) each political contribution made, identified by amount, date and name of the candidate or ballot issue supported or opposed.

B. In identifying expenditures pursuant to the provisions of Paragraph (1) of Subsection A of this section, any individual expenditure that is more than the threshold level established in the Internal Revenue Code of 1986, as amended, that must be reported separately to claim a business expense deduction, as published by the secretary of state, shall be identified by amount, date, purpose, type of expenditure and name of the person who received or was benefited by the expenditure; provided that in the case of special events, including parties, dinners, athletic events, entertainment and other functions, to which all members of the legislature, to which all members of either house or any legislative committee, or to which all members of a board or commission, are invited, expenses need not be allocated to each individual who attended but the date, location, name of the body invited and total expenses incurred shall be reported.

C. The reports required pursuant to the provisions of the Lobbyist Regulation Act shall be filed semiannually:

(1) in January for all presession or other expenditures and political contributions made or incurred up to the date of filing and not previously reported; and

(2) in July for all expenditures and political contributions made or incurred since the January filing.

D. A lobbyist's personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer need not be reported.

E. A lobbyist or lobbyist's employer shall obtain and preserve all accounts, bills, receipts, books, papers and documents necessary to substantiate the financial statements required to be made under the Lobbyist Regulation Act for a period of two years from the date of filing of the statement containing such items. When the lobbyist is required under the terms of his employment to turn over any such records to his employer, responsibility for the preservation of them as required by this section and the filing of reports required by this section shall rest with the employer. Such records shall be made available to the secretary of state or attorney general upon written request.

F. Any lobbyist's employer who also engages in lobbying shall comply with the provisions of the Lobbyist Regulation Act."

Section 22

Section 22. Section 2-11-7 NMSA 1978 (being Laws 1977, Chapter 261, Section 7) is amended to read:

"2-11-7. REGISTRATION AND EXPENDITURE STATEMENT--PRESERVATION AS PUBLIC RECORD.--Each registration and expenditure statement as required by the Lobbyist Regulation Act shall be preserved by the secretary of state for a period of two years from the date of filing as a public record, open to public inspection at any reasonable time. Unless an action or prosecution is pending that requires preserving the report, it may be destroyed two years after the date of filing."

Section 23

Section 23. A new section of the Lobbyist Regulation Act, Section 2-11-8.1 NMSA 1978, is enacted to read:

"2-11-8.1. RESTRICTIONS ON CAMPAIGN ACTIVITIES AND CONTRIBUTIONS.--

A. No lobbyist may serve as a campaign chairman, treasurer or fundraising chairman for a candidate for the legislature or a statewide office.

B. It is unlawful during the prohibited period for any lobbyist or lobbyist's employer to contribute to or act as an agent or intermediary for political contributions to or arrange for the making of political contributions to the campaign funds of any statewide elected official or legislator or any candidate for those offices.

C. For purposes of this section, "prohibited period" is that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on the twentieth day following the adjournment of the regular or special session."

Section 24. Section 2-11-4 NMSA 1978 (being Laws 1977, Chapter 261, Section 4) is recompiled as Section 2-11-8.2 NMSA 1978 and is amended to read:

"2-11-8.2. COMPLIANCE WITH ACT--ENFORCEMENT OF ACT--BINDING ARBITRATION--CIVIL PENALTIES.--

A. The secretary of state shall advise and seek to educate all persons required to perform duties pursuant to the Lobbyist Regulation Act of those duties. This includes advising all registered lobbyists at least annually of the Lobbyist Regulation Act's deadlines for submitting required reports. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested to do so in writing, on matters concerning the Lobbyist Regulation Act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may conduct thorough examinations of reports and initiate investigatios to determine whether the Lobbyist Regulation Act has been

violated. Any person who believes that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for issuing advisory opinions, processing complaints and notifications of violations.

C. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Lobbyist Regulation Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed.

D. If the secretary of state determines that a violation has occurred for which a penalty should be imposed, the secretary of state shall so notify the person charged and impose the penalty. If the person charged disputes the secretary of state's determination, including an advisory opinion, the person charged may request binding arbitration. If an advisory opinion is subject to binding arbitration, no penalty shall be imposed until the arbitration decision is issued, and the penalty shall not include any fine to cover days before the arbitration decision is issued.

E. The arbitration decision shall be decided by a panel of three persons. The secretary of state shall choose one panel member within fifteen days of receipt of the request for arbitration; the person charged shall choose another panel member and submit the arbitrator's name with
the request for arbitration; and those two members shall choose the third panel member. If no agreement is reached on a third panel member within thirty days of receipt of the request for arbitration, the presiding judge of the district court for the first judicial district shall appoint the third panel member. No panel member may be a person subject to the Lobbyist Regulation Act, Campaign Reporting Act or Financial Disclosure Act. Panel members shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act plus reimbursement for reasonable actual expenses.

F. The arbitration panel may take any action the secretary of state is authorized to take. The panel shall state the reasons for its decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within forty-five days of the conclusion of the hearing. Unless otherwise provided for in this section, the procedures for the arbitration shall be governed by the Uniform Arbitration Act, including the procedures set forth in Section 44-7-7 NMSA 1978 authorizing the issuance of subpoenas. No panel member shall be subject to liability for actions taken pursuant to this section.

G. Any person who files a statement or report after the deadline imposed by the Lobbyist Regulation Act, or any person who files a false or incomplete statement or report, shall be liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars ($50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars ($5,000).

H. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement."

Section 25

Section 25. Section 2-11-9 NMSA 1978 (being Laws 1977, Chapter 261, Section 9) is amended to read:

"2-11-9. PENALTIES.--In addition to any other penalties that may be assessed, any person who knowingly and willfully violates any of the provisions of the Lobbyist Regulation Act shall be punished by a fine of up to five thousand dollars ($5,000) and may have his lobbyist registration revoked or his lobbying activities enjoined for up to three years."

Section 26

Section 26. Section 10-16-1 NMSA 1978 (being Laws 1967, Chapter 306, Section 1) is amended to read:

"10-16-1. SHORT TITLE.-- Chapter 10, Article 16 NMSA 1978 may be cited as the " Governmental Conduct Act"."

Section 27

Section 27. Section 10-16-2 NMSA 1978 (being Laws 1967, Chapter 306, Section 2, as amended) is amended to read:

"10-16-2. DEFINITIONS.--As used in the Governmental Conduct Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "confidential information" means information that by law or practice is not available to the public;

C. "employment" means rendering of services for compensation in the form of salary as an employee;

D. "financial interest" means an interest held by an individual, his spouse or dependent minor children that is:

(1) an ownership interest in business; or

(2) any employment or prospective employment for which negotiations have already begun;

E. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

F. "person" means an individual or entity;

G. "public officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators and judges;

H. "standards" means the conduct required by the Governmental Conduct Act; and

I. "substantial interest" means an ownership interest that is greater than twenty percent."

Section 28

Section 28. Section 10-16-3 NMSA 1978 (being Laws 1967, Chapter 306, Section 3) is repealed and a new Section 10-16-3 NMSA 1978 is enacted to read:

"10-16-3. ETHICAL PRINCIPLES OF PUBLIC SERVICE--CERTAIN OFFICIAL ACTS PROHIBITED--PENALTY.--

A. A legislator, public officer or employee shall treat his government position as a public trust. He shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests incompatible with the public interest.

B. A legislator, public officer or employee shall conduct himself in a manner that justifies the confidence placed in him by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator, public officer or employee may request or receive, and no person may offer a legislator, public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

Section 29

Section 29. Section 10-16-4 NMSA 1978 (being Laws 1967, Chapter 306, Section 4) is amended to read:

"10-16-4. OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST PROHIBITED--DISQUALIFICATION FROM OFFICIAL ACT--PROVIDING A PENALTY.--

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing his own financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A public officer or employee shall disqualify himself from engaging in any official act directly affecting his financial interest.

C. If the public interest so requires, the governor may make an exception to Subsection B of this section for a public officer or employee by expressing the exception and the reasons for it in writing. The exception is effective when the public officer or employee files this writing with the secretary of state."

Section 30

Section 30. Section 10-16-6 NMSA 1978 (being Laws 1967, Chapter 306, Section 6) is amended to read:

"10-16-6. CONFIDENTIAL INFORMATION.--No legislator, public officer or employee shall use confidential information acquired by virtue of his state employment or office for his or another's private gain."

Section 31

Section 31. Section 10-16-7 NMSA 1978 (being Laws 1967, Chapter 306, Section 7, as amended) is amended to read:

"10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR EMPLOYEES.--A state agency shall not enter into any contract with a public officer or employee of the state or with a business in which the public officer or employee has a substantial interest unless the public officer or employee has disclosed his substantial interest and unless the contract is awarded pursuant to the Procurement Code; provided that this section does not apply to a contract of official employment with the state or to contracts made pursuant to the provisions of the University Research Park Act."

Section 32

Section 32. Section 10-16-8 NMSA 1978 (being Laws 1967, Chapter 306, Section 8, as amended) is amended to read:

"10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT SERVICE.--

A. A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars ($1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.

B. A former public officer or employee shall not represent a person in his dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

C. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the government agency at which the former public officer or employee served or worked."

Section 33

Section 33. Section 10-16-9 NMSA 1978 (being Laws 1967, Chapter 306, Section 9, as amended) is amended to read:

"10-16-9. CONTRACTS INVOLVING LEGISLATORS--REPRESENTATION BEFORE STATE AGENCIES.--

A. A state agency shall not enter into any procurement contract for services, construction or items of personal property with a legislator or with a business in which the legislator has a substantial interest unless the legislator has disclosed his substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code.

B. A legislator shall not appear for, represent or assist another person in any matter before a state agency, unless without compensation or for the benefit of a constituent, except for legislators who are attorneys or other professional persons engaged in the conduct of their professions and, in those instances, the legislator shall refrain from references to his legislative capacity except as to matters of scheduling,

from communications on legislative stationery and from thrats or implications relating to legislative actions."

Section 34

Section 34. Section 10-16-11 NMSA 1978 (being Laws 1967, Chapter 306, Section 11, as amended) is amended to read:

"10-16-11. CODES OF CONDUCT.--

A. By January 1, 1994, each elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to his control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act.

B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the secretary of state and are open to public inspection.

D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.

E. All legislators shall attend a minimum of one hour of ethics continuing education and training annually."

Section 35

Section 35. A new Section 10-16-13.1 NMSA 1978 is enacted to read:

"10-16-13.1. EDUCATION AND VOLUNTARY COMPLIANCE.--

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter. Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed."

Section 36

Section 36. Section 10-16-14 NMSA 1978 (being Laws 1967, Chapter 306, Section 14) is amended to read:

"10-16-14. ENFORCEMENT PROCEDURES.--

A. The secretary of state may refer suspected violations of the Governmental Conduct Act to the attorney general, district attorney or appropriate state agency or legislative body for enforcement. If a suspected violation involves the office of the secretary of state, the attorney general may enforce that act. If a suspected violation involves the office of the attorney general, a district attorney may enforce that act.

B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.

C. If the attorney general determines that there is sufficient cause to file a complaint against a public officer removable only by impeachment, he shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the attorney general shall make public the nature of the charges, but he shall make clear that the merits of the charges have never been determined. Days during which the legislature is not in session shall not be included in determining the thirty-day period.

D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those covered by Subsection C of this section, is grounds for discipline, including dismissal, demotion or suspension. Complaints against executive branch employees may be filed with the agency head and reviewed pursuant to the procedures provided in the Personnel Act. Complaints against legislative branch employees may be filed with and reviewed pursuant to procedures adopted by the New

Mexico legislative council. Complaints against judicial branch employees may be filed and reviewed pursuant to the procedures provided in the judicial personnel rules.

E. Subject to the provisions of this section, the Governmental Conduct Act may be enforced by the attorney general. Except as regards legislators or statewide elected officials, a district attorney in the county where a person resides or where a violation occurred may also enforce that act. Enforcement actions may include seeking civil injunctive or other appropriate orders."

Section 37

Section 37. A new section of the Governmental Conduct Act is enacted to read:

"CRIMINAL PENALTIES.--Unless specified otherwise in the Governmental Conduct Act, any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute."

Section 38

Section 38. A new section of the Governmental Conduct Act is enacted to read:

"HONORARIA PROHIBITED.--No legislator, public officer or employee may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars ($100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit."

Section 39

Section 39. SHORT TITLE--FINANCIAL DISCLOSURE ACT.--Sections 39 through 45 of this act may be cited as the
"Financial Disclosure Act".

Section 40

Section 40. DEFINITIONS.--As used in the Financial Disclosure Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "employment" means rendering of services for compensation in the form of salary as an employee;

C. "financial interest" means an interest held by an individual or his spouse that is:

(1) an ownership interest in business; or

(2) any employment or prospective employment for which negotiations have already begun;

D. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

E. "person" means an individual or entity; and

F. "public officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators and judges.

Section 41

Section 41. REQUIRED DISCLOSURES FOR CERTAIN CANDIDATES AND PUBLIC OFFICERS AND EMPLOYEES--CONDITION FOR PLACEMENT ON BALLOT OR APPOINTMENT.--

A. At the time of filing a declaration of candidacy, a candidate for legislative or statewide office shall file with the proper filing officer, as defined in the Election Code, a financial disclosure statement. In addition, each year during the month of January, a legislator and a person holding a statewide office shall file with that position's proper filing officer, as defined in the Election Code, a financial disclosure statement or a subsequent statement for each succeeding year that identifies changed circumstances, as provided in Subsection D of this section. If the proper filing officer is not the secretary of state, the proper filing officer shall promptly forward a copy of the financial disclosure statement to the secretary of state.

B. A state agency head or official whose appointment to a board or commission is subject to confirmation by the senate shall file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter.

C. The financial disclosure statement shall include for any person identified in Subsection A or B of this section and his spouse the following information for the prior calendar year:

(1) the full name, mailing address and residence address of each person covered in the disclosure statement, except the address of the spouse need not be disclosed; the name and address of the person's and spouse's employer and the title or position held; and a brief description of the nature of the business or occupation;

(2) all sources of gross income of more than five thousand dollars ($5,000) to each person covered in the disclosure statement, identified by general category descriptions that disclose the nature of the income source, in the following broad categories: finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described. In describing a law practice, consulting operation or similar business of the person or spouse, the major areas of specialization or income sources shall be described, and if the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was during the reporting calendar year or the prior calendar year a registered lobbyist under the Lobbyist Regulation Act, the names and addresses of all clients represented for lobbying purposes during those two years shall be disclosed;

(3) a general description of the type of real estate owned in New Mexico, other than a personal residence, and the county where it is located;

(4) all other New Mexico business interests not otherwise listed of ten thousand dollars ($10,000) or more in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

(5) all memberships by the reporting individual and his spouse on boards of for-profit businesses in New Mexico;

(6) all New Mexico professional licenses held;

(7) each state agency that was sold goods or services in excess of five thousand dollars ($5,000) during the prior calendar year by a person covered in the disclosure statement;

(8) each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of his employment during the prior calendar year; and

(9) a general category that allws the person filing the disclosure statement to provide whatever other financial interest or additional information the person believes should be noted to describe potential areas of interest that should be disclosed.

D. After filing the first financial disclosure statement required by this section, a subsequent statement for each of the next four years need only identify changes that must be disclosed to describe current circumstances. A complete financial disclosure statement shall be filed every five years. The secretary of state shall prepare a simplified financial disclosure statement form so that subsequent reports need disclose only changed circumstances.

E. The financial disclosure statements required by this section shall be retained by the state for five years from the date of filing and shall be made available for inspection by any citizen of the state.

F. A person who files a financial disclosure statement shall be allowed to file an amended statement at any time to reflect significant changed circumstances that occurred since the last report was filed.

G. Any candidate for a legislative or statewide office who fails or refuses to file a financial disclosure statement required by this section before the final date for the withdrawal of candidates shall not have his name printed on the ballot.

H. For a state agency head or an official whose appointment to a board or commission is subject to confirmation by the senate, the filing of the financial disclosure statement required by this section is a condition of entering upon and continuing in state employment or holding an appointed position.

Section 42

Section 42. DISCLOSURES BY CERTAIN PUBLIC OFFICERS OR EMPLOYEES OF STATE AGENCIES--CONDITION OF EMPLOYMENT.--

A. Every employee who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the state agency by which he is employed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before entering state employment and during the month of January every year thereafter.

B. Every public officer who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the board or commission to which he is appointed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before taking office and during the month of January every year thereafter.

C. The information on the disclosures shall be made available by the secretary of state for inspection to any citizen of this state.

D. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in state employment or, for persons subject to Subsection B of this section, of holding public office.

Section 43

Section 43. EDUCATION AND VOLUNTARY COMPLIANCE.--

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Financial Disclosure Act of those duties. This includes providing timely advance notice of the required financial disclosure statement and preparing forms that are clear and easy to complete.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Financial Disclosure Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed. Referrals for civil enforcement of the Financial Disclosure Act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

Section 44

Section 44. INVESTIGATIONS--BINDING ARBITRATION--FINES--ENFORCEMENT.--

A. The secretary of state may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated. Any person who believes that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for processing complaints and notifications of violations.

B. If the secretary of state determines that a violation has occurred for which a penalty should be imposed, the secretary of state shall so notify the person charged and impose the penalty. If the person charged disputes the secretary of state's determination, the person charged may request binding arbitration.

C. The arbitration decision shall be decided by a panel of three persons. The secretary of state shall choose one panel member within fifteen days of receipt of the request for arbitration; the person charged shall choose another panel member and submit the arbitrator's name with the request for arbitration; and those two members shall choose the third panel member. If no agreement is reached on a third panel member within thirty days of receipt of the request for arbitration, the presiding judge of the district court for the first judicial district shall appoint the third panel member. No panel member may be a person subject to the Financial Disclosure Act, Campaign Reporting Act or Lobbyist Regulation Act. Panel members shall be paid per diem and

mileage in accordance with the provisions of the Per Diem and Mileage Act plus reimbursement for reasonable actual expenses.

D. The arbitration panel may take any action the secretary of state is authorized to take. The panel shall state the reasons for its decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within forty-five days of the conclusion of the hearing. Unless otherwise provided
for in this section, the procedures for the arbitration shall be governed by the Uniform Arbitration Act, including the procedures set forth in Section 44-7-7 NMSA 1978 authorizing the issuance of subpoenas. No panel member shall be subject to liability for actions taken pursuant to this section.

E. Any person who files a statement or report after the deadline imposed by the Financial Disclosure Act, or any person who files a false or incomplete statement or report, shall be liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars ($50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars ($5,000).

F. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

Section 45

Section 45. CRIMINAL PENALTIES.--Any person who knowingly and willfully violates any of the provisions of the Financial Disclosure Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year or both.

Section 46

Section 46. GOVERNMENTAL ETHICS OVERSIGHT COMMITTEE CREATED--TERMINATION.--The joint interim "governmental ethics oversight committee" is created. The committee shall function from the date of its appointment until the first day of December prior to the first session of the forty-third legislature.

Section 47

Section 47. MEMBERSHIP--APPOINTMENT--VACANCIES.--

A. The governmental ethics oversight committee shall be composed of fourteen voting members, consisting of four legislators and ten public members, and four advisory members, consisting of two legislators from each house.

B. The members of the house of representatives shall be appointed by the speaker of the house of representatives. The members of the senate shall be appointed by the committees' committee of the senate or, if the senate appointments are made in the interim, by the president pro tempore of the senate after consultation with and agreement of a majority of the members of the committees' committee. Legislator voting and advisory members shall be
appointed annually from each house after consultation with the floor leaders of the two major political parties so as to give the two major political parties in each house equal representation on the committee.

C. Four public members shall be appointed to the committee by the speaker of the house of representatives, four public members shall be appointed by the president pro tempore of the senate, one public member shall be appointed by the governor and one public member shall be appointed by the chief justice of the New Mexico supreme court. The public members shall be appointed in such a manner so that neither major political party has a majority of members on the committee.

D. The speaker of the house of representatives and the president pro tempore of the senate shall each designate one co-chairman of the committee.

E. Vacancies on the committee shall be filled by appointment in the same manner as the original appointments.

F. The public members of the committee shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act plus reimbursement for reasonable actual expenses.

Section 48

Section 48. POWERS AND DUTIES.--

A. After its appointment, the governmental ethics oversight committee shall hold one organizational meeting to develop a workplan and budget for the ensuing interim. The workplan and budget shall be submitted to the New Mexico legislative council for approval. Upon approval of the workplan and budget by the New Mexico legislative council, the committee shall:

(1) examine the statutes, constitutional provisions and regulations governing governmental ethics in New Mexico;

(2) monitor and oversee the implementation of the legislative directives pertaining to financial disclosure, campaign reporting, lobbyist regulation and governmental conduct and financial disclosure laws;

(3) review issues related to statewide and legislative campaign expenditure and contribution limitations, public financing of political campaigns,

nepotism, legislative expense reimbursement and extension of campaign reporting requirements to various political subdivisions of the state; and

(4) make recommendations relating to the adoption of rules and legislation, if any are found to be necessary.

B. The committee shall regularly receive testimony from the secretary of state and the attorney general relating to the implementation of the legislative directives and shall review any proposed rules, regulations or reporting forms prior to adoption.

Section 49

Section 49. SUBCOMMITTEES.--Subcommittees shall be created only by majority vote of all members appointed to the governmental ethics oversight committee and with the prior approval of the New Mexico legislative council. A subcommittee shall be composed of at least one member from the senate and one member from the house of representatives, and at least one member of the minority party shall be a member of the subcommittee. All meetings and expenditures of a subcommittee shall be approved by the members of the full committee in advance of such meeting or expenditure and the approval shall be shown in the minutes of the committee.

Section 50

Section 50. REPORT.--The governmental ethics oversight committee shall make a report of its findings and recommendations for the consideration of the second session of the forty-first legislature, the first and second sessions of the forty-second legislature and the first session of the forty-third legislature. The report and suggested legislation shall be made available to the New Mexico legislative council on or before December 15 preceding each session.

Section 51

Section 51. STAFF.--The staff for the governmental ethics oversight committee shall be provided by the legislative council service. The committee may employ outside consultants.

Section 52

Section 52. INTERIM LEGISLATIVE ETHICS COMMITTEE--CREATION--APPOINTMENT.--

A. An interim legislative ethics committee, appointed by the legislative council, is created. Members of the legislative council shall be allowed to serve on the interim legislative ethics committee.

B. All matters arising in the interim pertaining to legislative ethics shall be referred to this special interim legislative ethics committee.

C. The committee shall be appointed by the New Mexico legislative council so as to give the two major political parties in each house equal representation on the committee. In appointing the members to the committee, the legislative council shall adopt the recommendations of the respective floor leaders of each house.

D. The New Mexico legislative council shall name the interim ethics committee at the beginning of each interim, but shall convene the committee only upon the receipt of a complaint, a request for an advisory opinion or a referral.

Section 53

Section 53. INTERIM LEGISLATIVE ETHICS COMMITTEE--DUTIES.--The interim legislative ethics committee is authorized to:

A. issue advisory opinions on the interpretation and enforcement of ethical principles as applied to the legislature;

B. investigate complaints from another member of the legislature or a member of the public alleging misconduct of a legislator;

C. investigate referrals made to the co-chairmen of the New Mexico legislative council from the attorney general, the secretary of state or a district attorney;

D. hire special counsel or independent hearing officers as necessary; and

E. make recommendations to the respective houses by the end of the first full week of the next convened regular session regarding proposed sanctions for ethical misconduct.

Section 54

Section 54. INTERIM LEGISLATIVE ETHICS COMMITTEE--PROCEDURES--CONFIDENTIALITY.--

A. Except as provided in this section, the New Mexico legislative council shall develop procedures to carry out the provisions of this section, in accordance with the existing procedures in the house and senate rules.

B. A member of the interim legislative ethics committee shall be ineligible to participate in any matter relating directly to that member's conduct. In any such case, a substitute member to the committee shall be appointed from the same house from the same political party by the appropriate appointing authority. A member may seek to be disqualified from any matter brought before the ethics committee on the grounds that

the member cannot render a fair and impartial decision. Disqualification must be approved by a majority vote of the remaining members of the committee. In any such case, a substitute member to the committee shall be appointed from the same political party as provided in this section.

C. The interim legislative ethics committee is authorized to issue advisory opinions on matters relating to ethical conduct during the interim. Any question relating to the interpretation and enforcement of ethical principles as applied to the legislature may be submitted in writing to the New Mexico legislative council by a legislator describing a real or hypothetical situation and requesting an advisory opinion establishing an appropriate standard of ethical conduct for that situation. The question shall be referred to the joint interim legislative ethics committee.

D. To initiate any action during the interim on alleged misconduct, any legislator or member of the public may file a written, sworn complaint setting forth, with specificity, the facts alleged to constitute unethical conduct. A complaint shall be filed with the New Mexico legislative council. Upon receipt of the complaint, the cochairmen shall convene the interim legislative ethics committee.

E. The interim legislative ethics committee shall maintain rules of confidentiality, unless the legislator against whom a complaint is filed waives the rules or any part of them in writing. The confidentiality rules shall include the following provisions:

(1) the complainant, the committee and its staff shall not publicly disclose any information relating to the filing or investigation of a complaint, including the identity of the complainant or respondent, until after a finding of probable cause has been made that a violation has occurred;

(2) the identity of the complainant shall be released to the respondent immediately upon request; and

(3) no member of the committee or its staff may knowingly disclose any confidential information except as authorized by the committee.

Section 55

Section 55. CRIMINAL SANCTIONS.--If the interim legislative ethics committee determines that in addition to recommending that sanctions be imposed by the respective house on the member, the conduct involves criminal activity, the interim ethics committee may refer the matter to the district attorney of the first judicial district, the district attorney of the judicial district where the member resides or the attorney general.

Section 56

Section 56. STAFF.--The staff for the interim ethics committee shall be provided by the legislative council service, but the committee is authorized to hire such special counsel or independent hearing officers as necessary to assist the legislative ethics committee when it is convened.

Section 57

Section 57. NEW MEXICO LEGISLATIVE COUNCIL--BUDGET.--The New Mexico legislative council shall annually provide an amount sufficient to carry out the duties and mandate of the interim ethics committee.

Section 58

Section 58. REPEAL.--Sections 1-19-27.1, 1-19-27.2, 1-19-30, 2-11-4, 10-16-5, 10-16-10, 10-16-12 and 10-16-15 NMSA 1978 (being Laws 1981, Chapter 331, Sections 3 and 4, Laws 1979, Chapter 360, Section 6, Laws 1977, Chapter 261, Section 4, Laws 1967, Chapter 306, Sections 5, 10, 12 and 15, as amended) are repealed.

Section 59

Section 59. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 60

Section 60. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 105

CHAPTER 47

RELATING TO PRESCHOOL EDUCATION; PROVIDING FOR THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT TO ADMINISTER CERTAIN PRESCHOOL PROGRAMS WITHIN THE OFFICE OF CHILD DEVELOPMENT.

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

Section 1

Section 1. Section 22-8-19.1 NMSA 1978 (being Laws 1992, Chapter 83, Section 1) is amended to read:

"22-8-19.1. PRESCHOOL PROGRAMS--SELECTED DISTRICTS.--

A. The children, youth and families department shall fund preschool programs for zero- to five-year-old children in selected school districts. The children,

youth and families department, through the office of child development, shall distribute any appropriation for this purpose to local entities upon approval by the children, youth and families department of an application from an individual school district or community-based early childhood education program. The preschool programs shall collaborate, where possible, with existing headstart programs or with other appropriate early childhood education programs in the community, and the preschool programs shall use one of the following three models:

(1) a community-based early childhood education program;

(2) a school-based early childhood education program; or

(3) a home-based early childhood education program.

B. School districts may choose to contract with licensed community-based early childhood education programs already in existence. School-based early childhood education programs may be housed in a school accredited by the department of education. A home-based early childhood education program may include a parents-as-teachers program, which supports parents in meeting the developmental learning and social growth needs of their young children.

C. Each preschool program shall have a strong parental involvement component, a staff development component and a procedural process to enable the office of child development to monitor and evaluate the program. The curriculum for each program shall comprehensively address the total developmental needs of the child, including physical, cognitive, social and emotional needs, and shall include aspects of health care, nutrition, safety, the needs of the family and multicultural sensitivity, in coordination with other resources for families."HB 177

CHAPTER 48

RELATING TO TELECOMMUNICATIONS; CHANGING CERTAIN PROVISIONS OF THE ENHANCED 911 ACT; PROVIDING PENALTIES; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 7-1-6.31 NMSA 1978 (being Laws 1990, Chapter 86, Section 5) is amended to read:

"7-1-6.31. DISTRIBUTIONS--ENHANCED 911 FUND--NETWORK AND DATABASE SURCHARGE FUND.--

A. Pursuant to Section 7-1-6.1 NMSA 1978, a distribution shall be made to the enhanced 911 fund in an amount equal to the net receipts attributable to the 911 emergency surcharge.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the network and database surcharge fund of the net receipts attributable to the network and database surcharge imposed pursuant to the Enhanced 911 Act."

Section 2

Section 2. Section 63-9D-1 NMSA 1978 (being Laws 1989, Chapter 25, Section 1) is amended to read:

"63-9D-1. SHORT TITLE.-- Chapter 63, Article 9D NMSA 1978 may be cited as the "Enhanced 911 Act"."

Section 3

Section 3. Section 63-9D-2 NMSA 1978 (being Laws 1989, Chapter 25, Section 2) is amended to read:

"63-9D-2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) isolated people, the elderly, the young and victims of crime are often at risk and without help;

(2) children, elderly persons and victims of crime are frequently unable to explain directions to the location of an emergency situation;

(3) life-threatening accidents, fires, crimes and natural disasters occur in the state each year;

(4) an enhanced 911 telephone emergency system provides:

(a) expansion of the benefits of the basic 911 emergency telephone number;

(b) faster response time which minimizes the loss of life and property;

(c) automatic routing to the appropriate emergency response unit;

(d) immediate visual display of the location and telephone number of the caller; and

(e) curtailment of abuses of the emergency system by documenting callers; and

(5) New Mexico communities could make efficient use of the enhanced 911 telephone emergency system if the communities had adequate funding available.

B. It is the purpose of the Enhanced 911 Act to further he public interest and protect the safety, health and welfare of the people of New Mexico by enabling the development, installation and operation of enhanced 911 emergency reporting systems to be operated under shared state and local governmental management and control."

Section 4

Section 4. Section 63-9D-3 NMSA 1978 (being Laws 1989, Chapter 25, Section 3) is amended to read:

"63-9D-3. DEFINITIONS.--As used in the Enhanced 911 Act:

A. "911 emergency surcharge" means the monthly uniform charge assessed on each local exchange service customer in the state for each local exchange access line to pay for the purchase, lease, installation and maintenance of equipment necessary for the establishment of a 911 system including the repayment of bonds issued pursuant to the Enhanced 911 Bond Act;

B. "911 service area" means the area within a local governing body's jurisdiction that has been designated by the local governing body or the division to receive enhanced 911 service;

C. "911 system" means the basic 911 system or the enhanced 911 system;

D. "basic 911 system" means a telephone service that automatically connects a person dialing the single three-digit number 911 to an established public safety answering point through normal telephone service facilities;

E. "commission" means the state corporation commission;

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

G. "division" means the local government division of the department of finance and administration;

H. "enhanced 911 system" means a telephone system consisting of network, database and on-premises equipment that utilizes the single three-digit number 911 for reporting police, fire, medical or other emergency situations, thereby enabling the users of a public telephone system to reach a public safety answering point to report emergencies by dialing 911, and includes the capability to:

(1) selectively route incoming 911 calls to the appropriate public safety answering point operating in a 911 service area; and

(2) automatically display the name, address and telephone number of an incoming 911 call on a video monitor at the appropriate public safety answering point;

I. "enhanced 911 equipment" means the customer premises equipment directly related to the operation of an enhanced 911 system, including, but not limited to, automatic number identification or automatic location identification controllers and display units, printers, cathode ray tubes and software associated with call detail recording;

J. "equipment supplier" means any person or entity who provides or offers to provide telecommunications equipment necessary for the establishment of enhanced 911 services;

K. "local 911 surcharge" means the additional charge imposed by a local governing body of a community served by a local exchange telephone company that has not otherwise provided for enhanced 911 capability in its network in order to provide funding for the local governing body to pay for development of the network and database;

L. "local exchange access line" means any telephone line that connects a local exchange service customer to the local switching office and has the capability of reaching local public safety service agencies, but does not include any line used by a carrier for the provision of interexchange services;

M. "local exchange area" means a geographic area encompassing one or more local communities, as described in maps, tariffs or rate schedules filed with the commission, where local exchange rates apply;

N. "local exchange service" means the transmission of two-way interactive switched voice communications furnished by a local exchange telephone company within a local exchange area, including access to enhanced 911 systems;

O. "local exchange telephone company" means a telecommunications company, as defined by Subsection M of Section 63-9A-3 NMSA 1978, certified to provide local exchange service;

P. "local governing body" means the board of county commissioners of a county or the governing body of a municipality as defined in the Municipal Code;

Q. "network" means any system designed to provide one or more access paths for communications between users at different geographic locations; provided that a system may be designed for voice, data or both and may feature limited or open access and may employ appropriate analog, digital switching or transmission technologies;

R. "network and database surcharge" means the monthly uniform charge assessed on each local exchange service customer in the state for each local exchange access line to pay for the costs of developing and maintaining a network and database for a 911 emergency system; and

S. "public safety answering point" means a twenty-four-hour local jurisdiction communications facility that receives 911 service calls and directly dispatches emergency response services or that relays calls to the appropriate public or private safety agency."

Section 5

Section 5. Section 63-9D-4 NMSA 1978 (being Laws 1989, Chapter 25, Section 4) is amended to read:

"63-9D-4. PROVISION FOR 911 SERVICES BY LOCAL GOVERNING BODIES--911 SYSTEM COSTS AND NETWORK AND DATABASE COSTS--PAYMENT OF COSTS--JOINT POWERS AGREEMENTS--AID OUTSIDE JURISDICTIONAL BOUNDARIES.--

A. A local governing body may incur costs for the purchase or lease, installation and maintenance of equipment necessary for the establishment of a 911 system at public safety answering points and may pay such costs through disbursements from the enhanced 911 fund. Necessary network and database costs may be recovered by a local governing body from the network and database fund in amounts approved by the state board of finance.

B. If the enhanced 911 system is to be provided for territory that is included in whole or in part in the jurisdiction of the local governing bodies of two or more public agencies that are the primary providers of emergency fire fighting, law enforcement, ambulance, emergency medical or other emergency services, the agreement for the procurement of the necessary equipment for a 911 system shall be entered into by each local governing body, unless a local governing body expressly excludes itself from the agreement. Any agreement shall provide that each local governing body not excluded from the agreement shall make payment therefor from general revenues. Nothing in this subsection shall be construed to prevent two or more such local governing bodies from entering into a contract to establish a separate legal

entity, that is, separate governing body, and thereunder to enter into an agreement as the enhanced 911 customer.

C. All public agencies in a 911 system shall provide that once an emergency unit is dispatched in response to a request for aid through the 911 system, the emergency unit shall render services to the requester without regard to whether the unit is operating outside its normal jurisdictional boundaries."

Section 6

Section 6. Section 63-9D-5 NMSA 1978 (being Laws 1989, Chapter 25, Section 5) is amended to read:
"63-9D-5. IMPOSITION OF SURCHARGE--NOTIFICATION.-- There is imposed a 911 emergency surcharge in the amount of twenty-five cents ($.25) and a network and database surcharge in the amount of twenty-six cents ($.26) to be billed by local exchange telephone companies on all local exchange access lines in the state; provided, however, that a 911 emergency surcharge and the network and database surcharge shall not be imposed upon local exchange service customers receiving reduced rates pursuant to the Low Income Telephone Service Assistance Act. The 911 emergency surcharge shall commence with the first billing period of each customer on or following ninety days after the effective date of the Enhanced 911 Act. The network and database surcharge shall commence with the first billing period of each customer on or following ninety days after July 1, 1993. Each local governing body shall notify the division and the local exchange telephone company providing local exchange service to the 911 service area of the boundaries of the 911 service area and the costs to the local governing body of purchasing or leasing, installing and maintaining the equipment necessary to provide 911 emergency services in the 911 service area. Each local governing body that seeks funding for its 911 system shall file an application with the division requesting approval of the state board of finance for disbursement from the enhanced 911 fund and the network and database fund."

Section 7

Section 7. Section 63-9D-6 NMSA 1978 (being Laws 1989, Chapter 25, Section 6, as amended) is amended to read:

"63-9D-6. PARTICIPATION IN FUNDS--LIABILITY OF USER FOR SURCHARGE--COLLECTION--UNCOLLECTED AMOUNTS.--

A. The local governing body may, by ordinance or resolution, recover from the enhanced 911 fund and the network and database fund an amount necessary to recover the costs of purchasing, leasing, installing and maintaining equipment and the costs of developing and maintaining a network and database necessary to provide a 911 emergency system in its designated 911 service area.

B. Local exchange telephone companies shall be required to bill and collect the 911 emergency surcharge and the network and database surcharge from their local exchange service customers. The 911 emergency surcharge and the network and database surcharge required to be collected by the local exchange telephone company shall be added to and shall be stated in the billings to the local exchange service customer. The money collected by the local exchange telephone company as the 911 emergency surcharge and the network and database surcharge shall not be considered as revenues of the local exchange telephone company.

C. Every billed local exchange service customer is liable for payment of the 911 emergency surcharge and the network and database surcharge until they have been paid to the local exchange telephone company.

D. The local exchange telephone company has no obligation to take any legal action to enforce the collection of the 911 emergency surcharge or the network and database surcharge. An action may be brought by or on behalf of the department. The local exchange telephone company shall annually provide the department a list of the amounts uncollected along with the names and addresses of those local exchange service customers who carry a balance that can be determined by the local exchange telephone company to be the nonpayment of the 911 emergency surcharge and the network and database surcharge. The local exchange telephone company shall not be held liable for uncollected amounts."

Section 8

Section 8. Section 63-9D-7 NMSA 1978 (being Laws 1989, Chapter 25, Section 7) is amended to read:

"63-9D-7. REMITTANCE OF CHARGES--ADMINISTRATIVE FEE--AUDITS.--

A. Amounts collected by reason of the 911 emergency surcharge and the network and database surcharge shall be remitted monthly to the department, which shall administer and enforce collection of each surcharge in accordance with the Tax Administration Act. The amount of the 911 emergency surcharge and the network and database surcharge shall be remitted to the department no later than the twenty-fifth day of the month following the month in which the surcharge was imposed. At that time, a return for the preceding month shall be filed with the department in such form as the department and local exchange telephone company shall agree upon. The local exchange telephone company required to file the return shall deliver the return together with a remittance of the amount of the 911 emergency surcharge and the network and database surcharge payable to the department. The local exchange telephone company shall maintain a record of the amount of each charge collected pursuant to the Enhanced 911 Act. The record shall be maintained for a period of three years after the time the charges were collected.

B. From every remittance to the department made on or before the date when it becomes due, the local exchange telephone company required to make a remittance shall be entitled to deduct and retain one percent of the collected amount or fifty dollars ($50.00), whichever is greater, as the cost of administration for collecting the 911 emergency surcharge and the network and database surcharge."

Section 9

Section 9. Section 63-9D-8 NMSA 1978 (being Laws 1989, Chapter 25, Section 8, as amended by Laws 1990, Chapter 86, Section 10 and also by Laws 1990, hapter 87, Section 2) is amended to read:

"63-9D-8. ENHANCED 911 FUND--CREATION--ADMINISTRATION--DISBURSEMENT--REPORTS TO LEGISLATURE.--

A. There is created in the state treasury a fund which shall be known as the "enhanced 911 fund". The enhanced 911 fund shall be administered by the division.

B. All money remitted to the department as a result of collection of the 911 emergency surcharge shall be deposited in the enhanced 911 fund.

C. All money deposited in the enhanced 911 fund and all income earned by investment of the fund are hereby appropriated for expenditure in accordance with the Enhanced 911 Act and shall not revert to the general fund.

D. Payments shall be made from the enhanced 911 fund to participating local governing bodies upon vouchers signed by the director of the division.

E. Money in the enhanced 911 fund may be used for the purchase, lease, installation or maintenance of equipment necessary for a 911 system, including the repayment of bonds issued pursuant to the Enhanced 911 Bond Act. Annually, the division may expend no more than five percent of all money deposited annually in the enhanced 911 fund for the purpose of administrating and coordinating activities associated with implementation of the Enhanced 911 Act.

F. The division shall report to the legislature each session as to the status of the enhanced 911 fund and whether the current level of the 911 emergency surcharge is adequate, excessive or insufficient to fund the anticipated needs for the next year."

Section 10

Section 10. Section 63-9D-8.1 NMSA 1978 (being Laws 1990, Chapter 87, Section 3) is amended to read:

"63-9D-8.1. DIVISION POWERS.--

A. The division may adopt such reasonable rules as are deemed necessary to carry out the provisions of the Enhanced 911 Act.

B. The division shall have the authority to fund basic 911 systems pursuant to the provisions of the Enhanced 911 Act.

C. The division and the local governing body shall have the authority to establish 911 service areas.

D. Unless otherwise provided by law, no rule affecting any person, agency, local governing body or local exchange telephone company shall be adopted, amended or repealed without a public hearing on the proposed action before the director of the division or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons or agencies who have made a written request for advance notice of the hearing and to all local governing bodies and local exchange telephone companies.

E. All rules shall be filed in accordance with the State Rules Act."

Section 11

Section 11. A new section of the Enhanced 911 Act, Section 63-9D-8.2 NMSA 1978, is enacted to read:

"63-9D-8.2. NETWORK AND DATABASE SURCHARGE FUND--CREATION--ADMINISTRATION--DISBURSEMENT.--

A. There is created in the state treasury the "network and database surcharge fund". The network and database surcharge fund shall be administered by the division.

B. All money remitted to the department as a result of the network and database surcharge shall be deposited in the network and database surcharge fund.

C. All money deposited in the network and database surcharge fund and all income earned by investment of the network and database surcharge fund are hereby appropriated for expenditure in accordance with the provisions of the Enhanced 911 Act and shall not revert to the general fund.

D. Payments shall be made from the network and database surcharge fund to participating local governing bodies upon vouchers signed by the director of the division.

E. Annually, the division may expend no more than two and one-half percent of all money deposited annually in the network and database surcharge fund for the purpose of administering and coordinating activities associated with implementation of the network and database surcharge fund.

F. Money in the network and database surcharge fund may be awarded as grant assistance upon application of local governing bodies to the division and approval by the state board of finance. If it is anticipated that insufficient funds will be available to pay all requests for grants, the state board of finance may reduce the percentage of assistance to be awarded. In the event of such a reduction, the state board of finance may award supplemental grants to local governing bodies that can demonstrate financial hardship."

Section 12

Section 12. Section 63-9D-9 NMSA 1978 (being Laws 1989, Chapter 25, Section 9) is amended to read:

"63-9D-9. AGREEMENTS OR CONTRACTS FOR 911 SYSTEMS--USE OF FUNDS COLLECTED--TRANSFER OF FUNDS.--

A. Money received by a local governing body from the enhanced 911 fund shall be spent solely to pay for 911 equipment costs, associated installation costs and maintenance costs necessary to provide enhanced 911 services. Money received as a result of the network and database surcharge shall be spent solely to pay for the network capability and database for an enhanced 911 system.

B. Money received by a local governing body from the local 911 surcharge shall be credited to separate cash funds, apart from the general fund of the local governing body, for network and database payments. Any local 911 surcharge money remaining on July 1, 1993 shall be transferred to the network and database surcharge fund."

Section 13

Section 13. A new section of the Enhanced 911 Act, Section 63-9D-11.1 NMSA 1978, is enacted to read:

"63-9D-11.1. VIOLATION--PENALTIES.--

A. Any person who knowingly dials 911 for the purpose of reporting a false alarm, making a false complaint or reporting false information that results in an

emergency response by any public safety agency is guilty of a petty misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500) or imprisonment for a term not to exceed six months, or both.

B. A municipality may adopt an ordinance making it a violation for any person to knowingly dial 911 for the purpose of reporting a false alarm, making a false complaint or reporting false information that results in an emergency response by any public safety agency. The municipality may adopt and enforce the ordinance pursuant to the authority provided in Section 3-17-1 NMSA 1978."

Section 14

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 218

CHAPTER 49

RELATING TO COUNSELING AND THERAPY PRACTICE; PROVIDING FOR LICENSURE OF PROFESSIONAL MENTAL HEALTH COUNSELORS, PROFESSIONAL CLINICAL MENTAL HEALTH COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL ART THERAPISTS AND FOR CERTIFICATION OF REGISTERED MENTAL HEALTH COUNSELORS; CREATING THE COUNSELING AND THERAPY PRACTICE BOARD; PRESCRIBING POWERS AND DUTIES; CREATING A FUND; PROVIDING FOR INSURANCE COVERAGE FOR CERTAIN COUNSELORS AND THERAPISTS; PROVIDING PENALTIES; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 30 of this act may be cited as the "Counseling and Therapy Practice Act".

Section 2

Section 2. PURPOSE.--In the interest of public health, safety and welfare and to protect the public from unprofessional, improper, incompetent and unlawful counseling and therapy practice, it is necessary to provide laws and regulations to govern the practice of counseling and therapy. The primary responsibility and obligation of the counseling and therapy practice board is to protect the public.

Section 3

Section 3. DEFINITIONS.--As used in the Counseling and Therapy Practice Act:

A. "accredited institution" means a university or college, accredited by a nationally recognized accrediting agency of institutions of higher education, or an approved institution or program as determined by the board;

B. "appraisal" means selecting, administering, scoring and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements, interests, personal characteristics and current emotional or mental state by appropriately educated, trained and experienced clinicians and the use of nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to or changing life situations of a physical, mental or emotional nature;

C. "appropriate supervision" means supervision by a professional clinical mental health counselor, professional mental health counselor, marriage and family therapist, professional art therapist, psychiatrist, psychologist, social worker, psychiatric nurse or other similar supervision approved by the board;

D. "board" means the counseling and therapy practice board;

E. "clinical counseling" means the rendering of counseling services involving the application of principles of psychotherapy, human development, learning theory, group dynamics and the etiology of mental illness and dysfunctional behavior to individuals, couples, families or groups for the purpose of treating psychopathology and promoting optimal mental health;

F. "consulting" means the application of scientific principles and procedures in psychotherapeutic counseling, guidance and human development to provide assistance in understanding and solving a problem that the consultee may have in relation to a third party;

G. "counseling" means the application of scientific principles and procedures in therapeutic counseling, guidance and human development to provide assistance in understanding and solving a mental, emotional, physical, social, moral, educational, spiritual or career development and adjustment problem that a client may have;

H. "counselor and therapist practice" means the practice of professional art therapy, professional clinical mental health counseling, professional mental health counseling and marriage and family therapy;

I. "counselor and therapist practitioners" means professional art therapists, professional clinical mental health counselors, professional mental health counselors and marriage and family therapists, as a group;

J. "department" means the regulation and licensing department or the division of the department designated to administer the counseling and therapy practice board;

K. "marital and family therapy" means the diagnosis and treatment of nervous and mental disorders, whether cognitive, affective or behavioral, within the context of marital and family systems;

L. "marriage and family therapist" means an individual who engages in the practice of marriage and family therapy;

M. "mental disorder" means any of several conditions or disorders that meet the diagnostic criteria contained in the diagnostic and statistical manual of the American psychiatric association or the world health organization's international classification of diseases manual;

N. "practice of art therapy" means the rendering to individuals, families or groups, services that use art media as a means of expression and communication to promote perceptive, intuitive, affective and expressive experiences that alleviate distress, reduce physical, emotional, behavioral and social impairment and lead to growth or reintegration of one's personality. Art therapy services includ, but are not limited to, diagnostic evaluation, development of patient treatment plans, goals and objectives, case management services and therapeutic treatment;

O. "practice of marriage and family therapy" means the rendering of marital and family therapy services to individuals, family groups and marital couples, singly or in groups. The "practice of marriage and family therapy" involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, marital couples and families and involves the presence of a diagnosed mental or physical disorder in at least one member of the couple or family being treated;

P. "practice of professional clinical mental health counseling" means the rendering of mental health counseling to individuals, couples, families or groups and the diagnosis and treatment of mental and emotional disorders, including psychopathology as defined by the American psychiatric association or the world health organization. "Practice of professional clinical mental health counseling" includes, but is not limited to, development of patient treatment plans, goals and objectives, case management services, therapeutic treatment, research and clinical mental health appraisal, consulting, counseling and referral as defined by regulation of the board;

Q. "practice of professional mental health counseling" means the rendering of a therapeutic counseling service that integrates a wellness and multicultural model of human behavior involving certain methods and techniques of appraisal, including, but not limited to, consulting, counseling and referral as defined by regulation of the board;

R. "practice of registered mental health counseling" means the rendering, under appropriate supervision, of a therapeutic counseling service that integrates a wellness and multicultural model of human behavior involving certain methods and techniques of appraisal, including, but not limited to, consulting, counseling and referral as defined by regulation of the board;

S. "professional art therapist" means an individual who engages in the practice of art therapy;

T. "professional clinical mental health counselor" means an individual who engages in the independent practice of professional clinical mental health counseling without supervision;

U. "professional mental health counselor" means an individual who engages in the practice of professional mental health counseling without supervision;

V. "referral" means the evaluation of information to identify needs of the person being counseled to determine the advisability of sending the person being counseled to other specialists, informing the person being counseled of such judgment and communicating the information to other counseling services as deemed appropriate; and

W. "registered mental health counselor" means an individual who is certified by the board and is authorized by the board to engage in the practice of mental health counseling under appropriate supervision.

Section 4

Section 4. LICENSE OR CERTIFICATE REQUIRED.--After July 1, 1994, unless licensed or certified to practice under the Counseling and Therapy Practice Act, no person shall engage in the practice of:

A. professional mental health counseling;

B. professional clinical mental health counseling;

C. marriage and family therapy;

D. professional art therapy; or

E. counseling as a registered mental health counselor.

Section 5

Section 5. SCOPE OF PRACTICE.--For the purpose of the Counseling and Therapy Practice Act, a person is practicing as a professional mental health counselor,

professional clinical mental health counselor, marriage and family therapist, professional art therapist or registered mental health counselor if he advertises; offers himself to practice; is employed in a position described as professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist or registered mental health counselor; or holds out to the public or represents in any manner that he is licensed or certified to practice as such in this state.

Section 6

Section 6. EXEMPTIONS.--

A. Nothing in the Counseling and Therapy Practice Act shall be construed to prevent:

(1) any individual who is licensed, certified, or regulated under the laws of this state from engaging in activities consistent with the standards and ethics of his profession or practice; or

(2) an alternative, metaphysical or holistic practitioner from engaging in non-clinical activities consistent with the standards and codes of ethics of that practice.

B. Specifically exempted from this act are:

(1) elementary and secondary school counselors acting on behalf of their employer, who are otherwise regulated;

(2) alcohol or drug abuse counselors working under appropriate supervision for a nonprofit corporation, association or similar entity;

(3) peer counselors of domestic violence or independent-living peer counselors working under appropriate supervision in a nonprofit corporation, association or similar entity;

(4) duly ordained, commissioned or licensed ministers of a church, or lay pastoral-care assistants providing pastoral services on behalf of a church;

(5) students enrolled in a graduate-level counselor and therapist training program and rendering services under supervision;

(6) hypnotherapists certified by the American council of hypnotist examiners or the southwest hypnotherapists examining board, providing non-clinical services from July 1, 1994 to June 30, 1998;

(7) pastoral counselors with master's or doctoral degrees, who are certified by the American association of pastoral counselors, from July 1, 1994 to June 30, 1998;

(8) practitioners of Native American healing arts; and

(9) state employees at the discretion of the department secretary.

Section 7

Section 7. BOARD CREATED--MEMBERS--APPOINTMENT--TERMS--COMPENSATION.--

A. There is created the "counseling and therapy practice board", which is administratively attached to the department.

B. The board shall consist of eight members who are United States citizens and have been New Mexico residents for at least five years prior to their appointment. Of the eight members:

(1) four members shall be professional members who shall be a professional mental health counselor, a professional clinical mental health counselor, a marriage and family therapist and a professional art therapist licensed under the Counseling and Therapy Practice Act, and shall have engaged in a counselor and therapist practice for at least five years. These members shall not hold any elected or appointed office in any professional organization of counseling, psychology or closely related field during their tenure on the board nor shall they be school owners. The initial four professional members shall meet requirements for licensure and be licensed within one year after the effective date of the Counseling and Therapy Practice Act. The professional mental health counselor shall also represent the registered mental health counselors; and

(2) four members shall represent the public. The public members shall not have been licensed or have practiced as counselor or therapist practitioners or in any other regulated mental health profession, nor have any significant financial interest, either direct or indirect, in the professions regulated.

C. All members of the board shall be appointed by the governor for staggered terms of four years, except that the initial board shall be appointed so that the terms of one professional and one public member expire June 30, 1994, one professional and one public member expire June 30, 1995, one professional and one public member expire on June 30, 1996 and one professional and one public member expire June 30, 1997. Each member shall hold office until his successor is appointed. Vacancies shall be filled in the same manner as original appointments. No appointee shall serve more than two terms.

D. The governor may appoint professional board members from a list of nominees submitted by qualified individuals and organizations, including the New Mexico counseling association, the New Mexico association for marriage and family therapy and the New Mexico art therapy association.

E. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

F. The board shall elect annually from its membership a chairman and a secretary and other officers as necessary to carry out its duties.

G. The board shall meet at least twice a year and at other times deemed necessary. Other meetings may be called by the chairman upon the written request of three members of the board. A simple majority of the board members shall constitute a quorum of the board.

Section 8

Section 8. DEPARTMENT DUTIES.--The department, with the consultation of the board, shall:

A. process applications and conduct and review the required examinations;

B. issue licenses and certificates of registration to applicants who meet the requirements of the Counseling and Therapy Practice Act;

C. administer, coordinate and enforce the provisions of the Counseling and Therapy Practice Act and investigate persons engaging in practices which may violate the provisions of that act;

D. hire staff as necessary to carry out the provisions of the Counseling and Therapy Practice Act;

E. maintain records, including financial records; and

F. maintain a current register of licensees and registrants as a matter of public record.

Section 9

Section 9. BOARD--POWERS AND DUTIES.--

A. The board shall have the power to:

(1) adopt in accordance with the Uniform Licensing Act and file in accordance with the State Rules Act rules and regulations necessary to carry out the provisions of the Counseling and Therapy Practice Act;

(2) select and provide for the administration of at least semiannually, examinations for licensure;

(3) establish by rule the passing scores for examinations;

(4) deny, suspend or revoke a license or certificate of registration in accordance with the Uniform Licensing Act;

(5) censure, reprimand or place a licensee or registrant on probation for a period not to exceed one year;

(6) require and establish criteria for continuing education;

(7) establish by rule procedures for receiving, investigating and resolving complaints;

(8) approve appropriate supervision and postgraduate experience for persons seeking licensure or certification;

(9) provide for the issuance of licenses and certificates of registration;

(10) determine eligibility of individuals for licensure or certification;

(11) set fees for administrative services, licenses and certificates of registration, as authorized by the Counseling and Therapy Practice Act, and authorize all disbursements necessary to carry out the provisions of that act;

(12) establish criteria for supervision of registered mental health counselors and professional mental health counselors in training to become professional clinical mental health counselors;

(13) adopt rules implementing an "impaired counselor and therapist practitioner treatment program";

(14) approve supervisors for registered mental health counselors and professional mental health counselors in training to become clinical mental health counselors; and

(15) establish professional codes of ethics, except for registered mental health counselors, who shall adhere to the professional mental health counselor code of ethics.

B. The board may establish a standards committee for each licensed profession. The members of each standards committee shall be appointed by the board with the consent of the department and shall include at least one board member from the licensed profession and at least one public board member. The board member representing each respective profession shall chair its standards committee and the committee shall:

(1) recommend a professional code of ethics;

(2) review license applications and recommend approval or disapproval;

(3) develop criteria for supervision;

(4) recommend rules and regulations;

(5) create long-term professional development goals; and

(6) periodically review the professional code of ethics.

C. Members of the standards committees may be reimbursed as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance. These members shall not hold any elected office in any professional organization of counseling, psychology or closely related field during their tenure on the standards committees.

Section 10

Section 10. PROFESSIONAL MENTAL HEALTH COUNSELOR--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a professional mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree in counseling or an allied mental health field from an accredited institution. The board may approve, on a case-by-case basis, applicants who have a master's degree or doctoral degree from non-accredited institutions;

C. demonstrates professional competency by satisfactorily passing an examination as prescribed by the board; and

D. has completed one thousand client contact hours of postgraduate professional counseling experience under appropriate supervision consisting of at least one hundred supervision hours.

Section 11

Section 11. PROFESSIONAL CLINICAL MENTAL HEALTH COUNSELOR--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a professional clinical mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree in counseling or an allied mental health field from an accredited institution. Effective July 1, 1998, the applicant must have a master's degree and a total of sixty graduate hours or more. The board may approve applicants who have a master's degree or doctoral degree from nonaccredited or foreign institutions on a case-by-case basis;

C. demonstrates professional competency by satisfactorily passing an examination as prescribed by the board; and

D. has a minimum of two years of postgraduate professional clinical counseling experience, including at least three thousand clinical contact hours and at least one hundred hours of face-to-face supervision. One thousand client clinical contact hours may be submitted from the applicant's internship or practicum.

Section 12

Section 12. MARRIAGE AND FAMILY THERAPIST--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a marriage and family therapist to any person who files a completed application accompanied by the required fees, and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree with a focus in marriage and family therapy from an accredited institution;

C. demonstrates professional competency by satisfactorily passing an examination as prescribed by the board; and

D. has a minimum of two years of postgraduate marriage and family therapy experience consisting of one thousand client contact hours and two hundred hours of appropriate supervision, of which one hundred hours of such supervision was on an individual basis.

Section 13

Section 13. PROFESSIONAL ART THERAPIST--REQUIREMENTS FOR LICENSURE.--The board shall issue a license as a professional art therapist to any person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. demonstrates professional competency by satisfactorily passing an examination as prescribed by the board;

C. holds either:

(1) a master's or doctoral degree in art therapy, that includes seven hundred hours of supervised internship experience from an accredited institution. The board may on a case-by-case basis approve applicants who hold a master's degree or a doctoral degree from non-accredited institutions; or

(2) a master's degree in a counseling related field and has a minimum of twenty-one semester hours of sequential course work in the history, theory and practice
of art therapy, and has completed seven hundred hours of supervised internship experience from an accredited institution. The board may approve on a case-by-case basis applicants who have a master's degree or a doctoral degree from non-accredited institutions; and

D. has completed one thousand client contact hours of postgraduate experience under appropriate supervision beyond the requirements in Paragraph (1) of Subsection C of this section, or two thousand client contact hours of postgraduate experience under appropriate supervision beyond the requirements in Paragraph (2) of Subsection C of this section. Supervision must be under a nationally registered art therapist for at least fifty percent of the working hours.

Section 14

Section 14. REQUIREMENTS FOR REGISTERED MENTAL HEALTH COUNSELOR.--The board shall issue a certificate of registration as a mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. has obtained a master's or doctoral degree in counseling or an allied mental health field. The board may approve on a case-by-case basis applicants who have a master's degree or a doctoral degree from non-accredited institutions; and

C. has arranged for a board-approved supervisor and a postgraduate experience plan for working under the appropriate supervision to meet marriage and family therapist, professional art therapist or professional mental health counselor requirements for licensure.

Section 15

Section 15. EXAMINATIONS.--

A. Applicants who have met the requirements for licensure shall be scheduled for the next appropriate examination following the approval of the application. The board shall establish by rule the examination application deadline and the requirements for re-examination if the applicant has failed the examination.

B. The examination shall cover subjects appropriate to the scope of practice as a professional mental health counselor, a professional clinical mental health counselor, a marriage and family therapist or a professional art therapist.

Section 16

Section 16. TEMPORARY LICENSURE.--Prior to examination, an applicant for licensure may obtain a temporary license to engage in any counselor and therapist practice if the person meets all of the requirements, except examination, provided for in Section 10, 11, 12, 13 or 14 of the Counseling and Therapy Practice Act. The temporary license shall be valid no more than thirty days after the results of the next examination become available. At that time, should the individual fail to take or pass that examination, the temporary license shall automatically expire.

Section 17

Section 17. LICENSURE WITHOUT EXAMINATION--PROFESSIONAL MENTAL HEALTH COUNSELOR.--An applicant for licensure as a professional mental health counselor may be licensed as a professional mental health counselor without examination, if the applicant files an application within one year from the effective date of the Counseling and Therapy Practice Act accompanied by the required fees and if:

A. the board determines that the applicant meets all other requirements for licensure as a professional mental health counselor;

B. at least two years immediately preceding the effective date of licensure, the applicant has a master's degree and has been employed in a public or private agency, or self-employed under the title of counselor or held a similar title in a position primarily involving the practice of professional counseling; or

C. the board determines that the applicant:

(1) meets the education requirements of either a baccalaureate degree in:

(a) counseling or a related mental health field from a university or college that was accredited at the time the degree was awarded and provides proof satisfactory to the board of an additional sixty contact hours of professional training deemed appropriate by the board; or

(b) any other field from a university or college that was accredited at the time the degree was awarded and provides proof satisfactory to the board of an additional one hundred eighty contact hours of professional training deemed appropriate by the board;

(2) meets experience and appropriate supervision requirements as follows:

(a) has been engaged in a full-time counseling practice of at least twenty hours per week for at least six consecutive years prior to application to the board; or

(b) has acquired six thousand client contact hours primarily in the provision of counseling; and

(3) has completed at least two hundred hours under appropriate supervision by June 30, 1994.

Section 18

Section 18. LICENSURE WITHOUT EXAMINATION--PROFESSIONAL CLINICAL MENTAL HEALTH COUNSELOR.--An applicant for licensure as a professional clinical mental health counselor may be licensed without examination if the applicant files an application within one year of the effective date of the Counseling and Therapy Practice Act, accompanied by the required fees and if the board determines that the applicant meets all other requirements for licensure as a professional clinical mental health counselor.

Section 19

Section 19. LICENSURE WITHOUT EXAMINATION--MARRIAGE AND FAMILY THERAPIST.--An applicant for licensure as a marriage and family therapist may be licened without examination if the applicant files a completed application within one year of the effective date of the Counseling and Therapy Practice Act, accompanied by the required fees, and if the board determines the applicant meets all other requirements for licensure as a marriage and family therapist.

Section 20

Section 20. LICENSURE WITHOUT EXAMINATION--PROFESSIONAL ART THERAPIST.--An applicant for licensure as a professional art therapist may be licensed without examination if the applicant files a completed application within one year of the effective date of the Counseling and Therapy Practice Act, accompanied by the required fees, and if the board determines that the applicant meets all other requirements for licensure as a professional art therapist.

Section 21

Section 21. CERTIFICATION WITHOUT EXAMINATION--REGISTERED MENTAL HEALTH COUNSELOR.--An applicant for certification as a registered mental health counselor may be certified as a registered mental health counselor if the applicant files an application within one year from the effective date of the Counseling and Therapy Practice Act, accompanied by the required fees and if:

A. the board determines the applicant meets all other requirements for certification as a registered mental health counselor; or

B. the board determines that the applicant:

(1) meets the education requirements of a baccalaureate degree in either:

(a) counseling, psychology or a closely related field from an accredited institution and provides proof satisfactory to the board of an additional sixty contact hours of professional training deemed appropriate by the board; or

(b) any other field from an accredited institution and provides proof satisfactory to the board of an additional one hundred eighty contact hours of professional training deemed appropriate by the board;

(2) is certified as competent to the board by at least three persons who qualify to provide appropriate supervision, and has:

(a) been engaged in a full-time counseling practice of at least twenty hours per week for at least four consecutive years prior to application to the board; or

(b) acquired four thousand client contact hours primarily in the profession of counseling; and

(3) has completed at least two hundred hours under appropriate supervision by July 1, 1994.

Applicants certified under the provisions of this section are exempted from the supervision requirements set forth in Section 14 of the Counseling and Therapy Practice Act.

Section 22

Section 22. LICENSURE BY CREDENTIALS.--The board may license an applicant without examination if the person possesses a valid regulatory document issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation that in the judgment of the board has requirements substantially equivalent to or exceeding those in the Counseling and Therapy Practice Act.

Section 23

Section 23. LICENSE AND CERTIFICATE RENEWAL.--

A. Each licensee or registrant shall renew his license or certificate of registration biennially by submitting a renewal application on a form provided by the board and complying with all renewal requirements. Licensees with even numbered licenses shall renew in even numbered years. Licensees with odd numbered licenses shall renew in odd numbered years. The board may authorize license renewal for one year to establish this renewal cycle and charge the proportionate license fee for that period.

B. A ninety-day grace period shall be allowed each licensee or registrant after the license or registration period, during which time licenses and certificates may be renewed upon payment of the renewal fee, the late fee, and compliance with all renewal requirements.

C. Any license or certificate granted by the board shall be automatically suspended if the holder fails to apply for the renewal license or certificate provided for in this section within a period of three months after the renewal deadline; provided that any license so suspended may be restored by the board upon payment of a reinstatement fee not to exceed one hundred dollars ($100) in addition to any unpaid renewal or late fees. Failure to renew a license or certificate within three months from the date of suspension as provided in this section shall cause the license or certificate to be automatically revoked. Reinstatement of a revoked license or certificate will require the licensee to reapply and meet all current standards for licensure or certification.

D. A person licensed or certified under the Counseling and Therapy Practice Act who wishes to retire from practice shall notify the board in writing before the expiration of his current license or certificate. If, within a period of five years from the year of retirement, the licensee wishes to resume practice, he shall so notify the board in writing, and upon giving proof of completing such continuing education as prescribed by regulation of the board and the payment of an amount equivalent to all lapsed renewal fees, his license or certificate shall be restored to him in full effect.

Section 24

Section 24. LICENSE AND CERTIFICATION FEES.--Applicants for licensure or certification shall pay biennial fees set by the board in an amount not to exceed:

A. for application for initial licensure or certification, seventy-five dollars ($75.00) which is not refundable;

B. for licensure or renewal as a professional mental health counselor, three hundred dollars ($300);

C. for licensure or renewal as a clinical mental health counselor, marriage and family therapist or art therapist, four hundred twenty dollars ($420);

D. for certification or renewal as a registered mental health counselor, two hundred forty dollars ($240);

E. for all examinations, seventy-five dollars ($75.00), or, if a national examination is used, an amount that shall not exceed the national examination costs by more than twenty-five percent;

F. for a duplicate or replacement license or certificate, twenty-five dollars ($25.00);

G. for failure to renew a license or certificate within the allotted grace period, a late penalty fee not to exceed one hundred dollars ($100); and

H. reasonable administrative fees.

Section 25

Section 25. FUND CREATED.--

A. There is created in the state treasury the "counseling and therapy practice board fund".

B. All money received by the board under the Counseling and Therapy Practice Act shall be deposited with the state treasurer for credit to the counseling and

therapy practice board fund. The state treasurer shall invest the fund as all other state funds are invested and income from investment of the fund shall be credited to the fund. Balances in the fund remaining at the end of any fiscal year shall not revert to the general fund.

C. Money in the counseling and therapy practice board fund is appropriated to the board and shall be used for the purpose of carrying out the provisions of the Counseling and Therapy Practice Act.

Section 26

Section 26. LICENSE AND REGISTRATION--DENIAL, SUSPENSION AND REVOCATION.--

A. In accordance with the procedures established by the Uniform Licensing Act, the board may deny, suspend or revoke any license or certificate held or applied for under the Counseling and Therapy Practice Act upon grounds that the licensee, registrant or applicant:

(1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure any license or certificate provided for in the Counseling and Therapy Practice Act;

(2) is adjudicated mentally incompetent by regularly constituted authorities;

(3) is found guilty of a felony or misdemeanor involving moral turpitude;

(4) is found guilty of unprofessional or unethical conduct;

(5) has been using any controlled substances, as defined in the Controlled Substances Act, or alcoholic beverage to an extent or in a manner dangerous to himself or any other person or the public or to an extent that the use impairs his ability to perform the work of a professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist or registered mental health counselor safely to the public;

(6) has violated any provision of the Counseling and Therapy Practice Act or regulations;

(7) is grossly negligent in practice as a professional counselor or therapist practitioner;

(8) willfully or negligently divulges a professional confidence;

(9) demonstrates marked incompetence in practice as a professional counselor or therapist practitioner; or

(10) has had a license or certificate to practice as a professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, art therapist or registered mental health counselor revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee or registrant similar to acts described in this subsection.

B. A certified copy of the record of conviction shall be conclusive evidence of such conviction.

C. Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the board, and shall conform to the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for such copy.

D. A person who violates any provision of the Counseling and Therapy Practice Act is guilty of a misdemeanor, and upon conviction shall be punished as provided in Section 31-19-1 NMSA 1978.

Section 27

Section 27. PRIVILEGED COMMUNICATIONS.--

A. No counselor and therapist practitioner, or person providing appropriate supervision for licensure or certification requirements or supervisee participating in obtaining supervision and practice experience requirements, shall be examined in nonjudicial proceedings without the consent of his client concerning any communication made by the client to him or any advice given to the client in the course of professional employment; nor shall the secretary, stenographer or clerk of a counselor and therapist practitioner or supervisor be examined without the consent of the counselor and therapist practitioner concerning any fact, the knowledge of which he acquired in that capacity; nor shall any person who has participated in any counseling practice conducted under the supervision of a person authorized by law to conduct such practice, including group therapy sessions, be examined concerning any knowledge gained during the course of the practice without the consent of the person to whom the testimony sought relates.

B. No counselor and therapist practitioner shall disclose any information acquired from a person who has consulted him in his professional capacity, unless:

(1) he has the written consent of the client or in the case of death or disability the client's personal representative or any other person authorized to sue for the beneficiary of any insurance policy on the client's life, health or physical condition;

(2) such communication reveals the contemplation of a crime or act harmful to the person's self or others;

(3) the information acquired indicates the person was the victim or subject of a crime required to be reported by law; or

(4) the person, family or legal guardian waives the privilege by bringing charges against a counselor and therapist practitioner as defined in the Counseling and Therapy Practice Act.

C. Nothing in this section shall be construed to prohibit a counselor and therapist practitioner from disclosing information in a court hearing concerning matters of adoption, child abuse, child neglect or other matters pertaining to the welfare of children as stipulated in the Children's Code or to those matters pertaining to citizens as protected under the Adult Protective Services Act.

Section 28

Section 28. CRIMINAL OFFENDER'S CHARACTER EVALUATION.--The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted by the Counseling and Therapy Practice Act.

Section 29

Section 29. INJUNCTIVE PROCEEDINGS.--The board may apply for an injunction in a district court to enjoin any person from committing any act prohibited by the Counseling and Therapy Practice Act.

Section 30

Section 30. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The counseling and therapy practice board is terminated on July 1, 1999 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Counseling and Therapy Practice Act until July 1, 2000. Effective July 1, 2000, the Counseling and Therapy Practice Act is repealed.

Section 31

Section 31. Section 61-1-2 NMSA 1978 (being Laws 1957, Chapter 247, Section 2, as amended) is amended to read:

"61-1-2. DEFINITIONS.--As used in the Uniform Licensing Act:

A. "board" means:

(1) the board of podiatry;

(2) the chiropractic board;

(3) the board of dentistry;

(4) the New Mexico state board of psychologist examiners;

(5) the New Mexico board of medical examiners;

(6) the board of nursing;

(7) the board of optometry;

(8) the board of osteopathic medical examiners;

(9) the board of pharmacy;

(10) the physical therapists' licensing board;

(11) the board of veterinary examiners;

(12) the board of examiners for architects;

(13) the board of barber examiners;

(14) the board of cosmetologists;

(15) the state board of thanatopractice of the state of New Mexico;

(16) the state board of registration for professional engineers and surveyors;

(17) the New Mexico state board of public accountancy;

(18) the New Mexico real estate commission;

(19) the board of nursing home administrators;

(20) the construction industries commission and construction industries division of the regulation and licensing department;

(21) the electrical bureau of the construction industries division;

(22) the mechanical bureau of the construction industries division;

(23) the general construction bureau of the construction industries division;

(24) the manufactured housing committee and manufactured housing division of the regulation and licensing department;
(25) the office of the attorney general or his delegate for purposes of administering the Private Investigators Act;

(26) the acupuncture board;

(27) the counseling and therapy practice board;

(28) the nutrition and dietetics practices board;

(29) the board of social work examiners;

(30) the athletic trainers advisory board;

(31) the board of landscape architects;

(32) the interior design board;

(33) the water quality control commission for purposes of administering the Utility Operators Certification Act;

(34) the regulation and licensing department for purposes of administering the Polygraphy Act, the Respiratory Care Act, the Speech-Language Pathology and Audiology Act and the Hearing Aid Act;

(35) the real estate appraisers board or the New Mexico real estate commission for purposes of administering the Real Estate Appraisers Act;

(36) the board of massage therapy;

(37) the board of occupational therapy practice; and

(38) any other New Mexico state agency to which the Uniform Licensing Act is subsequently applied by law;

B. "applicant" means a person who has applied for a license;

C. "license" means a certificate, permit or other authorization to engage in each of the professions and occupations regulated by the boards enumerated in Subsection A of this section;

D. "revoke a license" means to prohibit the conduct authorized by the license; and

E. "suspend a license" means to prohibit, for a stated period of time, the conduct authorized by the license. "Suspend a license" also means to allow for a stated period of time the conduct authorized by the license subject to conditions that are reasonably related to the grounds for suspension."

Section 32

Section 32. TEMPORARY PROVISION.--The initial counseling and therapy practice board members shall be appointed by the governor no later than July 1, 1993.

Section 33

Section 33. SEVERABILITY.--If any part or application of the Counseling and Therapy Practice Act is held invalid, the remainder or its application to other situations or persons shall not be affected. No part of this law shall be deemed invalidated by any other currently existing law.

Section 34

Section 34. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 234

CHAPTER 50

RELATING TO HEALTH; REPEALING THE DEVELOPMENTAL DISABILITIES COMMUNITY SERVICES ACT; ENACTING THE DEVELOPMENTAL DISABILITIES ACT.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 18 of this act may be cited as the "Developmental Disabilities Act".

Section 2

Section 2. LEGISLATIVE PURPOSE.--

A. It is the purpose of the legislature in enacting the Developmental Disabilities Act to promote opportunities for all persons with developmental disabilities to live, work and participate with their peers in New Mexico communities. Priority shall be

given to the development and implementation of support and services for persons with developmental disabilities that will enable and encourage them to:

(1) exert control and choice over their own lives;

(2) achieve their greatest potential for independent and productive living by participating in inclusive community activities; and

(3) live in their own homes and apartments or in facilities located within their own communities and in contact with other persons living in their communities.

B. The Developmental Disabilities Act authorizes the department to plan, provide and coordinate support and services to persons with developmental disabilities.

Section 3

Section 3. DEFINITIONS.--As used in the Developmental Disabilities Act:

A. "assessment" means a process for measuring and determining a person's strengths, needs and preferences to determine eligibility for support and services and to develop or modify an individual support and service plan;

B. "case management" means a process that assists a person with a developmental disability to know and understand his choices and rights, to obtain support and
services that the person is eligible to receive and that is reflected in the individual support and service plan and monitors the provision of support and services received by the person;

C. "department" means the department of health;

D. "diagnostic evaluation" means an empirical process that determines if, and to what degree, a person has a developmental deficiency and the type of intervention and services that are needed for the person and that person's family;

E. "inclusive" means using the same community resources that are used by, and available to, all citizens and developing relationships with nonpaid caregivers or recipients of support and services for persons with developmental disabilities;

F. "individual support and service plan" means a plan developed by an interdisciplinary team and agreed to by a person with a developmental disability, or a parent of a minor or legal guardian, as appropriate, that describes the combination and sequence of special, interdisciplinary or generic care, treatment or other support and services that are needed and desired by a person with a developmental disability;

G. "interdisciplinary team" means a group of persons drawn from or representing professions that are relevant to identifying the needs of a person with a developmental disability and designing a program to meet that person's needs. The team shall include the person with a developmental disability, the parent of a minor child or legal guardian, as appropriate; and

H. "service provider" means a nonprofit corporation, tribal government or trival organization, unit of local government or other organization that has entered into a contract or provider agreement with the department for the purpose of providing developmental disabilities support and services.

Section 4

Section 4. DEVELOPMENTAL DISABILITIES PLANNING COUNCIL--CREATION--MEMBERSHIP--TERMS.--

A. The "developmental disabilities planning council" is created in accordance with the federal Developmental Disabilities Assistance and Bill of Rights Act. The developmental disabilities planning council shall be an adjunct agency as provided in the Executive Reorganization Act.

B. The developmental disabilities planning council shall consist of no fewer than eighteen members, at least half of whom shall be persons with developmental disabilities or parents, immediate relatives or legal guardians of persons with developmental disabilities. The developmental disabilities planning council shall include:

(1) the secretary of health, or his designee;

(2) the secretary of human services, or his designee;

(3) the secretary of children, youth and families, or his designee;

(4) the director of the state agency on aging, or his designee;

(5) two directors from the state department of public education, including the vocational rehabilitation division;

(6) the director of the state protection and advocacy system established pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act;

(7) representatives of institutions of post-secondary education;

(8) representatives of each program established within institutions of post-secondary education, pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act; and

(9) representatives of local government agencies, nongovernment agencies or nonprofit groups concerned with services to persons with developmental disabilities, including a service provider.

C. Members, except for ex-officio members, shall be appointed by the governor for terms of three years.

Section 5

Section 5. POWERS AND DUTIES.--

A. The developmental disabilities planning council shall:

(1) act as a planning and coordinating body for persons with developmental disabilities;

(2) provide statewide advocacy systems for persons with developmental disabilities;

(3) work with appropriate state agencies to develop the developmental disabilities three-year plan as required by the federal Developmental Disabilities Assistance and Bill of Rights Act;

(4) monitor and evaluate the implementation of the developmental disabilities state plan;

(5) to the maximum extent feasible, review and comment on all state plans that relate to programs affecting persons with developmental disabilities;

(6) submit to the secretary of the United States department of health and human services, through the office of the governor, periodic reports that the secretary may request;

(7) advise the governor and the legislature about the needs of persons with developmental disabilities; and

(8) carry out any other activities authorized or required by the provisions of the federal Developmental Disabilities Assistance and Bill of Rights Act.

B. The developmental disabilities planning council is authorized to:

(1) award grants and enter into contracts to carry out its duties;

(2) seek funding from sources other than the state;

(3) create and support regional county or local advisory councils; and

(4) provide training to persons with developmental disabilities, their families and providers of support and services through traineeships, sponsoring training opportunities and by other means determined appropriate by the developmental disabilities planning council.

Section 6

Section 6. ELIGIBILITY.--For purposes of eligibility for support and services:

A. "developmental disability" means a severe chronic disability of a person that:

(1) is attributable to a mental or physical impairment, including the result from trauma to the brain, or combination of mental and physical impairments;

(2) is manifested before the person reaches the age of twenty-two years;

(3) is expected to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity:

(a) self-care;

(b) receptive and expressive language;

(c) learning;

(d) mobility;

(e) self-direction;

(f) capacity for independent living; and

(g) economic self-sufficiency; and

(5) reflects the person's need for a combination and sequence of special, interdisciplinary or generic care treatment or other support and services that are of life-long or extended duration and are individually planned and coordinated;

B. are children, birth through two years of age, who are at risk for or have developmental delays as defined by the department. These children are eligible for early intervention services; or

C. is a person who is eligible for services based on any previous definition of developmental disability used by the state and is receiving services on the effective date of the Developmental Disabilities Act. However, children birth through age two who were determined to be a risk for or have developmental delays are eligible for early intervention services only, unless meeting the criteria set forth in Subsection A of this section.

Section 7

Section 7. ASSESSMENT OF NEEDS OF PERSONS WITH DEVELOPMENTAL DISABILITIES.--

A. In order to comply with the provisions of 42 U.S.C. Section 6067, the developmental disabilities planning council shall conduct a needs assessment of persons with developmental disabilities to determine:

(1) the number residing in New Mexico;

(2) the range and degree of severity of their disabilities;

(3) the present placement and support and services being received; and

(4) the needs for support and services and the extent that their needs are unserved or underserved.

B. The findings of the assessment shall be included in the state plan for developmental disabilities services and support. The assessment shall be repeated at least every two years, with a summary of the findings distributed to relevant organizations, programs and agencies in the state.

Section 8

Section 8. PLANNING FOR COMMUNITY SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES.--

A. The developmental disabilities planning council shall coordinate, review and comment upon plans for services to persons with developmental disabilities

developed by all major state agencies providing or funding services to persons with developmental disabilities based, to the greatest extent possible, upon the most recent needs assessment completed pursuant to Section 7 of the Developmental Disabilities Act.

B. The department of health, the human services department, the state department of public education, the vocational rehabilitation division of the state department of public education, the children, youth and families department, the New Mexico school for the visually handicapped and the New
Mexico school for the deaf shall each submit a plan for support and services for persons with developmental and other disabilities within a reasonable time to allow for meaningful coordination, review and comment by the developmental disabilities planning council.

C. Each plan shall define and provide for the support and services that are required within the scope of each respective agency's applicable federal and state laws and regulations. The goal of each plan is to enable persons with developmental disabilities to maximize their potential, live as independently as possible in their own homes and communities and achieve productive lives through involvement in inclusive service settings.

Section 9

Section 9. INFORMATION AND REFERRAL SYSTEM--COORDINATION AND CONTINUATION.--In order to coordinate information and referral services and eliminate the duplication of effort, the developmental disabilities planning council shall provide information and referral services for persons with disabilities, their families, providers of support and services and local and state agencies, including:

A. the human services department;

B. the department of health;

C. the state department of public education and its vocational rehabilitation division;

D. the New Mexico school for the deaf;

E. the New Mexico school for the visually handicapped;

F. the Carrie Tingley crippled children's hospital; and

G. the children, youth and families department.

Section 10

Section 10. DEVELOPMENTAL DISABILITIES PLANNING COUNCIL--STAFF.--The developmental disabilities planning council shall employ an executive director, who is the administrative officer of the council. The executive director shall employ other necessary employees pursuant to the provisions of the Personnel Act.

Section 11

Section 11. DEVELOPMENTAL DISABILITIES PLANNING COUNCIL--REPORTS.--The developmental disabilities planning council shall submit reports on its preceding year's work to the governor and the legislative interim health and human services committee by December 1 of each year. The reports shall contain recommendations, if any, for legislation or other appropriate action.

Section 12

Section 12. DEVELOPMENTAL DISABILITIES PLANNING COUNCIL--COMPENSATION.--Developmental disabilities planning council members shall be reimbursed as provided in the Per Diem and Mileage Act. Reasonable accommodations shall be made available to permit full participation in council activities by its members, including personal assistance to members with developmental disabilities and respite care for members that are parents, immediate relatives or legal guardians of persons with developmental disabilities. No other compensation, perquisite or allowance shall be received.

Section 13. AUTHORIZATION FOR PROVIDING COMMUNITY-BASED SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES.--

A. Subject to the availability of appropriations provided expressly for this purpose, the department may:

(1) acquire, provide or coordinate support and services for persons with developmental disabilities;

(2) enter into contracts and provider agreements with agencies and individuals capable of providing support and services to persons with developmental disabilities that promote the objectives of the department's state plan, prepared pursuant to Section 5 of the Developmental Disabilities Act; and

(3) establish advisory councils and task forces as necessary to guide the development and review of support and services to persons with developmental disabilities.

B. Support and services shall be provided based on individual support and service plans developed by an interdisciplinary team. The team is responsible for collectively evaluating the child's or adult's needs and developing an individual support

and service plan to meet the
needs.

C. The department shall:

(1) solicit the involvement of consumers, providers, parents, professional organizations and other governmental organizations prior to the adoption or revision of any policies or regulations concerning the provision of support, services, standards or funding systems. Participants shall be selected in a manner that reflects geographical, cultural, organizational and professional representation across the state;

(2) develop policies, procedures, rules and regulations that to the extent possible will promote uniformity in reimbursement and quality assurance systems regardless of the source of funding; and

(3) convene and maintain a family infant toddler inter-agency coordinating council and a statewide adult support and services task force that shall, at a minimum, address quality assurance.

Section 14

Section 14. QUALITY ASSURANCE SYSTEM.--

A. The department shall develop and maintain a quality assurance system to improve and enhance the quality of support and services for persons with developmental disabilities. The management information system portion of the quality assurance system shall track and maintain information concerning the characteristics of the persons served, support and services received and the length of time support and services are provided.

B. The program evaluation portion of the quality assurance system shall consist of a comprehensive collection of data from providers and analysis of measures of effectiveness, efficiency and consumer satisfaction.

C. The department shall adopt regulations that ensure compliance with recognized professional standards for support and services.

Section 15

Section 15. ADMISSION, TRANSFER, WITHDRAWAL AND DISCHARGE OF PERSONS RECEIVING SUPPORT AND SERVICES PURCHASED OR PROVIDED BY THE DEPARTMENT.--

A. In cooperation with other state agencies, the department shall adopt requirements for admission, transfer, withdrawal and discharge of persons receiving support and services funded in whole or in part by state funds.

B. The department shall maintain a centralized registry of persons who are requesting or receiving support and services and a centralized referral system that promotes the delivery of support and services within the person's home community and reflects the person's informed selection and choice of a support or service provider. This centralized referral system shall determine eligibility based on a comprehensive assessment and shall prioritize individuals waiting to access publicly funded developmental disability support and services.

C. The centralized referral system shall maintain information regarding the needs of persons not receiving services and shall report the information annually to the legislature. The department shall have the authority to provide assessments and case management services to persons applying for and receiving publicly funded support and services necessary to implement the provisions of this section.

Section 16

Section 16. DETERMINATION OF RATES FOR PAYMENT FOR SUPPORT AND SERVICES.--

A. The department shall develop, implement and maintain a provider reimbursement system based on the level of support and services required by a person with a developmental disability.

B. If the approved funding from the legislature does not permit the implementation of a reimbursement system using the considerations provided for in this section, the department shall develop and implement a service reduction plan.

C. The department shall report to the legislature and the governor the impact of any service reduction plans and the steps that will be taken to reinstate those services.

D. The department shall report annually to the legislature and the governor an estimate of the costs of maintaining support and services for persons with developmental disabilities being served, including the effects of changes in the costs of providing support and services, an estimate of the costs of providing support and services to persons that are eligible for service but not receiving services, and the request of the department for funding of services.

E. Contractors shall be required to submit records of support and services delivered as determined by the
department, subject to monitoring by the department.

F. Contingent upon appropriations, the department shall conduct an independent biannual cost study for the purpose of establishing payment rates. The results of this study shall be submitted to the legislature.

Section 17

Section 17. INDEPENDENT STATUS OF SERVICE PROVIDERS.--Except as otherwise provided, each service provider shall be considered to be an independent contractor and not an entity of state government.

Section 18

Section 18. DEVELOPMENTAL DISABILITIES EARLY CHILDHOOD EVALUATION SYSTEM.--The state shall have a timely, comprehensive, multidisciplinary system for evaluating infants, toddlers and preschool-age children suspected of having developmental delays. Diagnostic evaluations for infants and toddlers shall address family service needs and shall include training capabilities to educate community providers and parents in the understanding and application of the evaluations. This diagnostic evaluation system shall be jointly provided through a coordinated system by the children's medical services bureau of the public health division or the developmental disabilities division of the department, the university of New Mexico's developmental
disabilities team and the state department of public education.

Section 19

Section 19. REPEAL.--Sections 28-16-1 through 28-16-18 NMSA 1978 (being Laws 1984, Chapter 100, Sections 1 through 4, Laws 1989, Chapter 195, Section 2, Laws 1984, Chapter 100, Sections 6 through 8, Laws 1989, Chapter 195, Section 3, Laws 1984, Chapter 100, Sections 10 and 11, Laws 1989, Chapter 195, Section 4, Laws 1987, Chapter 194, Section 1, Laws 1989, Chapter 92, Sections 1 and 2, Laws 1990, Chapter 97, Section 2, Laws 1989, Chapter 92, Sections 3 through 5, as amended) are repealed.HB 247

CHAPTER 51

RELATING TO TRUST ADMINISTRATION; ENACTING A NEW SECTION OF THE NMSA 1978.

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

Section 1

Section 1. FIDUCIARY INVESTMENTS--CERTAIN SECURITIES.--A bank or trust company that is acting as a fiduciary or agent may, in its discretion or at the direction of another person who is authorized to direct the investment of money held by the bank or trust company, invest in the securities of an open-end or closed-end management investment company or investment trust that is registered under the federal Investment Company Act of 1940, as amended. The bank or trust company, or

any affiliate thereof, may provide services to the investment trust or investment company, including acting as an investment advisor, manager, sponsor, distributor, custodian, transfer agent or registrar, and may receive reasonable compensation for the services; provided that with respect to any funds invested, the bank or trust company or its affiliate shall disclose to the persons to whom statements of the account are rendered the rate, formula or other method by which the compensation paid is determined.HB 329

CHAPTER 52

RELATING TO TAXATION; ENACTING THE HISTORIC BUILDING IMPROVEMENTS ACT; AUTHORIZING IMPOSITION OF A PROPERTY TAX FOR HISTORIC BUILDING IMPROVEMENTS; PROVIDING FOR AN ELECTION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Historic Building Improvements Act".

Section 2

Section 2. DEFINITIONS.--As used in the Historic Building Improvements Act:

A. "county" means an H class county;

B. "governing body" means the board of county commissioners of a county;

C. "historic building improvements" means any repair or maintenance to the exterior or any renovation or other improvement necessary to meet life safety codes of a publicly owned building entered in the state register of cultural properties or the national register of historic places; and

D. "taxable value of property" means the "net taxable value", as that term is defined in the Property Tax Code, of property subject to taxation under the Property Tax Code.

Section 3

Section 3. AUTHORIZATION FOR A COUNTY TO IMPOSE AN HISTORIC BUILDING IMPROVEMENTS TAX--RESOLUTION--ELECTION REQUIRED.--

A. The governing body of a county may adopt a resolution authorizing the imposition of a property tax upon the taxable value of property in the county for the purpose of making historic building improvements. The total tax imposition that may be authorized under the Historical Building Improvements Act shall not exceed a rate of one dollar ($1.00) on each one thousand dollars ($1,000) of taxable value of property in the county and shall be imposed for a period not to exceed four years.

B. The tax authorized pursuant to Subsection A of this section shall not be imposed unless the question of
authorizing the imposition of the tax is submitted to the voters of the county.

C. The resolution adopted pursuant to Subsection A of this section shall specify:

(1) the rate of the proposed tax;

(2) the date an election will be held to submit the question of imposition of the tax to the voters of the county;

(3) the period of time the tax is authorized to be imposed; and

(4) the proposed use of the revenues from the proposed tax.

Section 4

Section 4. CONDUCT OF ELECTION--BALLOT.--

A. The question of authorizing the imposition of a tax under the Historic Building Improvements Act shall be submitted to voters of the county at any general election or special election called for that purpose following the adoption of a resolution pursuant to the Historic Building Improvements Act.

B. The proclamation calling the election shall be filed and published as required pursuant to the provisions of the Election Code and shall specify:

(1) the date on which the election will be held;

(2) the question that will be put to the voters;

(3) the precincts in the county, the location of each polling place and the hours the polling places will be open; and

(4) the date and time of the closing of the registration books by the county clerk as required by law.

C. The question on the ballot shall read:

"____ For the imposition of an historic building improvements tax at a rate of _____dollars on each one thousand dollars ($1,000) of taxable value of property in the county for a period of _____ years; or

____ Against the imposition of an historic building improvements tax at a rate of _____ dollars on each one thousand dollars ($1,000) of taxable value of property in the county for a period of _____ years".

D. The election shall be conducted and canvassed pursuant to the provisions of the Election Code.

Section 5

Section 5. IMPOSITION OF TAX--CERTIFICATION BY DEPARTMENT OF FINANCE AND ADMINISTRATION--DISCONTINUANCE OF TAX.--

A. If a majority of the voters voting on the question votes for the historic building improvements tax pursuant to a resolution adopted under the Historic Bulding Improvements Act, the tax shall be imposed for the earliest property tax year for which the tax rate may be certified. The governing body of the county shall notify the department of finance and administration of the results of the election immediately upon completion of the canvass. The tax rate shall be certified by the department of finance and administration and imposed, administered and collected in accordance with the provisions of the Property Tax Code.

B. If a majority of the voters voting on the question votes against the historic building improvements tax, the tax shall not be imposed. The county shall not adopt another resolution authorizing the imposition of a tax under the Historic Building Improvements Act for at least one year after the date of the resolution that the voters rejected.

C. The governing body of the county may adopt a resolution discontinuing the imposition of the tax authorized and imposed pursuant to the Historic Building Improvements Act. The discontinuance resolution shall be mailed to the department of finance and administration no later than June 15 of the year in which a tax rate pursuant to that act is not to be certified.

Section 6

Section 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect
immediately.HB 495

CHAPTER 53

RELATING TO HIGHER EDUCATION; WAIVING THE NONRESIDENT DIFFERENTIAL TUITION RATES ON A RECIPROCAL BASIS WITH THE STATES OF THE FOREIGN COUNTRY CONTIGUOUS TO NEW MEXICO.

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

Section 1

Section 1. Section 21-1-6 NMSA 1978 (being Laws 1975, Chapter 308, Section 1) is amended to read:

"21-1-6. WAIVING OF NONRESIDENT DIFFERENTIAL IN TUITION RATES ON A RECIPROCAL BASIS WITH OTHER STATES.--The commission on higher education shall identify those circumstances where the waiving of the nonresident differential in tuition rates, on a reciprocal basis with other states, including the states of the foreign country contiguous to New Mexico, would enhance educational opportunities for New Mexico residents. Relative to the identified circumstances, the commission shall negotiate with the other states involved with the objective of establishing reciprocal agreements for the waiving of the nonresident differential for New Mexico residents attending institutions in other states in exchange for New Mexico institutions waiving the nonresident differential for residents of the other states. Upon successful completion of the negotiations, the commission may identify those classes and numbers of New Mexico residents whose educational opportunities would be enhanced and the number and classes of nonresident students for whom the nonresident differential is to be waived by the New Mexico institutions and may direct that the institutions grant such waivers. The commission shall establish regulations for the administration of the waivers and for the reporting of the cases in which the waivers are given."HB 643

CHAPTER 54

RELATING TO TELECOMMUNICATIONS; PROVIDING FOR ACCESS TO TELECOMMUNICATIONS FOR PERSONS THAT ARE SPEECH OR HEARING IMPAIRED; PROVIDING FOR A PROGRAM OF SPECIALIZED TELECOMMUNICATIONS EQUIPMENT; PROVIDING FOR A TELECOMMUNICATIONS RELAY SYSTEM; IMPOSING A SURCHARGE; ESTABLISHING A FUND AND PROVIDING FOR EXPENDITURES FROM THE FUND; PROVIDING FOR CONFIDENTIALITY AND THE IMPOSITION OF PENALTIES FOR BREACH OF CONFIDENTIALITY; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Telecommunications Access Act".

Section 2

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) it supports those provisions of the federal Americans with Disabilities Act of 1990 that address the need to provide telecommunications access to all citizens;

(2) many New Mexicans are hearing or speech impaired and because of their impairment are unable to use traditional telecommunications equipment and services without assistance; and

(3) the state's hearing or speech impaired citizens are a substantial and valuable resource and their participation as contributing and productive members of our society would be enhanced substantially if full access to telecommunications service were made available to them.

B. It is the purpose of the Telecommunications Access Act to provide a statutory framework and funding under which the opportunity for full access to telecommunications services is made available to hearing or speech impaired New Mexicans.

Section 3

Section 3. DEFINITIONS.--As used in the Telecommunications Access Act:

A. "commission" means the commission for deaf and hard-of-hearing persons;

B. "communications assistant" means an individual who translates conversation from text to voice and from voice to text between two end users of a telecommunications service;

C. "department" means the general services department;

D. "impaired" means having an impairment of or deficit in the ability to hear or speak, or both;

E. "intrastate telephone services" means all charges for access lines, special services and intrastate toll services;

F. "specialized telecommunications equipment" means devices, that when connected to a telephone, enable or assist an impaired individual to communicate with another individual using the telephone network;

G. "telecommunications company" means an individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity which provides public telecommunications services, and includes cellular service companies as defined in Subsection B of Section 63-9B-3 NMSA 1978, but does not include radio-paging service; and

H. "telecommunications relay system" means a statewide telecommunications system through which an impaired individual using specialized telecommunications equipment is able to send or receive messages to and from an individual who is not impaired and whose telephone is not equipped with specialized telecommunications equipment, and through which the unimpaired individual is able, by using voice communications, to send and receive messages to and from an impaired person.

Section 4

Section 4. SPECIALIZED TELECOMMUNICATIONS EQUIPMENT PROGRAM ESTABLISHED.--The commission shall design, establish and administer a program for providing specialized telecommunications equipment to impaired individuals. The commission shall adopt regulations for the program that:

A. shall include eligibility requirements for participation in the program, which requirements:

(1) shall provide financial eligibility conditions;

(2) may include provisions for participation by impaired individuals in the cost of acquiring specialized telecommunications equipment; and

(3) shall include provisions for determining eligibility thresholds based on the quality and severity of the individual's impairment;

B. establish detailed procedures and forms to be used by impaired individuals wishing to apply for participation in the program;

C. include a statewide survey and information gathering component to identify the extent of the hearing and speech impairment problem in the state, the number of impaired individuals in the state and the existence and availability of any specialized telecommunications equipment; and

D. include an outreach component designed to provide information about and facilitate access to the program for impaired individuals.

Section 5

Section 5. IMPLEMENTATION DATE REQUIREMENT FOR SPECIALIZED TELECOMMUNICATIONS EQUIPMENT PROGRAM.--The commission shall implement a specialized telecommunications equipment program no later than two years after the effective date of the Telecommunications Access Act.

Section 6

Section 6. TELECOMMUNICATIONS RELAY SYSTEM.--

A. The department, in consultation with the commission, shall establish a telecommunications relay system that enables impaired individuals to communicate with unimpaired individuals. The department shall implement the telecommunications relay system no later than July 26, 1993.

B. The department, after consultation with the commission, shall invite proposals or bids, or both, from telecommunications companies to design and implement a telecommunications relay system. The department shall comply with the provisions of the Procurement Code in contracting for the services and property required. It shall consider the factors of price and the interest of the community of impaired individuals in having access to a high quality and technologically-advanced system. New Mexico residency shall be given a weight of five percent of the total weight of all evaluation factors in a proposal evaluation. Any business that qualifies as a "resident business" as defined in Section 13-1-21 NMSA 1978 shall receive a five percent preference. In the procurement process it shall request and consider the recommendations of the communications assistants who have provided the voice relay service used in the state prior to the effective date of the Telecommunications Access Act.

C. If the department determines that no proposal or bid is acceptable after review, the department may provide the telecommunications relay system.

D. The telecommunications relay system shall:

(1) be available statewide for operation twenty-four hours a day every day of the year;

(2) relay all messages promptly and accurately;

(3) protect and maintain the privacy of individuals using the system;

(4) preserve the confidentiality of all telephone communications; and

(5) conform to all applicable standards established by state and federal laws and any regulations adopted pursuant to those laws.

Section 7

Section 7. DUTIES OF THE DEPARTMENT.--

A. The department shall:

(1) adopt regulations to carry out the provisions of the Telecommunications Access Act and to ensure that the specialized telecommunications equipment program and the telecommunications relay system are in compliance with the applicable state and federal laws and any regulations adopted pursuant to those laws;

. (2) seek recommendations annually from the commission about how to administer the provisions of the Telecommunications Access Act; and

(3) perform all duties necessary to carry out the provisions of the Telecommunications Access Act.

B. The department may require an annual audit of each telecommunications company participating in the telecommunications relay system to account for all surcharges billed and collected pursuant to the Telecommunications Access Act.

Section 8

Section 8. COMMISSION DUTIES.--The commission shall advise the department concerning the administration of the specialized telecommunications equipment program and the telecommunications relay system. The commission shall:

A. review and recommend policies, procedures and regulations governing the administration of the specialized telecommunications equipment program and the telecommunications relay system;

B. assist the department in obtaining certification from the federal communications commission that the telecommunications relay system is in cmpliance with applicable federal rules and regulations;

C. review and comment upon the department's budget request for administration of the specialized telecommunications equipment program and the telecommunications relay system;

D. monitor expenditures for the specialized telecommunications equipment program and the telecommunications relay system;

E. monitor the quality of the telecommunications relay system and the satisfaction of its users;

F. identify the need for specialized telecommunications equipment by impaired individuals;

G. identify the problems that impaired individuals have in acquiring specialized telecommunications equipment;

H. identify funding sources available to provide specialized telecommunications equipment needed by impaired individuals; and

I. perform other duties necessary to advise the department in the administration of the provisions of the Telecommunications Access Act.

Section 9

Section 9. LIMIT ON LIABILITY.--The commission, the department, the provider of the telecommunications relay system and their employees shall not be liable for any claims, actions, damages or causes of action arising out of or resulting from the establishment, participation in or operation of the telecommunications relay system except for
gross negligence or intentional acts.

Section 10

Section 10. COMPLAINTS.--All complaints, including complaints about the service provided by the telecommunications relay system, the provider of the telecommunications relay system or the operation and administration of the telecommunications relay system, shall be made directly to the commission.

Section 11

Section 11. IMPOSITION OF SURCHARGE.--

A. A telecommunications relay service surcharge of thirty-three one hundredths of one percent is imposed on the gross amount paid by customers for intrastate telephone services provided in this state. The surcharge shall be included on the monthly bill of each customer of a local exchange company or other telecommunications company and paid at the time of payment of the monthly bill. Receipts from selling a service to any other telecommunications company or provider for resale shall not be subject to the surcharge. The customer shall be liable for the payment of this surcharge to the local exchange company or other telecommunications company providing intrastate telephone services to the customer.

B. Every telecommunications company, except a company contributing to the interstate relay service, shall be responsible for assessing, collecting and remitting the telecommunications relay service surcharge to the taxation and revenue department. The amount of the telecommunications relay service surcharge collected by a telecommunications company shall be remitted monthly to the taxation and revenue department on or before the twenty-fifth of the month following collection, which shall administer and enforce the collection of the surcharge pursuant to the provisions of the Tax Administration Act.

C. The taxation and revenue department shall remit to the telecommunications access fund the amount of the telecommunications relay service surcharge collected less any amount deducted pursuant to the provisions of Subsection D of this section. Transfer of the net receipts from the surcharge to the telecommunications access fund shall be made within the month following the month in which the surcharge is collected.

D. The taxation and revenue department may deduct an amount not to exceed three percent of the telecommunications relay service surcharge collected as a charge for the administrative costs of collection, which
amount shall be remitted to the state treasurer for deposit in the general fund each month.

Section 12

Section 12. TELECOMMUNICATIONS ACCESS FUND--ESTABLISHED.--There is created in the state treasury the "telecommunications access fund". Money appropriated to the fund or accruing to it through gifts, grants, fees, surcharges, penalties or bequests shall be delivered to the state treasurer for deposit in the fund. The fund shall be invested as other state funds are invested. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of general services. The department shall administer the fund. Money in the fund is appropriated for the purpose of carrying out the provisions of the Telecommunications Access Act. The department and the commission may request the budget division of the department of finance and administration to approve the expenditure of funds deposited in the telecommunications access fund for the purpose of defraying salary and other necessary expenses incurred by the department and the commission in the administration of the provisions of the Telecommunications Access Act. The budget division may approve the expenditure of not more than ten percent of the amount deposited in the telecommunications access fund during any fiscal year for administrative expenses. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert.

Section 13

Section 13. CONFIDENTIALITY OF TRANSLATED OR RELAYED CONVERSATIONS--PENALTY FOR BREACH OF CONFIDENTIALITY.--

A. A communications assistant who is employed to translate or relay a conversation to or from an impaired individual is a conduit for the conversation and shall not disclose, or be compelled to disclose in any nonjudicial proceeding, the contents of the conversation.

B. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

Section 14

Section 14. EFFECTIVE DATE.--The effective date of the provisions of Section 11 of the Telecommunications Access Act is July 1, 1993.

Section 15

Section 15. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect
immediately.HB 822

CHAPTER 55

RELATING TO ELECTIONS; ESTABLISHING PRE-PRIMARY CONVENTION DESIGNATION OF CANDIDATES.

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

Section 1

Section 1. Section 1-8-13 NMSA 1978 (being Laws 1969, Chapter 240, Section 162, as amended) is amended to read:

"1-8-13. PRIMARY ELECTION LAW--CONTENTS OF PROCLAMATION.--The proclamation shall contain:

A. the names of the major political parties participating in the primary election;

B. the offices for which each political party shall nominate candidates; provided that if any law is enacted by the legislature in the year in which the primary election is held and such law does not take effect until after the date of the proclamation but prior to the date of the primary election, the proclamation shall conform to the intent

of such law with respect to the offices for which each political party shall nominate candidates;

C. the date on which declarations of candidacy and nominating petitions for United States representative, any office voted upon by all the voters of the state, a legislative office, the office of district judge, district attorney, state board of education or magistrate shall be filed and the places where they shall be filed in order to have the candidates' names printed on the official ballot of their party at the primary election;

D. the date on and place at which declarations of candidacy shall be filed for any other office and filing fees paid or, in lieu thereof, a pauper's statement of inability to pay;

E. the date on and place at which declarations of intent to be a write-in candidate for a statewide office or office of United States representative shall be filed;

F. the date on and place at which declarations of intent to be a write-in candidate for any other office shall be filed;

G. the final date on and place at which candidates for the office of United States representative and for any statewide office seeking pre-primary convention designation by the major parties shall file petitions and declarations of candidacy;

H. the final date on which the major political parties shall hold state pre-primary conventions for the designation of candidates; and

I. the final date on and place at which certificates of designation of primary election candidates shall be filed by political parties with the secretary of state.

As used in the Primary Election Law, "statewide office" means any office voted on by all the voters of the state."

Section 2

Section 2. Section 1-8-21 NMSA 1978 (being Laws 1975, Chapter 295, Section 7, as amended) is amended to read:

"1-8-21. PRIMARY ELECTION LAW--METHOD OF PLACING NAMES ON PRIMARY BALLOT.--

A. All candidates for nomination to be made at any primary election for United States representative, any office voted upon by all the voters of the state, a legislative office, the office of district judge, district attorney, state board of education or magistrate shall have their names placed on the primary election ballot by filing a

declaration of candidacy and a nominating petition as prescribed in Section 1-8-30 NMSA 1978.

B. All candidates designated by a major political party at a state pre-primary convention shall have their names placed on the primary election ballot pursuant to a certificate of designation submitted to the secretary of state by the major political party.

C. All other candidates for nominations to be made at any primary election shall have their names placed on the primary election ballot by filing a declaration of candidacy and paying the filing fee prescribed by law or by filing a declaration of candidacy and filing a pauper's statement of inability to pay the prescribed filing fee."

Section 3

Section 3. Section 1-8-26 NMSA 1978 (being Laws 1975, Chapter 295, Section 12, as amended) is amended to read:

"1-8-26. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--TIME OF FILING.--

A. Declarations of candidacy by pre-primary convention designation for the office of United States representative and for any statewide office shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the second Tuesday in February of each even-numbered year and ending at 5:00 p.m. on that same day.

B. Declarations of candidacy by nominating petition for statewide office or the office of the United States representative shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the last Tuesday in March of each even-numbered year and ending at 5:00 p.m. on the same day.

C. Declarations of candidacy for any other office shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the first Tuesday of April of each even-numbered year and ending at 5:00 p.m. on that same day.

D. Certificates of designation shall be submitted to the secretary of state during the period commencing at 9:00 a.m. and ending at 5:00 p.m. on the first Tuesday following the pre-primary convention at which the designation as candidate took place.

E. No candidate's name shall be placed on the ballot until the candidate has been notified in writing by the proper filing officer that the declaration of candidacy, the nominating petition, the certificate of designation, if necessary and the affidavit of registration of the candidate on file are in proper order and that the candidate, based on those documents, is qualified to have his name placed on the ballot. The proper filing

officer shall mail such notice no later than 5:00 p.m. on the Tuesday following the appropriate filing date."

Section 4

Section 4. Section 1-8-27 NMSA 1978 (being Laws 1969, Chapter 240, Section 172, as amended) is amended to read:

"1-8-27. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--MANNER OF FILING.--Each declaration of candidacy, by nominating petition or by pre-primary convention designation, shall be delivered for filing in person by the candidate therein named or by a person acting, by virtue of written authorization, solely on the candidate's behalf. The proper filing officer shall not accept for filing more than one declaration of candidacy from any one individual except that candidates who seek but fail to receive pre-primary convention designation shall file a declaration of candidacy by nomination, according to provisions of the Primary Election Law, to have their names placed on the primary election ballot."

Section 5

Section 5. Section 1-8-29 NMSA 1978 (being Laws 1973, Chapter 228, Section 3, as amended) is amended to read:

"1-8-29. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--FORM.--In making a declaration of candidacy by nominating petition or by pre-primary convention designation, the candidate shall submit substantially the following form:

"DECLARATION OF CANDIDACY

BY PRE-PRIMARY CONVENTION DESIGNATION

(OR BY NOMINATING PETITION)

I, _____, (candidate's name on affidavit of registration) being first duly sworn, say that I reside at _____, as shown by my affidavit of registration as a voter of Precinct No._____ of the county of _____, State of New Mexico;

I am a member of the _____ party as shown by my affidavit of registration and I have not changed such party affiliation subsequent to the Governor's proclamation calling the primary in which I seek to be a candidate;

I desire to become a candidate for the office of _____ at the primary election to be held on the date set by law for this year, and if the office be that of a member of the legislature or that of a member of the state board of education, that I actually reside at the address designated on my affidavit of voter registration;

I will be eligible and legally qualified to hold this office at the beginning of its term;

If a candidate for any office for which a nominating petition is required, I am submitting with this statement a nominating petition in the form and manner as prescribed by the Primary Election Law; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

_____
(Declarant)

_____
(Mailing Address)

_____
(Residence Address)

Subscribed and sworn to before me this_____day of _____, 19 _____.

_____
(Notary Public)
My commission expires:
_____"."

Section 6

Section 6. Section 1-8-30 NMSA 1978 (being Laws 1973, Chapter 228, Section 4, as amended) is amended to read:

"1-8-30. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--NOMINATING PETITION--FILING AND FORM.--

A. As used in the Primary Election Law, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters which is signed on behalf of the person wishing to become a candidate for a political office in the primary election requiring a nominating petition.

B. In making a declaration of candidacy, whether by petition or pre-primary convention designation, the candidate at the same time shall file a nominating petition which shall be on forms prescribed by law.

C. The nominating petition shall be on paper approximately eight and one-half inches wide and fourteen inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION

I, the undersigned, a registered voter of the county of _____, New Mexico, and a member of the_____ party, hereby nominate _____, who resides atin the county of _____, New Mexico, for the party nomination for the office of _____, to be voted for at the primary election to be held on the first Tuesday of June, 19 _____, and I declare that I am a resident of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

1. _____ _____ _____ _____
(usual signature) (name printed (address as (city or rt. no.)
as registered) registered)

2. _____ _____ _____ _____
(usual signature) (name printed (address as (city or rt. no.).".
as registered) registered)

D. In October of odd-numbered years, the secretary of state shall furnish to each county clerk a sample of a nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate.

E. The signature of the voter shall not be counted unless the entire line indicates the voter's usual signature, his name printed as registered and his address as registered and his city or route number and is upon the form furnished by the secretary of state to the county clerks or a duplicate thereof.

F. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section and all sheets shall be firmly secured by a staple or other suitable fastening."

Section 7

Section 7. Section 1-8-33 NMSA 1978 (being Laws 1985, Chapter 2, Section 6, as amended) is amended to read:

"1-8-33. PRIMARY ELECTION LAW--NOMINATING PETITION--NUMBER OF SIGNATURES REQUIRED.--

A. As used in this section, "total vote" means the sum of all votes cast for all of the party's candidates for governor at the last preceding primary election at which the party's candidate for governor was nominated.

B. Nominating petitions for a candidate for United States senator, any statewide officer or any candidate for United States representative shall be signed by a

number of voters equal to at least three percent of the total vote of the candidate's party in the state or congressional district, as the case may be.

C. Nominating petitions for candidates for any other office to be voted on at the primary election for which nominating petitions are required shall be signed by a number of voters equal to at least three percent of the total vote of the candidate's party in the district or division, as the case may be.

D. Nominating petitions for candidates for United States representative or any statewide office are required to be submitted with the declaration of candidacy by pre-primary convention designation filed by a candidate and shall be signed by a number of voters equal to at least two percent of the total vote of the candidate's party statewide or in the congressional district, whichever applies to the office for which the candidate is declaring.

E. A candidate who fails to receive the pre-primary convention designation that he sought may collect signatures from an additional one percent of the total vote of the candidate's party in the state or congressional district, whichever applies to the office he seeks, and file a new declaration of candidacy by nominating petition for the office for which he failed to receive a pre-primary designation. The declaration of candidacy by nominating petition shall be filed with the secretary of state either ten days following the date of the pre-primary convention at which he failed to receive the designation or on the date all declarations of candidacy by nominating petition are due pursuant to the provisions of the Primary Election Law, whichever is later."

Section 8

Section 8. Section 1-8-35 NMSA 1978 (being Laws 1973, Chapter 228, Section 9, as amended) is amended to read:

"1-8-35. PRIMARY ELECTION LAW--NOMINATING PETITION--LIMITATION ON APPEALS OF VALIDITY OF NOMINATING PETITIONS.--

A. Any voter filing any court action challenging a nominating petition provided for in the Primary Election Law shall do so within ten days after the last day for filing the declaration of candidacy with which the nominating petition was filed. Within ten days after the filing of the action, the district court shall hear and render a decision on the matter. The decision shall be appealable only to the supreme court and notice of appeal shall be filed within five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.

B. For the purposes of an action challenging a nominating petition, each person filing a nominating petition under the Primary Election Law appoints the proper filing officer as his agent to receive service of process. Immediately upon receipt of process served upon the proper filing officer, the officer shall, by certified mail, return receipt requested, mail the process to the person."

Section 9

Section 9. Section 1-8-40 NMSA 1978 (being Laws 1969, Chapter 240, Section 175, as amended) is amended to read:

"1-8-40. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--FALSE STATEMENT.--Any person knowingly making a false statement in his declaration of candidacy by nominating
petition or by pre-primary convention designation is guilty of a fourth degree felony."

Section 10

Section 10. A new section of the Primary Election Law is enacted to read:

"DECLARATION OF PRE-PRIMARY DESIGNATION--CERTIFICATION BY SECRETARY OF STATE.--

A. Not later than six days after the dates for filing declarations of candidacy by pre-primary convention designation, the secretary of state shall certify to the chairman of each state political party the names of that party's candidates for office of United States representative or for other statewide office who have filed their declarations of candidacy by convention designation and have otherwise complied with the requirements of the Primary Election Law.

B. No person shall be placed in nomination at the convention unless he has been certified by the secretary of state."

Section 11

Section 11. A new section of the Primary Election Law is enacted to read: "DESIGNATION OF CANDIDATES BY CONVENTION.--

A. State conventions of major political parties may designate candidates for nomination to statewide office or the office of United States representative.

B. No state convention for designating candidates shall be held later than the third Sunday in March preceding the primary election, and delegates to the convention shall be elected according to state party rules filed in the office of the secretary of state.

C. The state convention shall take only one ballot upon candidates for each office to be filled. Every candidate receiving twenty percent or more of the votes of the duly elected delegates to the convention for the office to be voted upon at the ensuing primary election shall be certified to the secretary of state as a convention-designated nominee for that office by the political party. Certification shall take place no later than 5:00 p.m. on the first Tuesday succeeding the state convention.

D. The certificate of designation submitted to the secretary of state shall state the name of the office for which each person is a candidate, his name and address and the
name of the political party that the candidate represents, and shall certify that the candidate has been a member of that political party for the period of time required by the Election Code."

Section 12

Section 12. Section 1-1-26 NMSA 1978 (being Laws 1979, Chapter 360, Section 2, as amended) is amended to read:

"1-19-26. DEFINITIONS.--As used in the Campaign Reporting Act:

A. "candidate" means an individual seeking nomination at any primary election or election at a general or statewide special election;

B. "contribution" means a gift, subscription, loan, advance or deposit of any money or other thing of value that is made for the purpose of supporting or opposing a candidate at any election of a candidate or for the purpose of adopting or defeating any constitutional amendment or other question submitted to the voters, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a general purpose political committee that are paid by an organization that sponsors such a committee;

C. "election" means any primary, general or statewide special election in New Mexico;

D. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value for the purpose of influencing the outcome of any election of a candidate or for the purpose of influencing the result of an election or pre-primary convention designation on any constitutional amendment or other question submitted to the voters, but does not include the candidate's or his immediate family's personal expenses for traveling, sleeping or eating, nor does it include the administrative or solicitation expenses of a general purpose political committee that are paid by an organization that sponsors such a committee;

E. "political committee" means every two or more persons who are selected, appointed, chosen or associated within New Mexico for the purpose of, wholly or in part, supporting or opposing a candidate at any election or preprimary convention or for the purpose of adopting or
defeating any constitutional amendment or other question submitted to the voters and includes political action committees or similar organizations composed of employees or

members of any corporation, labor organization, trade or professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for the purpose of supporting or opposing a candidate at any election or for the purpose of adopting or defeating any constitutional amendment or other question submitted to the voters;

F. "reporting individual" means every candidate, every treasurer of a political committee and every nonresident political committee, special purpose political committee and general purpose political committee who contributes to a candidate for office in New Mexico except as may otherwise be provided in the Campaign Reporting Act;

G. "special purpose political committee" means a political committee making contributions to support or oppose one candidate or one constitutional amendment or other question submitted to the voters, such contributions being limited to one primary and one general election; and

H. "general purpose political committee" means a political committee other than a special purpose political committee."

Section 13

Section 13. Section 1-19-28 NMSA 1978 (being Laws 1979, Chapter 360, Section 4, as amended) is amended to read:

"1-19-28. FURNISHING REPORT FORMS.--The proper filing officer shall furnish upon request to political committees the form prescribed by the secretary of state for the reporting of expenditures and contributions. At the time of filing a declaration of candidacy by nominating petition or by pre-primary convention designation for nomination at a primary election, the proper filing officer shall give such candidate the prescribed reporting forms. Ten days before any report of expenditures and contributions is required to be filed by the Campaign Reporting Act, the proper filing officer shall notify each candidate by certified mail of the deadline for filing the report."

Section 14

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is November 15, 1993.HB 995

CHAPTER 56

RELATING TO TAXATION; AMENDING SECTION 7-9-73.1 NMSA 1978 (BEING LAWS 1991,

CHAPTER 8, SECTION 3) TO CHANGE THE GROSS RECEIPTS DEDUCTION FOR HOSPITALS.

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

Section 1

Section 1. Section 7-9-73.1 NMSA 1978 (being Laws 1991, Chapter 8, Section 3) is amended to read:

"7-9-73.1. DEDUCTION--GROSS RECEIPTS--HOSPITALS.--Fifty percent of the receipts of hospitals licensed by the department of health may be deducted from gross receipts."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 509

CHAPTER 57

RELATING TO ALCOHOLIC BEVERAGES; CHANGING PROVISIONS RELATING TO FRANCHISE AGREEMENTS BETWEEN WHOLESALERS AND SUPPLIERS OF ALCOHOLIC BEVERAGES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 60-8A-8 NMSA 1978 (being Laws 1981, Chapter 39, Section 55) is amended to read:

"60-8A-8. FRANCHISES--VIOLATIONS.--

A. The purpose of the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978 is to provide an equal bargaining position between the parties and to protect the health, safety and welfare of the citizens by ensuring that there is an orderly and fair distribution of alcoholic beverages in the state.

B. It is a violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978 for the supplier, directly or through any officer, agent or employee, to fail to act in good faith in performing or complying with any terms, provisions or conditions of the franchise, or in terminating, canceling or not renewing a franchise with a wholesaler, unless such termination, cancellation or failure to renew is done in good faith and for good cause.

Good cause shall not include supplier mergers or acquisitions or consolidation of brands with one wholesaler.

C. If more than one franchise for the same brand or brands of alcoholic beverages is originally granted to different wholesalers in this state, it is a violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978 for any supplier to discriminate in any of the terms, provisions and conditions of the franchise between the wholesalers. It is not the purpose of this section to allow suppliers to unilaterally and without good cause or in violation of the contract change the terms of an existing franchise or exclusive distribution agreement by authorizing the transfer of brands to another wholesaler in violation of this act."

Section 2

Section 2. Section 60-8A-9 NMSA 1978 (being Laws 1981, Chapter 39, Section 56) is amended to read:

"60-8A-9. FRANCHISES--RECOVERY OF DAMAGES--INJUNCTION--REMEDIES INDEPENDENT.--

A. Any wholesaler may bring an action against a supplier for violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978 in any court of competent jurisdiction, and may recover damages, together with the costs of the action, including reasonable attorneys' fees.

B. Any wholesaler may bring an action against a supplier in any court of competent jurisdiction for injunctive relief against termination, cancellation or failure to renew a franchise in violation of the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978.

C. The remedies provided in this section are independent of and supplemental to any other remedy available to the wholesaler in law or equity.

D. It is the intent of the legislature that the Liquor Control Act control contractual relations between suppliers and wholesalers in the state. Any contract provision which has the effect of circumventing the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978, whether a "choice of law" provision, or other provision, shall be deemed null and void and not applicable to franchises between suppliers and wholesalers in the state.

E. In any action brought by a wholesaler against a supplier under the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978, if it is determined that the supplier terminated a franchise without good cause or not in good faith, such supplier shall be responsible to any wholesaler so aggrieved in damages in an amount not less than three times the annual gross profits derived by such wholesaler from the sale of any and all brands under such franchise."

Section 3

Section 3. Section 60-8A-10 NMSA 1978 (being Laws 1981, Chapter 39, Section 57) is amended to read:

"60-8A-10. FRANCHISES--ACTIONS--DEFENSE.--In any action brought by a wholesaler against a supplier for termination, cancellation or failure to renew a franchise in violation of Sections 60-8A-7 through 60-8A-11 NMSA 1978, it is a complete defense for the supplier to prove that the termination, cancellation or failure to renew was done in good faith and for good cause. It shall not be a defense to any action brought by a wholesaler against a supplier under the provisions of Sections 60-8A-7 through 60-8A-11 NMSA 1978 for the supplier to claim that the laws of another state control over those provisions or in any way make the cited provisions not applicable."HB 944

CHAPTER 58

RELATING TO PUBLIC EMPLOYEE RETIREMENT; CREATING A NEW MUNICIPAL EMPLOYEE RETIREMENT PLAN; ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. A new section of the Public Employees Retirement Act, Section 10-11-55.1 NMSA 1978, is enacted to read:

"10-11-55.1. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 3--APPLICABILITY.--Municipal general member coverage plan 3 is applicable to a designated group of municipal general members the first day of the calendar month following an affirmative vote by the majority of the municipal general members in a designated group. A designated group may be all members employed by the affiliated public employer, an organizational group whose compensation is established by negotiated contract or all members employed by the affiliated public employer, whose compensation is not established by negotiated contract. The election shall be conducted by the retirement board in accordance with procedures adopted by the retirement board. The procedures shall afford all municipal general members who are part of the designated group an opportunity to vote. A new election for coverage by municipal general member coverage plan 3 shall not be held prior to the expiration of six months following the date of an election which failed to adopt municipal general member coverage plan 3. An election adopting municipal general member coverage plan 3 is irrevocable for the purpose of subsequently adopting a coverage plan that would decrease employer or employee contributions with respect to all current and future municipal general employees of the affiliated public employer who are part of the designated group. All elections for the purpose of adopting municipal general member

coverage plan 3 shall take place prior to July 1, 1995. Any election occurring after June 30, 1995 shall be null, void and of no effect."

Section 2

Section 2. A new section of the Public Employees Retirement Act, Section 10-11-55.2 NMSA 1978, is enacted to read:

"10-11-55.2. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 3--AGE AND SERVICE REQUIREMENTS FOR NORMAL RETIREMENT.--Under municipal general member coverage plan 3, the age and service requirements for normal retirement are:

A. age sixty-five years or older and five or more years of credited service;

B. age sixty-four years and eight or more years of credited service;

C. age sixty-three years and eleven or more years of credited service;

D. age sixty-two years and fourteen or more years of credited service;

E. age sixty-one years and seventeen or more years of credited service;

F. age sixty years and twenty or more years of credited service; or

G. any age and twenty-five or more years of credited service."

Section 3

Section 3. A new section of the Public Employees Retirement Act, Section 10-11-55.3 NMSA 1978, is enacted to read:

"10-11-55.3. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 3--AMOUNT OF PENSION--FORM OF PAYMENT A.--Under municipal general member coverage plan 3, the amount of pension under form of payment A is equal to three percent of the final average salary multiplied by credited service. The amount shall not exceed eighty percent of the final average salary."

Section 4

Section 4. A new section of the Public Employees Retirement Act, Section 10-11-55.4 NMSA 1978, is enacted to read:

"10-11-55.4. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 3--FINAL AVERAGE SALARY.--Under municipal general member coverage plan 3, the final average salary is one thirty-sixth of the greatest aggregate amount of salary paid a member for thirty-six consecutive months of credited service. Under municipal general

member coverage plan 3, if a member has less than thirty-six months of credited service, the final average salary is the aggregate amount of salary paid a member for the member's period of credited service divided by the member's credited service."

Section 5

Section 5. A new section of the Public Employees Retirement Act, Section 10-11-55.5 NMSA 1978, is enacted to read:

"10-11-55.5. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 3--MEMBER CONTRIBUTION RATE.--A member under municipal general member coverage plan 3 shall contribute thirteen and fifteen one-hundredths percent of salary starting with the first full pay period in the calendar month in which coverage plan 3 becomes applicable to the member."

Section 6

Section 6. A new section of the Public Employees Retirement Act, Section 10-11-55.6 NMSA 1978, is enacted to read:

"10-11-55.6. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 3--AFFILIATED PUBLIC EMPLOYER CONTRIBUTION RATE.--An affiliated public employer shall contribute nine and fifteen one-hundredths percent of the salary of each member it employs and who is covered under municipal general member coverage plan 3."SB 154

CHAPTER 59

RELATING TO AUCTIONS; EXCEPTING NONPROFIT CORPORATIONS FROM CERTAIN AUCTION REGULATIONS.

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

Section 1

Section 1. Section 61-16-4 NMSA 1978 (being Laws 1941, Chapter 45, Section 2) is amended to read:

"61-16-4. SCOPE--AUCTION SALES EXCEPTIONS.--

A. Chapter 61, Article 16 NMSA 1978 shall apply to all sales by auction, other than those specifically excepted in this section, of gold, silver, plated ware, precious or semiprecious stones, watches, clocks and goods, wares and merchandise commonly classified as jewelry of any kind and nature. It shall not apply to:

(1) bona fide judicial sales; or

(2) bona fide sales upon foreclosure of a chattel mortgage landlord's lien or other lien or like interests.

B. Auction sales of jewelry by transferees upon judicial or bankruptcy sales shall be subject to all the provisions of Chapter 61, Article 16 NMSA 1978."

Section 2

Section 2. Section 61-16-5 NMSA 1978 (being Laws 1941, Chapter 45, Section 3) is amended to read:

"61-16-5. SALES PROHIBITED WITHOUT LICENSE.--All sales of jewelry by auction within the scope of Chapter 61, Article 16 NMSA 1978 are forbidden unless a license issued pursuant to that article has been obtained and is in effect. No such sales whether licensed or not shall be held or be or remain open for business for a period of more than fifteen consecutive days exclusive of Sundays and legal holidays nor shall any license be granted for a sale of greater duration."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 18

CHAPTER 60

RELATING TO CAPITAL EXPENDITURES; EXPANDING THE PURPOSE FOR WHICH SEVERANCE TAX BONDS HAVE BEEN ISSUED TO INCLUDE RENOVATION OR BUILDING OF MORE THAN ONE WATER STORAGE TANK AT AZTEC IN SAN JUAN COUNTY; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SEVERANCE TAX BONDS--EXPANDING THE PURPOSE FOR WHICH ISSUED--APPROPRIATION OF BALANCES.--The balance of the proceeds from the sale of severance tax bonds authorized pursuant to Subsection Q of Section 4 of Chapter 113 of Laws 1992 is appropriated to the department of environment for the purpose of renovating or building additional water storage tanks at Aztec in San Juan county.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.SB 44

CHAPTER 61

RELATING TO PROFESSIONAL LICENSING; AMENDING THE NURSING PRACTICE ACT; PROVIDING FOR CERTIFICATION OF HEMODIALYSIS TECHNICIANS AND TRAINING PROGRAMS; BROADENING DUTIES OF NURSE PRACTITIONERS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 61-3-3 NMSA 1978 (being Laws 1991, Chapter 190, Section 2) is amended to read:

"61-3-3. DEFINITIONS.--As used in the Nursing Practice Act:

A. "board" means the board of nursing;

B. "certified nurse practitioner" means a registered nurse whose qualifications are endorsed by the board for expanded practice as a certified nurse practitioner and whose name and pertinent information are entered on the list of certified nurse practitioners maintained by the board;

C. "certified registered nurse anesthetist" means a registered nurse whose qualifications are endorsed by the board for expanded practice as a certified registered nurse anesthetist and whose name and pertinent information are entered on the list of certified registered nurse anesthetists maintained by the board;

D. "clinical nurse specialist" means a registered nurse whose qualifications are endorsed by the board for expanded practice as a clinical nurse specialist and whose name and pertinent information are entered on the list of clinical nurse specialists maintained by the board;

E. "collaboration" means the cooperative working relationship with another health care provider in the provision of patient care, and such collaborative practice includes the discussion of patient diagnosis and cooperation in the management and delivery of health care;

F. "expanded practice" means the practice of professional registered nursing by a registered nurse who has been prepared through a formal educational program in an institution of higher learning to function beyond the scope of practice of professional registered nursing;

G. "licensed practical nurse" means a nurse who practices licensed practical nursing and whose name and pertinent information are entered in the register of licensed practical nurses maintained by the board;

H. "licensed practical nursing" means the practice of a directed scope of nursing requiring basic knowledge of the biological, physical, social and behavioral sciences and nursing procedures, which practice is at the direction of a registered nurse, physician or dentist licensed to practice in this state. This practice includes, but is not limited to:

(1) contributing to the assessment of the health status of individuals, families and communities;

(2) participating in the development and modification of the plan of care;

(3) implementing appropriate aspects of the plan of care commensurate with education and verified competence;

(4) collaborating with other health care professionals in the management of health care; and

(5) participating in the evaluation of responses to interventions;

I. "nursing diagnosis" means a clinical judgment about individual, family or community responses to actual or potential health problems or life processes, which judgment provides a basis for the selection of nursing interventions to achieve outcomes for which the person making the judgment is accountable;

J. "practice of nursing" means assisting individuals, families or communities in maintaining or attaining optimal health, assessing and implementing a plan of care to accomplish defined goals and evaluating responses to care and treatment. This practice is based on specialized knowledge, judgment and nursing skills acquired through educational preparation in nursing and in the biological, physical, social and behavioral sciences and includes but is not limited to:

(1) initiating and maintaining comfort measures;

(2) promoting and supporting optimal human functions and responses;

(3) establishing an environment conducive to well-being or to the support of a dignified death;

(4) collaborating on the health care regimen;

(5) administering medications and performing treatments prescribed by a person authorized in this state or in any other state in the United States to prescribe them;

(6) recording and reporting nursing observations, assessments, interventions and responses to health care;

(7) providing counseling and health teaching;

(8) delegating nursing interventions that may be performed safely by others and are not in conflict with the Nursing Practice Act; and

(9) maintaining accountability for safe and effective nursing care;

K. "professional registered nursing" means the practice of the full scope of nursing requiring substantial knowledge of the biological, physical, social and behavioral sciences and of nursing theory and may include expanded practice pursuant to the Nursing Practice Act. This practice includes but is not limited to:

(1) assessing the health status of individuals, families and communities;

(2) establishing a nursing diagnosis;

(3) establishing goals to meet identified health care needs;

(4) developing a plan of care;

(5) determining nursing intervention to implement the plan of care;

(6) implementing the plan of care commensurate with education and verified competence;

(7) evaluating responses to interventions;

(8) teaching based on the theory and practice of nursing;

(9) managing and supervising the practice of nursing;

(10) collaborating with other health care professionals in the management of health care; and

(11) conducting nursing research; and

L. "registered nurse" means a nurse who practices professional registered nursing and whose name and pertinent informaton are entered in the register of licensed registered nurses maintained by the board."

Section 2

Section 2. Section 61-3-10.1 NMSA 1978 (being Laws 1989, Chapter 93, Section 1) is repealed and a new Section 61-3-10.1 NMSA 1978 is enacted to read:

"61-3-10.1. HEMODIALYSIS TECHNICIANS--TRAINING PROGRAMS--CERTIFICATION.--

A. As used in this section:

(1) "hemodialysis technician" means a person who is certified by the board to assist with the direct care of a patient undergoing hemodialysis, including performing arteriovenous punctures for dialysis access, injecting intradermal lidocaine in preparation for dialysis access, administering heparin bolus and connecting a dialysis access to isotonic saline or heparinized isotonic saline according to standards adopted by the board; and

. (2) "training program" means an educational program approved by the board for persons seeking certification as hemodialysis technicians.

B. Unless certified as a hemodialysis technician pursuant to this section, no person shall practice as a hemodialysis technician or use the title "certified hemodialysis technician", "hemodialysis technician" or other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a hemodialysis technician.

C. The board shall:

(1) maintain a permanent register of all hemodialysis technicians;

(2) adopt rules and regulations that set reasonable requirements for training programs, including prescribing standards and approving curricula;

(3) provide for periodic evaluation of training programs at least every two years;

(4) grant, deny or withdraw approval from training programs for failure to meet prescribed standards; and

(5) conduct hearings on charges relating to discipline of a hemodialysis technician and may deny certification, place a technician on probation or suspend or revoke a certificate in accordance with the Uniform Licensing Act.

D. Every applicant for certification as a hemodialysis technician shall pay the required application fee, submit written evidence of having completed a training program and successfully complete a board-approved examination. The board shall issue a certificate to any person who fulfills the requirements for certification.

E. A certificate shall be renewed biennially upon payment of the required fee, proof of employment as a hemodialysis technician and proof of having met any continuing education requirements adopted by the board.

F. The board shall set the following nonrefundable fees:

(1) for initial certification of a hemodialysis technician by examination, not to exceed sixty dollars ($60.00);

(2) for renewal of certification of a hemodialysis technician, not to exceed sixty dollars ($60.00);

(3) for reactivation of a certificate of a hemodialysis technician after failure to renew a certificate, not to exceed thirty dollars ($30.00);

(4) for initial review and approval of a training program, not to exceed one hundred fifty dollars
($150);

(5) for each subsequent review and approval of a training program where the hemodialysis unit has changed the program, not to exceed fifty dollars ($50.00);

(6) for each subsequent review and approval of a training program when a change has been required by a change in board policy, rules or regulations, not to exceed twenty-five dollars ($25.00); and

(7) for periodic evaluation of a training program, not to exceed seventy-five dollars ($75.00)."

Section 3

Section 3. Section 61-3-12 NMSA 1978 (being Laws 1968, Chapter 44, Section 9, as amended) is amended to read:

"61-3-12. EXAMINATION--NOTICE TO APPLICANTS.--The board shall provide for the examination of all applicants seeking licensure under the provisions of the Nursing Practice Act."

Section 4

Section 4. Section 61-3-23 NMSA 1978 (being Laws 1977, Chapter 220, Section 14, as amended) is amended to read:

"6l-3-23. PERMIT TO PRACTICE FOR GRADUATE NURSES.--

A. The board may issue a permit to practice to an applicant upon completion of an approved course of study and upon application to take the first available national licensing examination after graduation.

B. The permit to practice shall be issued for practice under direct supervision at a specified place of employment in the state.

C. The permit to practice shall be valid from issuance until the results of the national licensing examination are disseminated by the board office to the examinee, at which time the permit is void and the applicant who has passed the examination may be issued a license to practice."

Section 5

Section 5. Section 61-3-23.2 NMSA 1978 (being Laws 1991, Chapter 190, Section 14) is amended to read:

"61-3-23.2. CERTIFIED NURSE PRACTITIONER--QUALIFICATIONS--PRACTICE--EXAMINATION.--

A. The board may endorse for expanded practice as a certified nurse practitioner an applicant who furnishes evidence satisfactory to the board that the applicant:

(1) is a registered nurse;

(2) has successfully completed a post-graduate program for the education and preparation of nurse practitioners;

(3) has successfully completed the national certifying examination in the applicant's specialty area; and

(4) is certified by a national nursing organization.

B. Certified nurse practitioners may:

(1) perform an expanded practice that is beyond the scope of practice of professional registered nursing; and

(2) make independent decisions regarding health care needs of the individual, family or community and carry out health regimens, including the prescription

and distributing of dangerous drugs, including controlled substances included in Schedules II through V of the Controlled Substances Act.

C. Certified nurse practitioners who have fulfilled requirements for prescriptive authority may prescribe in accordance with rules, regulations, guidelines and formularies for individual certified nurse practitioners promulgated by the board. As used in this subsection, "prescriptive authority" means the ability of the certified nurse practitioner to practice independently, serve as a primary health care provider and as necessary collaborate with licensed medical doctors, osteopathic physicians or podiatrists.

D. Certified nurse practitioners who have fulfilled requirements for prescribing drugs may distribute to their patients dangerous drugs, including controlled substances included in Schedules II through V of the Controlled Substances Act, that have been prepared, packaged or fabricated by a registered pharmacist or doses of drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act and the New Mexico Drug, Device and Cosmetic Act.

E. Certified nurse practitioners endorsed by the board on and after December 2, 1985 shall successfully complete the national certifying examination and shall maintain certification in their specialty area. Certified nurse practitioners endorsed by the board prior to December 2, 1985 are not required to sit for a national certification examination or be certified by a national organization."

Section 6

Section 6. Section 61-3-28 NMSA 1978 (being Laws 1968, Chapter 44, Section 24, as amended) is amended to read:

"6l-3-28. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW--APPLICATION OF UNIFORM LICENSING ACT--LIMITATION.--

A. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any license held or applied for under the Nursing Practice Act or reprimand or place a licensee on probation upon grounds that the licensee or applicant:

(l) is guilty of fraud or deceit in procuring or attempting to procure a license or certificate of registration;

(2) is convicted of a felony;

(3) is unfit or incompetent;

(4) is intemperate or is addicted to the use of habit-forming drugs;

(5) is mentally incompetent;

(6) is guilty of unprofessional conduct as defined by the rules and regulations adopted by the board pursuant to the Nursing Practice Act;

(7) has willfully or repeatedly violated any provisions of the Nursing Practice Act, including any rule or regulation adopted by the board pursuant to that act; or

(8) was licensed to practice nursing in any jurisdiction, territory or possession of the United States or another country and was the subject of disciplinary action as a licensee for acts similar to acts described in this subsection. A certified copy of the record of the jurisdiction, territory or possession of the United States or another country taking the disciplinary action is conclusive evidence of the action.

B. Disciplinary proceedings may be instituted by any person, shall be by sworn complaint and shall conform with the provisions of the Uniform Licensing Act. Any party to the hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. Any person filing a sworn complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

D. Notwithstanding Section 61-1-3.1 NMSA 1978, the board shall not initiate a disciplinary action more than two years after the date that it receives a sworn complaint.

E. The time limitation contained in Subsection D of this section shall not be tolled by any civil or criminal litigation in which the licensee or applicant is a party, arising substantially from the same facts, conduct, transactions or occurrences that would be the basis for the board's disciplinary action."SB 145

CHAPTER 62

RELATING TO EDUCATION; AMENDING CERTAIN SECTIONS OF THE PUBLIC SCHOOL CODE PERTAINING TO HOME SCHOOLS.

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

Section 1

Section 1. Section 22-1-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 2, as amended by Laws 1991, Chapter 137, Section 1 and also by Laws 1991, Chapter 187, Section 1) is amended to read:

"22-1-2. DEFINITIONS.--As used in the Public School Code:

A. "state board" means the state board of education;

B. "state superintendent" means the superintendent of public instruction;

C. "department of education" means the state department of public education;

D. "certified school instructor" means any person holding a valid certificate authorizing the person to teach, supervise an instructional program, counsel or provide special instructional services in the public schools of the state;

E. "certified school administrator" means any person holding a valid cetificate authorizing the person to administer in the public schools of the state;

F. "certified school employee" or "certified school personnel" means any employee who is either a certified school instructor or a certified school administrator or both;

G. "non-certified school employee" means any employee who is not a certified school employee;

H. "certificate" means a certificate issued by the state board authorizing a person to teach, supervise an instructional program, counsel, provide special instructional services or administer in the public schools of the state;

I. "chief" or "director" means the state superintendent or his designee unless the context clearly indicates otherwise;

J. "private school" means a school offering on-site programs of instruction not under the control, supervision or management of a local school board, exclusive of home instruction offered by the parent, guardian or one having custody of the student;

K. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;

L. "local school board" means the governing body of a school district;

M. "public school" means that part of a school district that is a single attendance center where instruction is offered by a certified school instructor or a group of certified school instructors and is discernible as a building or group of buildings generally recognized as either an elementary, secondary, junior high or high school or any combination thereof;

N. "school year" means the total number of teaching days offered by public schools in a school district during a period of twelve consecutive months;

O. "consolidation" means the combination of part or all of the geographical area of an existing school district with part or all of the geographical area of one or more contiguous existing school districts;

P. "consolidated school district" means a school district created by order of the state board by combining part or all of the geographical area of an existing school district with part or all of the geographical area of one or more contiguous existing school districts;

Q. "state institution" means the New Mexico military institute, the New Mexico school for the visually handicapped, the New Mexico school for the deaf, the New Mexico boys' school, the New Mexico youth diagnostic and development center, the Los Lunas medical center, the Fort Stanton hospital, the Las Vegas medical center or the Carrie Tingley crippled children's hospital;

R. "state educational institution" means an institution enumerated in Article 12, Section 11 of the constitution of New Mexico;

S. "forty-day report" means the report of qualified student membership of each school district and of those eligible to be qualified students but enrolled in a private school or a home school for the first forty days of school;

T. "school" means any supervised program of instruction designed to educate a person in a particular place, manner and subject area;

U. "school-age person" means any person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year and who has not received a high school diploma or its equivalent. A maximum age of twenty-one shall be used for persons who are classified as special education membership as defined in Section 22-8-2 NMSA 1978 or as residents of state institutions;

V. "home school" means the operation by a parent, guardian or other person having custody of a school-age person who instructs a home study program that provides a basic academic educational program, including but not limited to reading, language arts, mathematics, social studies and science; and

W. "school building" means a public school, an administration building and related school structure or facilities, including teacher housing, as may be owned, acquired or constructed by the local school board and as necessary to carry out the powers and duties of the local school board."

Section 2

Section 2. Section 22-1-2.1 NMSA 1978 (being Laws 1985, Chapter 21, Section 2) is amended to read:

"22-1-2.1. HOME SCHOOL--REQUIREMENTS.--Any person operating or intending to operate a home school shall:

A. notify the superintendent of schools of the school district in which the person is a resident of the establishment of a home school within thirty days of its establishment and notify the superintendent of schools of the school district on or before April 1 of each subsequent year of operation;

B. maintain records of student attendance and disease immunization and furnish such records to the superintendent of schools of the school district;

C. provide instruction by a person possessing at least a high school diploma or its equivalent; and

D. test students annually to assess student achievement according to the statewide and local school district testing programs as determined by the state superintendent. The home school child shall take such achievement tests at a time and place and in a manner consistent with the procedures established by the state superintendent."SM 202

CHAPTER 63

RELATING TO CAPITAL EXPENDITURES; AUTHORIZING AN EXTENSION OF TIME FOR EXPENDITURE OF CERTAIN PROCEEDS OF SEVERANCE TAX BONDS THAT PROVIDE FOR THE FIRST PHASE OF A SEWAGE COLLECTION SYSTEM IN DONA ANA IN DONA ANA COUNTY; MAKING AN APPROPRIATION.

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

Section 1

Section 1. SEVERANCE TAX BONDS--EXTENDED PERIOD FOR EXPENDITURES OF FUNDS.--Two hundred twenty thousand dollars ($220,000) from the proceeds of the sale of the severance tax bonds appropriated to the environmental improvement division of the health and environment department pursuant to Paragraph (1) of Subsection H of Section 2 of Chapter 6 of Laws 1990 (1st. S.S.) shall be expended for its original purpose but the period for expenditure of the authorization is extended through the eighty-fourth fiscal year.SB 211

CHAPTER 64

RELATING TO TRANSPORTATION; CREATING THE TRANSPORTATION BUSINESS COUNCIL.

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

Section 1

Section 1. TRANSPORTATION BUSINESS COUNCIL CREATED--COMPOSITION--DUTIES.--

A. There is created the "transportation business council".

B. The transportation business council shall be composed of eight members. Members of the council shall include the governor or his designee, the secretary of taxation and revenue or his designee, the chairman of the state corporation commission or his designee, the secretary of economic development or his designee, the secretary of public safety or his designee, the secretary of highway and transportation or his designee and two New Mexico based members appointed by the governor to represent the motor carrier industry.

C. The members of the transportation business council shall elect a chairman from among their membership. The council shall meet at the call of the chairman.

D. The members of the transportation business council shall:

(1) familiarize themselves with issues currently impacting the transportation industry;

(2) review state law, policies and strategies impacting the transportation industry and make recommendations to the governor and the legislature necessary to improve and stabilize that industry; and

(3) review current tax policy and structure affecting transportation providers and make recommendations for changes in tax policy and structure to the governor and the legislature.

Section 2

Section 2. REPEAL.--Section 1 of this act is repealed effective July 1, 1994.SB 223

CHAPTER 65

RELATING TO ALCOHOL; INCREASING THE RATE OF THE LIQUOR EXCISE TAX; PROVIDING FOR STATE AND LOCAL PROGRAMS AND SERVICES FOR PREVENTION, EDUCATION, SCREENING, TREATMENT, ENFORCEMENT AND OTHER PURPOSES RELATED TO DWI AND ALCOHOL ABUSE; ENACTING THE LOCAL DWI GRANT PROGRAM ACT; CREATING A DWI OVERSIGHT TASK

FORCE; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Local DWI Grant Program Act".

Section 2

Section 2. DEFINITIONS.--As used in the Local DWI Grant Program Act:

A. "council" means the DWI grant council; and

B. "division" means the local government division of the department of finance and administration.

Section 3

Section 3. LOCAL DWI GRANT PROGRAM--FUND.--

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

B. The "local DWI grant fund" is created in the state treasury and shall be administered by the division. Money in the fund is appropriated to the division to make grants to municipalities and counties upon council approval in accordance with the program established under the Local DWI Grant Program Act. No more than five percent of any appropriation to the fund in any fiscal year shall be expended for administration of the grant program. Balances in the fund at the end of any fiscal year shall not revert to the general fund.

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

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

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

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

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

Section 4

Section 4. DWI GRANT COUNCIL--MEMBERSHIP--DUTIES.--

A. The "DWI grant council" is created and shall consist of the president of the New Mexico municipal league, the president of the New Mexico association of counties, the secretary of health or the secretary's designee, the secretary of finance and administration or the secretary's designee, the chief of the traffic safety bureau of the state highway and transportation department and two representatives of local governing bodies who shall be appointed by the governor so as to provide geographic diversity.

B. Appointed members shall be appointed to a two-year term. In the event of a vacancy, the governor shall appoint a member for the remainder of the term.

C. The ouncil shall meet as necessary to receive applications, consider grant requests and award DWI grants pursuant to the Local DWI Grant Program Act. All actions of the council require the affirmative vote of a majority of the members of the council.

D. Members of the council shall be reimbursed for per diem and mileage in accordance with the Per Diem and Mileage Act.

Section 5

Section 5. ADMINISTRATION OF DWI GRANT PROGRAM--REGULATIONS.--

A. The division shall administer the DWI grant program and shall serve as staff to the council.

B. The division with the advice and approval of the council shall adopt regulations necessary for operation of the grant program, including:

(1) forms and procedures for the application process for the grant program;

(2) documentation to be provided by the applicant to assure compliance with the grant guidelines and other provisions of the Local DWI Grant Program Act;

(3) procedures and guidelines for review, evaluation and approval of grant awards;

(4) procedures and guidelines for oversight, evaluation and audit of DWI grantees to assure that grants are being administered in the manner and for the purposes that the grant was awarded; and

(5) design of an evaluation mechanism for DWI grant programs and services and submission by each grantee of an annual report on each grant program or service and its effectiveness and outcomes.

Section 6

Section 6. Section 7-17-2 NMSA 1978 (being Laws 1966, Chapter 49, Section 2, as amended) is amended to read:

"7-17-2. DEFINITIONS.--As used in the Liquor Excise Tax Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters:

(1) "spirituous liquors" means alcoholic beverages except fermented beverages such as wine, beer and ale;

(2) "beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water and includes porter, beer, ale and stout;

(3) "fortified wine" means wine containing more than fourteen percent alcohol by volume when bottled or packaged by the manufacturer, but does not include:

(a) wine that is sealed or capped by cork closure, aged two years or more and sold only in 750 milliliter bottles; or

(b) wine that contains more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and has not been produced with the addition of wine spirits, brandy or alcohol; and

(4) "wine" includes the words "fruit juices" and means alcoholic beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, that do not contain less than one-half of one percent nor more than twenty-one percent alcohol by volume;

B. "distribute" means the transfer of alcoholic beverages by a wholesaler to another person by any means other than by sale, but does not include the return by a wholesaler to a distiller, rectifier, brewer or winer of alcoholic beverages that are spoiled or otherwise damaged so as to be unfit for sale or consumption;

C. "department", "director" or "division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

D. "micro brewer" means any person who produces less than five thousand barrels of beer in a year;

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

F. "small winer or winegrower" means any person who produces less than two hundred twenty thousand liters of wine in a year; and

G. "wholesaler" means any person holding a license issued under Section 60-6A-1 NMSA 1978 or any person selling alcoholic beverages that were not purchased from a person holding a license issued under Section 60-6A-1 NMSA 1978."

Section 7

Section 7. Section 7-17-5 NMSA 1978 (being Laws 1983, Chapter 213, Section 17, as amended) is amended to read:

"7-17-5. IMPOSITION AND RATE OF LIQUOR EXCISE TAX.--There is imposed on any wholesaler who sells or distributes alcoholic beverages on which the tax imposed by this section has not been paid an excise tax, to be referred to as the "liquor excise tax", at the following rates on alcoholic beverages sold or distributed:

A. on spirituous liquors, one dollar fifty cents ($1.50) per liter;

B. on beer, except as provided in Subsection E of this section, thirty-five cents ($.35) per gallon;

C. on wine, except as provided in Subsections D and F of this section, thirty-four cents ($.34) per liter;

D. on fortified wine, one dollar fifty cents ($1.50) per liter;

E. on beer manufactured or produced by each micro brewer sold in this state, provided that proof is furnished to the department that the beer was manufactured or produced by a micro brewer, twenty-five cents ($.25) per gallon; and

F. on wine manufactured or produced by each small winer or winegrower sold in this state, provided that proof is furnished to the department that the wine was manufactured or produced by a small winer or winegrower:

(1) from July 1, 1992 to June 30, 1994, ten cents ($.10) per liter on the first eighty thousand liters sold and twenty cents ($.20) per liter on all liters sold over eighty thousand but less than two hundred twenty thousand; and

(2) after June 30, 1994, twenty-five cents ($.25) per liter on all liters sold."

Section 8. Effective July 1, 1994, Section 7-17-5 NMSA 1978 (being Laws 1983, Chapter 213, Section 17, as amended and as further amended by Section 7 of this act) is repealed and a new Section 7-17-5 NMSA 1978 is enacted to read:

"7-17-5. IMPOSITION AND RATE OF LIQUOR EXCISE TAX.--There is imposed on any wholesaler who sells or distributes alcoholic beverages on which the tax imposed by this section has not been paid an excise tax, to be referred to as the "liquor excise tax", at the following rates on alcoholic beverages sold or distributed:

A. on spirituous liquors, one dollars sixty cents ($1.60) per liter;

B. on beer, forty-one cents ($.41) per gallon;

C. on wine, except as provided in Subsections D and F of this section, forty-five cents ($.45) per liter;

D. on fortified wine, one dollar fifty cents ($1.50) per liter;

E. on beer manufactured or produced by each micro brewer sold in this state, provided that proof is furnished to the department that the beer was manufactured or produced by a micro brewer, twenty-five cents ($.25) per gallon; and

F. on wine manufactured or produced by each small winer or winegrower sold in this state, provided that proof is furnished to the department that the wine was manufactured or produced by a small winer or winegrower:

(1) from July 1, 1992 to June 30, 1994, ten cents ($.10) per liter on the first eighty thousand liters sold and twenty cents ($.20) per liter on all liters sold over eighty thousand but less than two hundred twenty thousand; and

(2) after June 30, 1994, twenty-five cents ($.25) per liter on all liters sold."

Section 9

Section 9. Section 43-3-8 NMSA 1978 (being Laws 1985, Chapter 185, Section 1) is amended to read:

"43-3-8. SHORT TITLE.--Chapter 43, Article 3, NMSA 1978 may be cited as the "Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act"."
Section 10. Section 43-3-10 NMSA 1978 (being Laws 1985, Chapter 185, Section 3, as amended) is amended to read:

"43-3-10. DEFINITIONS.--As used in the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act:

A. "aftercare" means the monitoring and continuation of treatment and the rendering of other rehabilitative services in the community to a patient following a period of inpatient treatment in order to help the patient maintain and continue his recovery;

B. "board" means the board of county commissioners of a county;

C. "department" means the department of health;

D. "detoxification program" means a residential program which provides physical care, education and counseling to persons who enter the program physically dependent on alcohol, to whom the program then offers the services necessary to provide for their health and safety during the process of physical withdrawal from alcohol dependence and to motivate the persons to accept further treatment for alcoholism as appropriate to their cases;

E. "DWI program" means a community program specifically designed to provide treatment, aftercare or prevention of or education regarding driving while under the influence of alcohol or drugs;

F. "incarceration and treatment facility" means a minimum security detention facility that provides a DWI program;

G. "long-term rehabilitation program" means a residential program offering individualized habilitative or rehabilitative programming to chronic alcoholics, ordinarily involving a residential stay of forty-five days or more, the object of which is to equip the

alcoholic to establish a sober, productive life in the community and to assist the alcoholic in establishing such a life;

H. "outpatient program" means a program offering counseling, education, consultative and related services to alcohol abusers, alcoholics, families and other parties in the community who are not resident in an alcoholism treatment program;

I. "planning council" means a county DWI planning council;

J. "prevention program" means any program which has as its objective the amelioration of conditions known to motivate excessive or abusive use of alcohol and other drugs or to increase the ability of the individual to resist pressures from other people to use or abuse alcohol and other drugs, through such techniques as affective education, values clarification, saying no to peer pressure, recreational alternatives to substance abuse and wilderness experience;

K. "screening program" means a program that provides screening or examination by alcoholism treatment professionals of persons charged with or convicted of driving while intoxicated or other offenses to determine whether the individual is:

(1) physically dependent on alcohol and thus suffering from the disease of alcoholism;

(2) an alcohol abuser who has not yet developed the alcoholism disease syndrome but has an entrenched pattern of pathological use of alcohol and social or occupational impairment in function from alcohol abuse; or

(3) neither an alcoholic nor an alcohol abuser such that alcoholism treatment is not necessary;
and that providesreferral or recommendation of such persons to the most appropriate treatment;

L. "short-term rehabilitation program" means a residential program offering an organized counseling and educational curriculum for the treatment of alcoholism, ordinarily involving a residential stay of forty-five days or less and serving the needs of persons from a region of the state; and

M. "statewide alcoholism services plan" means the comprehensive plan for a statewide services network developed by the department that documents the extent of New Mexico's alcoholism problem and statewide needs for prevention, screening, detoxification, short-term and long-term rehabilitation, outpatient programs and DWI programs. The plan shall be based on the continuum of care concept of a comprehensive alcoholism prevention and treatment system."

Section 11

Section 11. Section 43-3-11 NMSA 1978 (being Laws 1985, Chapter 185, Section 4) is amended to read:

"43-3-11. POWERS AND DUTIES OF THE DEPARTMENT.--

A. The department shall adopt rules to provide for:

(1) minimum standards of service for prevention programs, screening programs, detoxification programs, short-term rehabilitation programs, long-term rehabilitation programs, outpatient programs and DWI programs which contract for funds under the provisions of the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act; provided that such rules shall, before adoption, have been presented to all interested parties in a public hearing;

(2) the format and guidelines for county DWI plans and the criteria for evaluating them;

(3) procedures and forms for applying for a contract for funds pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act;

(4) procedures for review and recommendations of such applications by the secretary of health;

(5) procedures for ensuring compliance with standards of service by contractors receiving funds under the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act; and

(6) procedures for reporting of programmatic and financial information necessary to evaluate the effectiveness of programs funded through the provisions of the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act. Evaluation of program effectiveness shall include an analysis of outcome-based measures and the impact of the programs on the incidence of driving while under the influence of intoxicating liquor or drugs and shall be reported to the legislature annually.

B. Rules adopted by the department shall become effective when filed according to the State Rules Act.

C. The department shall provide technical assistance and training to assist each county as needed in developing its DWI plan.

D. The department shall review the impact of the programs on the reduction of the incidence of driving while under the influence of intoxicating liquor or drugs, approve county DWI plans and incorporate these plans into the statewide alcoholism services plan in accordance with Section 43-3-13 NMSA 1978.

E. The department is authorized to enter into contracts to provide services and programs consistent with the priorities set forth in the statewide alcoholism services plan, subject to the availability of appropriations for that purpose.

F. In awarding contract funds, the department shall emphasize development of statewide prevention and early intervention programming and shall work with other state agencies and local school boards and administrations to encourage the development of prevention, education and early intervention programs involving the schools.

G. Any screening programs funded pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act shall be established in collaboration with the district, magistrate, metropolitan and municipal courts to be served by the screening program. Whenever feasible, the screening program shall not be provided by an alcoholism treatment program serving the judicial districts involved in order to avoid conflict of interest in recommending that offenders enter treatment."

Section 12

Section 12. Section 43-3-13 NMSA 1978 (being Laws 1985, Chapter 185, Section 6) is amended to read:

"43-3-13. STATEWIDE ALCOHOLISM SERVICES PLAN.--

A. The department shall develop and update annually prior to August 30 a statewide alcoholism services plan that documents the extent of New Mexico's alcoholism problem. The plan shall describe the effectiveness of existing services and shall document needs based on a statewide assessment that reflects local planning, concerns and priorities.

B. The department shall annually invite comment and review of the alcoholism services plan for a period of no less than thirty days prior to its publication.

C. The department shall make decisions concerning proposed alcoholism and alcohol abuse programs consistent with the priorities and service system concepts contained in the current statewide alcoholism services plan."

Section 13

Section 13. A new section of the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act is enacted to read:

"COUNTY DWI PLANNING COUNCILS AUTHORIZED--MEMBERSHIP.--

A. A board may create a county DWI planning council and appoint the members for terms set by the board. The members of the planning council shall be

selected to represent a broad spectrum of interests and may include county officials, DWI program and service providers, law enforcement officers, alcohol counselors and therapists, school administrators and local political leaders.

B. The members of a planning council shall elect from among the membership of the planning council a chairman for a term designated by the board. The planning council shall meet at the call of the chairman.

C. Planning council members shall receive per diem and mileage reimbursement as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Section 14

Section 14. A new section of the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act is enacted to read:

"COUNTY DWI PLANS.--

A. With the advice of the planning council, the board or its designee shall prepare a county DWI plan. Upon approval of the DWI plan by the board and the planning council, the board shall submit the DWI plan to the department for approval and integration into the statewide alcoholism services plan.

B. Two or more boards may agree to establish a multicounty DWI plan.

C. Each county DWI plan shall include:

(1) a county needs assessment that identifies and quantifies:

(a) the major factors that affect access to and the success or effectiveness of local DWI programs;

(b) the gaps and needs not covered in local DWI programs; and

(c) the extent to which county residents use DWI programs available in other counties;

(2) an inventory of existing public and private DWI providers and programs in the county, including identification of any DWI program duplication, and existing governmental funding and other resources, including county funding, for county DWI programs; and

(3) recommendations and goals for providing, improving and funding DWI programs in the county, based on the needs assessment and inventory,

and including proposals to eliminate duplication of programs and services, improve access to programs and services, establish new programs or services, provide additional funding, in-kind contributions and other resources for existing programs and where feasible use DWI programs available in other counties.

D. The county DWI plan shall be updated at the request of the board or the department if the plan as implemented through the statewide alcoholism services plan is not achieving its stated goals, if the needs of the county have changed or if the department determines that the distribution of funds is not having an impact on the incidence of driving while under the influence of intoxicating liquor or drugs."

Section 15

Section 15. DWI OVERSIGHT TASK FORCE CREATED--TERMINATION.--The "DWI oversight task force" is created. The task force shall function from the date of its appointment until the first day of December prior to the second session of the forty-third legislature.

Section 16

Section 16. MEMBERSHIP--APPOINTMENT--VACANCIES.--

A. The DWI oversight task force shall be composed of six legislative members, six public members and thirteen advisory members from the executive and judicial branches of government.

B. Three members of the house of representatives shall be appointed by the speaker of the house of
representatives and three members of the senate shall be appointed by the committees' committee of the senate, or, if the senate appointments are made in the interim, by the president pro tempore of the senate after consultation with the agreement of a majority of the members of the committee's committee. Members shall be appointed from each house so as to give the two major political parties in each house the same proportional representation on the task force as prevails in each house; however, in no event shall either party have less than one member from each house on the task force. Vacancies on the task force shall be filled by appointment in the same manner as the original appointments.

C. Three public members shall be appointed to the task force by the speaker of the house of representatives and three public members shall be appointed by the president pro tempore of the senate so as to represent the state's ethnic and geographic diversity. The public members of the task force shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act plus reimbursement for reasonable actual expenses.

D. Additionally the task force shall include the following advisory members:

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

(2) the attorney general or his designee;

(3) the president of the district judges association or his designee;

(4) the secretary of health or his designee;

(5) the secretary of children, youth and families or his designee;

(6) the president of the magistrate judges association or his designee;

(7) the president of the municipal judges association or his designee;

(8) the chief justice of the supreme court or his designee;

(9) the chief judge of the Bernalillo county metropolitan court or his designee;

(10) the chief of the traffic safety bureau of the state highway and transportation department;

(11) the chief public defender;

(12) one district attorney appointed by the president of the district attorney's association; and

(13) the secretary of taxation and revenue or the secretary's designee.

E. The speaker of the house of representatives and the president pro tempore of the senate shall each designate one co-chairman of the task force.

Section 17

Section 17. DUTIES.--

A. After its appointment, the DWI oversight task force shall hold one organizational meeting to develop a workplan and budget for the ensuing interim. The workplan and budget shall be submitted to the legislative council for approval.

B. Upon approval of the workplan and budget by the legislative council, the task force shall oversee the implementation of the legislative directives relating to alcohol and driving while under the influence of intoxicating liquor or drugs, including:

(1) implementation of the enhanced penalties and enforcement needs;

(2) state and community-based programs and services providing DWI and alcohol and drug abuse prevention, screening and treatment;

(3) DWI and alcohol and drug abuse education, counseling and public health and awareness programs; and

(4) court automation.

C. Additionally the task force shall address other concerns relating to driving while under the influence of intoxicating liquor or drugs and other alcohol and drug abuse issues, including:

(1) development and coordination of joint state-tribal programs relating to driving while under the influence; and

(2) review and better coordination of intervention, screening and treatment programs among the courts, the department of health and the corrections department.

D. The task force shall recommend legislation or changes if any are found to be necessary to the legislature.

Section 18

Section 18. REPORT.--The DWI oversight task force shall make a report of its findings and recommendations for the consideration of the second session of the forty-first legislature; the first session of the forty-second legislature; the second session of the forty-second legislature; the first session of the forty-third legislature and the second session of the forty-third legislature. The reports and suggested legislation shall be made available to the legislative council on or before December 15 preceding each session.

Section 19

Section 19. STAFF.--The staff for the DWI oversight task force shall be provided by the legislative council service.

Section 20

Section 20. DWI PROGRAM FUND CREATED--APPROPRIATION.--

A. The "DWI program fund" is created in the state treasury and shall be administered by the department of finance and administration. Money in the fund is subject to appropriation by the legislature to the agencies and for the purposes specified and in accordance with the limitations and requirements in this section. Balances in the fund at the end of any year shall not revert to the general fund.

B. Money in the DWI program fund may be appropriated to any of the following agencies for the following purposes:

(1) to the department of health to contract for community DWI programs and services and for alcoholism and alcohol abuse prevention, screening and treatment programs and services pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act;

(2) to the children, youth and families department to provide public school health education and counseling programs that emphasize alcohol abuse prevention;

(3) to the traffic safety bureau of the state highway and transportation department for DWI education, awareness and information programs;

(4) to the department of public safety to provide additional special investigators for enforcement of the Liquor Control Act;

(5) to the alcohol and gaming division of the regulation and licensing department for enforcement of the provisions of the Liquor Control Act and administration of the Alcohol Server Education Act, if enacted into law by the first session of the forty-first legislature;

(6) to the public defender department for costs related to workload increases due to increases in DWI caseloads;

(7) to the district attorneys for costs related to workload increases due to increases in DWI caseloads;

(8) to the magistrate courts division of the administrative office of the courts for magistrate court costs related to workload increases due to increases in DWI caseloads, including costs of probation services;

(9) to the Bernalillo county metropolitan court for costs related to workload increases due to increases in DWI caseloads;

(10) to the district courts for costs related to workload increases due to increases in DWI caseloads;

(11) to the taxation and revenue department for DWI costs; and

(12) to the school of medicine at the university of New Mexico for prevention, research and intervention in the field of fetal alcohol syndrome.

C. Prior to the second session of the forty-first legislature, agencies eligible for funds under this section shall determine their needs for such purposes and develop recommendations with supporting data to justify the need for increased funding to expand existing programs and services or to implement new programs and services. The agencies shall develop these recommendations as part of the budget process as specified in Sections 6-3-18 through 6-3-22 NMSA 1978.

Section 21

Section 21. TEMPORARY PROVISION--TRANSFER.--On July 1, 1993, all balances in the community alcoholism treatment and detoxification fund shall be transferred to the general fund.

Section 22

Section 22. APPROPRIATIONS.--

A. Five million five hundred thousand dollars ($5,500,000) is appropriated from the general fund in the eighty-second fiscal year to the local DWI grant fund for expenditure by the local government division of the department of finance and administration for the purpose of making grants to counties and municipalities pursuant to the provisions of the Local DWI Grant Program Act. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall not revert to the general fund.

B. Five million one hundred thousand dollars ($5,100,000) is appropriated from the general fund to the DWI program fund in the eighty-second fiscal year for expenditure in accordance with the provisions of Section 20 of this act. Any unexpended or unencumbered balances remaining at the end of the eighty-second fiscal year shall not revert to the general fund.

C. Twenty thousand dollars ($20,000) is appropriated from the general fund to the legislative council service for expenditure in the eighty-second fiscal year for payment of the salaries and expenses of technical, legal and clerical staff, purchase of necessary equipment and supplies and reimbursement of the per diem and mileage expenses of the DWI oversight task force.

D. Nine million two hundred thousand dollars ($9,200,000) is appropriated from the general fund to the department of health for expenditure in the eighty-second fiscal year to contract for community DWI programs and services and for alcoholism and alcohol abuse prevention, screening and treatment programs and services for adults

and juveniles pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.
E. Ninety-eight thousand three hundred thirty-six dollars ($98,336) is appropriated from the general fund to the alcohol and gaming division of the regulation and licensing department for expenditure in the eighty-second fiscal year for two full-time equivalent positions and related costs for the administration of the server training program and to hold administrative hearings pursuant to the Liquor Control Act.

Section 23

Section 23. REPEAL.--Sections 7-1-6.3 and 43-3-7 NMSA 1978 (being Laws 1983, Chapter 214, Section 5 and Laws 1981, Chapter 39, Section 126, as amended) are repealed.

Section 24

Section 24. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 341, 30, 1 & 286

CHAPTER 66

RELATING TO ALCOHOL; AUTHORIZING PROTECTIVE CUSTODY OF AN INTOXICATED PERSON; PROVIDING FOR LIMITED DRIVING PRIVILEGES; PROVIDING ENHANCED SENTENCING FOR AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; LOWERING THE STANDARD FOR A PRESUMPTION OF INTOXICATION WHEN A PERSON DRIVES UNDER THE INFLUENCE OF INTOXICATING LIQUOR; PROVIDING MANDATORY CRIMINAL PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 3-17-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-16-1, as amended by Laws 1990, Chapter 100, Section 1 and also by Laws 1990, Chapter 113, Section 1) is amended to read:

"3-17-1. ORDINANCES--PURPOSES.--The governing body of a municipality may adopt ordinances or resolutions not inconsistent with the laws of New Mexico for the purpose of:

A. effecting or discharging the powers and duties conferred by law upon the municipality;

B. providing for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the municipality and its inhabitants; and

C. enforcing obedience to the ordinances by prosecution in the municipal court and metropolitan courts and upon conviction the imposition of:

(1) except for those violations of ordinances described in Paragraphs (2) and (3) of this subsection, a fine of not more than five hundred dollars ($500) or imprisonment for not more than ninety days or both;

(2) for a violation of an ordinance prohibiting driving a motor vehicle while under the influence of intoxicating liquor or drugs, a fine of not more than one thousand dollars ($1,000) or imprisonment for not more than three hundred sixty-four days or both; and

(3) for violations of an industrial user wastewater pretreatment ordinance as required by the United States environmental protection agency, a fine of not more
than one thousand dollars ($1,000) a day for each violation."

Section 2

Section 2. Section 4-37-3 NMSA 1978 (being Laws 1975, Chapter 312, Section 3, as amended) is amended to read:

"4-37-3. ENFORCING COUNTY ORDINANCES--JURISDICTION.--

A. County ordinances may be enforced by prosecution for violations of those ordinances in any court of competent jurisdiction of the county. Penalties for violations of any county ordinances shall not exceed a fine of three hundred dollars ($300) or imprisonment for ninety days or both the fine and imprisonment; except that a county may enact and enforce ordinances that impose the following penalties in addition to any other penalty provided by law:

(1) no more than one thousand dollars ($1,000) for discarding or disposing of refuse, litter or garbage on public or private property in any manner other than by disposing it in an authorized landfill;

(2) no more than five thousand dollars ($5,000) for the improper or illegal disposal of hazardous materials or waste in any manner other than as provided for in the Hazardous Waste Act; and

(3) no more than imprisonment for three hundred sixty-four days or a fine of one thousand dollars ($1,000), or both, for violation of an ordinance regarding driving while under the influence of intoxicating liquor or drugs.

B. Prosecution of violations under this section may be commenced by the issuance of a citation charging the violation. Citations may be issued by the code enforcement officer of the county or an employee or employees of the county authorized by the board of county commissioners to issue such citations."

Section 3

Section 3. Section 43-2-22 NMSA 1978 (being Laws 1973, Chapter 331, Section 7, as amended) is amended to read:

"43-2-22. TRANSPORTATION TO JAIL--PROTECTIVE CUSTODY.--

A. An intoxicated person held in protective custody under the Detoxification Act shall be held in protective custody until the alcohol concentration in the person's blood or breath is less than five one-hundredths; provided that the local governing body of any home-rule municipality may by ordinance extend the protective custody of intoxicated persons under the provisions of this subsection to a maximum period of no more than seventy-two hours; and provided further that, within twenty-four hours of the original custody, a licensed physician, or a physician's assistant or registered nurse functioning directly under standards established by a licensed physician, certifies that extension of the term of protective custody up to a maximum of seventy-two hours is in the best medical interest of the person in protective custody. Upon such certification, the intoxicated person may be retained in protective custody only in a detoxification facility or regional alcoholism treatment center for the remainder of the seventy-two hours.

B. An intoxicated person transported to a health care facility under the Detoxification Act shall not be detained at the facility:

(1) once he is no longer intoxicated; or

(2) for more than forty-eight hours after admission, unless he is committed under Section 43-2-8 NMSA 1978.

C. An intoxicated person held in protective custody at a jail or transported to a health care facility under the Detoxification Act shall not be considered to have been arrested or charged with any crime.

D. A peace officer or public service officer shall record the date, time and place of the protective custody of any intoxicated person. This record of protective custody shall not be considered as an arrest or criminal record.

E. For the purposes of this section, the determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath."

Section 4

Section 4. Section 66-5-29 NMSA 1978 (being Laws 1978, Chapter 35, Section 251, as amended) is amended to read:

"66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

A. The division shall immediately revoke the license of any driver upon receiving a record of the driver's adjudication as a delinquent for or conviction of any of the following offenses, whether the offense is under any state law or local ordinance, when the conviction or adjudication has become final:

(1) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) any offense rendering a person a "first offender" as defined in the Motor Vehicle Code, if that person does not attend a driver rehabilitation program pursuant to Section 66-8-102 NMSA 1978;

(3) any offense rendering a person a "subsequent offender" as defined in the Motor Vehicle Code;

(4) any felony in the commission of which a motor vehicle is used;

(5) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(6) perjury or the making of a false affidavit or statement under oath to the division under the Motor Vehicle Code or under any other law relating to the ownership or operation of motor vehicles; or

(7) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of twelve months.

B. Any person whose license has been revoked under this section, except as provided in Subsection C or D of this section, shall not be entitled to apply for or receive any new license until the expiration of one year from the date of the last application on which the revoked license was surrendered to and received by the division, if no appeal is filed, or one year from the date that the revocation is final and he has exhausted his rights to an appeal.

C. Any person who upon adjudication as a delinquent or conviction is subject to license revocation under this section for an offense pursuant to which he was also subject to license revocation under Section 66-8-111 NMSA 1978 shall have his license revoked for that offense for a combined period of time equal to one year.

D. Upon receipt of an order from a court pursuant to Subsection J of Section 32-1-34 NMSA 1978 or Subsection G of Section 32-1-36 NMSA 1978, the division shall revoke the driver's license or driving privileges for a period of time in accordance with these provisions."

Section 5

Section 5. Section 66-5-35 NMSA 1978 (being Laws 1978, Chapter 35, Section 257, as amended) is amended to read:

"66-5-35. LIMITED DRIVING PRIVILEGE UPON SUSPENSION OR REVOCATION--HEARING--REVIEW.--

A. Upon suspension or revocation of license following conviction or adjudication as a delinquent under any law, ordinance or regulation relating to motor vehicles, a person may apply to the director for a license or permit to drive, limited to use allowing him to engage in gainful employment, except that no person shall be eligible to apply for a limited license when the person's license was revoked or suspended pursuant to:

(1) the provisions of the Implied Consent Act, except as provided in Subsection B of this section; or

(2) an offense for which the person is a subsequent offender as defined in the Motor Vehicle Code.

B. A person who has had his license revoked for the first time pursuant to the provisions of Paragraph (1) or (2) of Subsection C of Section 66-8-111 NMSA 1978 may apply for and shall receive a limited license or permit thirty days after suspension or revocation of his license if the person provides the director with documentation of the following:

(1) that the person is enrolled in an approved DWI school and an approved alcohol screening program;

(2) proof of financial responsibility pursuant to the provisions of the Mandatory Financial Responsibility Act; and either

(3) proof of gainful employment or gainful self-employment and that the person needs a limited license to travel to and from his place of employment; or

(4) that the person is enrolled in school and needs a limited license to travel to and from school.

C. Upon receipt of the application, proof of financial responsibility for the future and a hearing as
provided in Subsection D of this section, the director shall issue a limited license or permit to the applicant showing the limitations specified in the approved application, provided that the applicant meets established uniform criteria for limited driving privileges adopted by regulation of the department. For each limited license or permit to drive, the applicant shall pay to the division a fee of forty-five dollars ($45.00), which shall be transferred to the state highway and transportation department. All money collected under this subsection shall be used for DWI prevention and education programs for elementary and secondary school students. The state highway and transportation department shall coordinate with the department of health to ensure that there is no program duplication. The limited license or permit to drive may be suspended as provided in Section 66-5-30 NMSA 1978.

D. The director, within twenty days of receipt of an application for a limited driver's license or permit pursuant to this section, shall afford the applicant a hearing in the county in which the applicant resides, unless the division and the licensee agree that the hearing may be held in some other county. The director may, in his discretion, extend the twenty-day period, provided that the extension is in writing and made no later than fifteen days after receipt of an application. Upon hearing, the director or his duly authorized hearing officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. The director shall make specific findings as to whether the applicant has shown proof of financial responsibility for the future and meets established uniform criteria for limited driving privileges adopted by regulation of the department. The director shall enter an order either approving or denying the applicant's request for a limited license or permit to drive. If any of the specific findings set forth in this subsection are not found by the director, the applicant's request for a limited license or permit shall not be approved.

E. A person adversely affected by an order of the director may seek review within thirty days in the district court in the county in which he resides. The district court, upon thirty days' written notice to the director, shall hear the case. On review, it is for the court to determine only whether the applicant met the requirements in this section for issuance of a limited license or permit to drive."

Section 6

Section 6. Section 66-5-39 NMSA 1978 (being Laws 1978, Chapter 35, Section 261, as amended) is amended to read:

"66-5-39. DRIVING WHILE LICENSE SUSPENDED OR REVOKED--PROVIDING PENALTIES.--

A. Any person who drives a motor vehicle on any public highway of this state at a time when his privilege to do so is suspended or revoked and who knows or should have known that his license was suspended or revoked is guilty of a

misdemeanor and shall be charged with a violation of this section. Upon conviction, the person shall be punished notwithstanding the provisions of Section 31-18-13 NMSA 1978 by imprisonment for not less than four days or more than three hundred sixty-four days or participation for an equivalent period of time in a certified alternative sentencing program, and there may be imposed in addition a fine of not more than one thousand dollars ($1,000). When a person pays any or all of the cost of participating in a certified alternative sentencing program, the court may apply that payment as a deduction to any fine imposed by the court. Notwithstanding any other provision of law for suspension or deferment of execution of a sentence, if the person's privilege to drive was revoked for driving while under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act, upon conviction under this section, that person shall be punished by imprisonment for not less than seven consecutive days and shall be fined not less than three hundred dollars ($300) or not more than one thousand dollars ($1,000) and the fine and imprisonment shall not be suspended, deferred or taken under advisement. No other disposition by plea of guilty to any other charge in satisfaction of a charge under this section shall be authorized if the person's privilege to drive was revoked for driving while under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act. Any municipal ordinance prohibiting driving with a suspended or revoked license shall provide penalties no less stringent than provided in this section.

B. In addition to any other penalties imposed pursuant to the provisions of this section, when a person is convicted pursuant to the provisions of this section or a municipal ordinance that prohibits driving on a suspended or revoked license, the motor vehicle the person was driving shall be immobilized by an immobilization device for thirty days, unless immobilization of the motor vehicle poses an imminent danger to the health, safety or employment of the convicted person's immediate family or the family of the owner of the motor vehicle. The convicted person shall bear the cost of immobilizing the motor vehicle.

C. The division, upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the license of the person was suspended, shall extend the period of suspension for an additional like period, and, if the conviction was upon a charge of driving while a license was revoked, the division shall not issue a new license for an additional period of one year from the date the person would otherwise have been entitled to apply for a new license."

Section 7

Section 7. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. PERSONS UNDER INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

A. It is unlawful for any person who is under the influence of intoxicating liquor to drive any vehicle within this state.

B. It is unlawful for any person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive any vehicle within this state.

C. It is unlawful for any person who has an alcohol concentration of eight one-hundredths or more in his blood or breath to drive any vehicle within this state.

D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one-hundredths or more in his blood or breath while driving any vehicle within this state;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Implied Consent Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, the person was under the influence of intoxicating liquor or drugs.

E. Every person under first conviction under this section shall be punished notwithstanding the provisions of Section 31-18-13 NMSA 1978 by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars ($500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. Upon a first conviction under this section, an offender may be sentenced to not less than forty-eight hours of community service or a fine of three hundred dollars ($300). The offender shall be ordered by the court to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school", approved by the traffic safety bureau of the state highway and transportation department and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail. If an offender fails to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court, the offender shall be sentenced to not less than an additional forty-eight consecutive hours in jail. Any jail sentence imposed under this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a first conviction under this

section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence under this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or third conviction under this section shall be punished notwithstanding the provisions of Section 31-18-13 NMSA 1978 by imprisonment for not more than three hundred sixty-four days or by a fine of not more than one thousand dollars ($1,000), or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond one year but shall not exceed five years. Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

(1) upon a second conviction, each offender shall be sentenced to a jail term of not less than seventy-two consecutive hours, forty-eight hours of community service and a fine of five hundred dollars ($500). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than ninety-six consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and

(2) upon a third conviction, an offender shall be sentenced to a jail term of not less than thirty consecutive days and a fine of seven hundred fifty dollars ($750). In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than sixty consecutive days. If an offender fails to complete, within a time specified by the court, any screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional sixty consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

G. Upon a fourth or subsequent conviction under this section, an offender is guilty of a fourth degree felony, as provided in Section 31-18-15 NMSA 1978, and shall be sentenced to a jail term of not less than six months which shall not be suspended or deferred or taken under advisement.

H. Upon any conviction under this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program and if necessary, a treatment program approved by the court.

I. In the case of a first, second or third offense under this section, the magistrate court has concurrent jurisdiction with district courts to try the offender.

J. A conviction under a municipal or county ordinance prescribing penalties for driving while under the influence of intoxicating liquor or drugs shall be deemed to be a conviction under this section for purposes of determining whether a conviction is a second or subsequent conviction.

K. In addition to any other fine or fee which may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.

L. As used in this section:

(1) "bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body; and

(2) "conviction" means an adjudication of guilt and does not include imposition of a sentence."

Section 8

Section 8. Section 66-8-102.1 NMSA 1978 (being Laws 1982, Chapter 102, Section 2, as amended) is amended to read:

"66-8-102.1. GUILTY PLEAS--LIMITATIONS.--Where the complaint or information alleges a violation of Section 66-8-102 NMSA 1978, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of the subsections of Section 66-8-102 NMSA 1978, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to the Implied Consent Act disclose that the blood or breath of the person charged contains an alcohol concentration of eight one-hundredths or more."

Section 9

Section 9. Section 66-8-107 NMSA 1978 (being Laws 1978, Chapter 35, Section 515, as amended by Laws 1985, Chapter 178, Section 3 and also by Laws 1985, Chapter 187, Section 1) is amended to read:

"66-8-107. IMPLIED CONSENT TO SUBMIT TO CHEMICAL TEST.--

A. Any person who operates a motor vehicle within this state shall be deemed to have given consent, subject to the provisions of the Implied Consent Act, to chemical tests of his breath or blood or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978 as determined by a law enforcement officer, or for the purpose of determining the

drug or alcohol content of his blood if arrested for any offense arising out of the acts alleged to have been committed while the person was driving a motor vehicle while under the influence of an intoxicating liquor or drug.

B. A test of blood or breath or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of Section 24-1-22 NMSA 1978, shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle within this state while under the influence of intoxicating liquor or drug."

Section 10

Section 10. Section 66-8-109 NMSA 1978 (being Laws 1978, Chapter 35, Section 517) is amended to read:

"66-8-109. ADMINISTRATION OF CHEMICAL TEST--PAYMENT OF COSTS--ADDITIONAL TESTS.--

A. Only the persons authorized by Section 66-8-103 NMSA 1978 shall withdraw blood from any person for the purpose of determining its alcohol or drug content. This limitation does not apply to the taking of samples of breath.

B. The person tested shall be advised by the law enforcement officer of the person's right to be given an opportunity to arrange for a physician, licensed professional or practical nurse or laboratory technician or technologist who is employed by a hospital or physician of his own choosing to perform a chemical test in addition to any test performed at the direction of a law enforcement officer.

C. Upon the request of the person tested, full information concerning the test performed at the direction of the law enforcement officer shall be made available to him as soon as it is available from the person performing the test.

D. The law enforcement agency represented by the law enforcement officer at whose direction the chemical test is performed shall pay for the chemical test.

E. If a person exercises his right under Subsection B of this section to have a chemical test performed upon him by a person of his own choosing, the cost of that test shall be paid by the law enforcement agency represented by the law enforcement officer at whose direction a chemical test was administered under Section 66-8-107 NMSA 1978."

Section 11

Section 11. Section 66-8-110 NMSA 1978 (being Laws 1978, Chapter 35, Section 518, as amended) is amended to
read:

"66-8-110. USE OF TESTS IN CRIMINAL ACTIONS OR CIVIL ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING.--

A. The results of a test performed pursuant to the Implied Consent Act may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of five one-hundredths or less, it shall be presumed that the person was not under the influence of intoxicating liquor; or

(2) an alcohol concentration of more than five one-hundredths but less than eight one-hundredths, no presumption shall be made that the person either was or was not under the influence of intoxicating liquor. However, the amount of alcohol in the person's blood may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

C. When the blood or breath of the person tested contains an alcohol concentration of eight one-hundredths or more, the arresting officer shall charge him with a violation of Section 66-8-102 NMSA 1978.

D. When a person is less than twenty-one years of age and the blood or breath of the person contains an alcohol concentration of two one-hundredths or more, the person's drivig privileges shall be revoked pursuant to the provisions of the Implied Consent Act.

E. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

F. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

G. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor, the trial judge shall be required to inquire into the past driving record of the person before sentence is entered in the matter."

Section 12

Section 12. Section 66-8-111 NMSA 1978 (being Laws 1978, Chapter 35, Section 519, as amended) is amended to read:

"66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

A. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Section 66-8-107 NMSA 1978, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section 66-8-107 NMSA 1978 upon his finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance, thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony while under the influence of alcohol or a controlled substance and that chemical tests as provided in Section 66-8-107 NMSA 1978 will produce material evidence in a felony prosecution.

B. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor or drug and that, upon his request, the person refused to submit to a chemical test after being advised that failure to submit could result in revocation of his privilege to drive, shall revoke the person's New Mexico driver's license or any nonresident operating privilege for a period of one year or until all conditions for license reinstatement are met, whichever is later.

C. The department, upon receipt of a statement signed under penalty of perjury from a law enforcement officer stating the officer's reasonable grounds to believe the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor
and that the person submitted to chemical testing pursuant to Section 66-8-107 NMSA 1978 and the test results indicated an alcohol concentration of eight one-hundredths or more in the person's blood or breath if the person is twenty-one years of age or older or an alcohol concentration of two one-hundredths or more in the person's blood or breath if the person is less than twenty-one years of age, shall revoke the person's license or permit to drive or his nonresident operating privilege for a period of:

(1) ninety days or until all conditions for license reinstatement are met, whichever is later, if the person is twenty-one years of age or older;

(2) six months or until all conditions for license reinstatement are met, whichever is later, if the person is less than twenty-one years of age and has not previously had his license revoked pursuant to the provisions of this section, notwithstanding any provision of the Children's Code; or

(3) one year or until all conditions for license reinstatement are met, whichever is later, if the person has previously had his license revoked pursuant to the

provisions of this section, notwithstanding the provisions of Paragraph (1) or (2) of this subsection or any provision of the Children's Code.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. If the person subject to the revocation provisions of this section is a resident or will become a resident within one year and is without a license to operate a motor vehicle in this state, the department shall deny the issuance of a license to him for the appropriate period of time as provided in Subsections B and C of this section.

F. A statement signed by a law enforcement officer, pursuant to the provisions of Subsection B or C of this section, shall be sworn to by the officer or shall contain a declaration substantially to the effect: "I hereby declare under penalty of perjury that the information given in this statement is true and correct to the best of my knowledge." A law enforcement officer who signs a statement, knowing that the statement is untrue in any material issue or matter, is guilty of perjury as provided in Section 66-5-38
NMSA 1978."

Section 13

Section 13. Section 66-8-111.1 NMSA 1978 (being Laws 1984, Chapter 72, Section 7, as amended) is amended to read:

"66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO HEARING.--On behalf of the department, a law enforcement officer requesting a chemical test or directing the administration of a chemical test pursuant to Section 66-8-107 NMSA 1978 shall serve immediate written notice of revocation and of right to a hearing on a person who refuses to permit chemical testing or on a person who submits to a chemical test the results of which indicate an alcohol concentration of eight one-hundredths or more in the person's blood or breath if the person is twenty-one years of age or older or an alcohol concentration of two one-hundredths or more in the person's blood or breath if the person is less than twenty-one years of age. Upon serving notice of revocation, the law enforcement officer shall take the license or permit of the driver, if any, and issue a temporary license valid for twenty days or, if the driver requests a hearing pursuant to Section 66-8-112 NMSA 1978, valid until the date the department issues the order following that hearing; provided that no temporary license shall be issued to a driver without a valid license or permit. The law enforcement officer shall send the person's driver's license to the department along with the signed statement required pursuant to Section 66-8-111 NMSA 1978."

Section 14

Section 14. Section 66-8-112 NMSA 1978 (being Laws 1978, Chapter 35, Section 520, as amended) is amended to read:

"66-8-112. REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE--NOTICE--EFFECTIVE DATE--HEARING--HEARING COSTS--REVIEW.--

A. The effective date of revocation pursuant to Section 66-8-111 NMSA 1978 is twenty days after notice of revocation or, if the person whose license or privilege to drive is being revoked or denied requests a hearing pursuant to this section, the date that the department issues the order following that hearing. The date of notice of revocation is:

(1) the date the law enforcement officer serves written notice of revocation and of right to a hearing pursuant to Section 66-8-111.1 NMSA 1978; or

(2) in the event the results of a chemical test cannot be obtained immediately, the date notice of revocation is served by mail by the department. This notice of revocation and of right to a hearing shall be sent by certified mail and shall be deemed to have been served on the date borne by the return receipt showing delivery, refusal of the addressee to accept delivery or attempted delivery of the notice at the address obtained by the arresting law enforcement officer or on file with the department.

B. Within ten days after receipt of notice of revocation pursuant to Subsection A of this section, a person whose license or privilege to drive is revoked or denied or the person's agent may request a hearing. The hearing request shall be made in writing and shall be accompanied by a payment of twenty-five dollars ($25.00) or a sworn statement of indigency on a form provided by the department. A standard for indigency shall be established pursuant to regulations adopted by the department. Failure to request a hearing within ten days shall result in forfeiture of the person's right to a hearing. Any person less than eighteen years of age who fails to request a hearing within ten days shall have notice of revocation sent to his parent, guardian or custodian by the department. A date for the hearing shall be set by the department, if practical, within thirty days after receipt of notice of revocation. The hearing shall be held in the county in which the offense for which the person was arrested took place.

C. The department may postpone or continue any hearing on its own motion or upon application from the person and for good cause shown for a period not to exceed ninety days from the date of notice of revocation and provided that the department extends the validity of the temporary license for the period of the postponement or continuation.

D. At the hearing, the department or its agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers.

E. The hearing shall be limited to the issues:

(1) whether the law enforcement officer had reasonable grounds to believe that the person had been driving a motor vehicle within this state while under the influence of intoxicating liquor;

(2) whether the person was arrested;

(3) whether this hearing is held no later than ninety days after notice of revocation; and either

(4)

(a) whether the person refused to submit to a test upon request of the law enforcement officer; and

(b) whether the law enforcement officer advised that the failure to submit to a test could result in revocation of the person's privilege to drive; or

(5)

(a) whether the chemical test was administered pursuant to the provisions of the Implied Consent Act; and

(b) the test results indicated an alcohol concentration of eight one-hundredths or more in the person's blood or breath if the person is twenty-one years of age or older or an alcohol concentration of two one-hundredths or more in the person's blood or breath if the person is less than twenty-one years of age.

F. The department shall enter an order sustaining the revocation or denial of the person's license or privilege to drive if the department finds that:

(1) the law enforcement officer had reasonable grounds to believe the driver was driving a motor vehicle while under the influence of intoxicating liquor or drug;

(2) the person was arrested;

(3) this hearing is held no later than ninety days after notice of revocation; and

(4) the person either refused to submit to the test upon request of the law enforcement officer after the law enforcement officer advised him that his failure to submit to the test could result in the revocation of his privilege to drive or that a chemical test was administered pursuant to the provisions of the Implied Consent Act and the test results indicated an alcohol concentration of eight one-hundredths or more if the person is twenty-one years of age or older or an alcohol concentration of two one-hundredths or more if the person is less than twenty-one years of age.

If one or more of the elements set forth in Paragraphs (1) through (4) of this subsection are not found by the department, the person's license shall not be revoked.

G. A person adversely affected by an order of the department may seek review within thirty days in the district court in the county in which the offense for which the person was arrested took place. The district court, upon thirty days' written notice to the department, shall hear the case. On review, it is for the court to determine only whether reasonable grounds exist for revocation or denial of the person's license or privilege to drive based on the record of the administrative proceeding.

H. Any person less than eighteen years of age shall have results of his hearing forwarded by the department to his parent, guardian or custodian."

Section 15

Section 15. Section 66-8-135 NMSA 1978 (being Laws 1978, Chapter 35, Section 543, as amended) is amended to read:

"66-8-135. RECORD OF TRAFFIC CASES.--

A. Every trial court judge shall keep a record of every traffic complaint, uniform traffic citation and other form of traffic charge filed in the judge's court or its traffic violations bureau and every official action and disposition of the charge by that court.

B. Within ten days after entry of judgment and sentence or failure to appear on a charge of violating the Motor Vehicle Code or other law or ordinance relating to motor vehicles, every trial court judge, including juvenile court judges, or the clerk of the court in which the entry of judgment and sentence or failure to appear occurred shall prepare and forward to the division an abstract of the record containing:

(1) the name and address of the defendant;

(2) the specific section number and common name of the provision of the NMSA 1978 or local law, ordinance or regulation under which the defendant was tried;

(3) the plea, finding of the court and disposition of the charge, including fine or jail sentence or both, forfeiture of bail or dismissal of the charge;

(4) an itemization of costs assessed to the defendant;

(5) the date of the hearing;

(6) the court's name and address;

(7) whether the defendant was a first or subsequent offender; and

(8) whether the defendant was represented by counsel or waived his right to counsel and, if represented, the name and address of counsel.

C. The abstract of record prepared and forwarded under Subsection B of this section shall be certified as correct by the person required to prepare it. With the prior approval of the director, the information required by Subsection B of this section may be transmitted electronically to the division. Report need not be made of any disposition of a charge of illegal parking or standing of a vehicle except when the uniform traffic citation is used.

D. When the uniform traffic citation is used, the court shall provide the information required by Subsection B of this section in the manner prescribed by the director.

E. Every court of record shall also forward a like report to the division upon conviction of any person of any felony if a motor vehicle was used in the commission. With the prior approval of the director, the information required by this subsection may be submitted electronically to the division.

F. The failure or refusal of any judicial officer to comply with this section is misconduct in office and ground for removal.

G. The division shall keep records received on motorists licensed in this state at its main office. Records showing a record of conviction by a court of law shall be open to public inspection during business hours for three years from the date of their receipt, after which they shall be destroyed by the division except for records of convictions under Sections 66-8-101 through 66-8-112 NMSA 1978, which may not be destroyed until twenty-five years from the date of their receipt. Any record received on a motorist licensed in another state or country shall be forwarded to the licensing authority of that state or country."

Section 16. MUNICIPAL AND COUNTY ORDINANCES--UNLAWFUL ALCOHOL CONCENTRATION LEVEL FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--No municipal or county ordinance prohibiting driving while under the influence of intoxicating liquor or drugs shall be enacted that provides for an unlawful alcohol concentration level that is different than the alcohol concentration levels provided in Subsections C and D of Section 66-8-102 NMSA 1978.

Section 17

Section 17. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 18

Section 18. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1994.SB 342, 27 & 238

CHAPTER 67

RELATING TO THE COURTS; AUTHORIZING THE METROPOLITAN COURT TO BE A COURT OF RECORD FOR SPECIFIC CRIMINAL ACTIONS; MAKING APPROPRIATIONS.

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

Section 1

Section 1. Effective on January 1, 1994, Section 34-8A-6 NMSA 1978 (being Laws 1979, Chapter 346, Section 6, as amended) is amended to read:

"34-8A-6. METROPOLITAN COURT--RULES--APPEAL.--

A. The supreme court shall adopt separate rules of procedure for the metropolitan courts. The rules shall provide simple procedures for the just, speedy and inexpensive determination of any metropolitan court action.

B. The metropolitan court is a court of record for civil actions. Any party aggrieved by a judgment rendered by the metropolitan court in a civil action may appeal to the district court of the county in which the metropolitan court is located within fifteen days after the judgment was rendered. The manner and method for the appeal shall be set forth by supreme court rule.

C. The metropolitan court is a court of record for criminal actions involving driving while under the influence of intoxicating liquors or drugs or involving domestic violence. A criminal action involving domestic violence means an assault or battery under any state law or municipal or county ordinance in which the alleged victim is a household member as defined in the Family Violence Protection Act. Any party aggrieved by a judgment rendered by the metropolitan court in a criminal action involving driving while under the influence of intoxicating liquors or drugs or involving domestic violence may appeal to the district court of the county in which the metropolitan court is located within fifteen days after the judgment was rendered. The manner and method of appeal shall be set forth by supreme court rule.

D. The metropolitan court is not a court of record for criminal actions other than driving while under the influence of intoxicating liquors or drugs or domestic violence actions. Any party aggrieved by a judgment rendered by the metropolitan court in a criminal action, other than driving while under the influence of intoxicating liquors or

drugs or domestic violence action, may appeal to the district court of the county in which the metropolitan court is located within fifteen days after the judgment was rendered. The appeal shall be de novo.

E. All judgments rendered in civil actions in the metropolitan court shall be subject to the same provisions of law as those rendered in district court."

Section 2

Section 2. MUNICIPAL COURTS--AUTOMATION REQUIRED.--By July 1, 1996, each municipal court shall have the capability of providing on a timely basis electronic records in a format specified by the judicial information system council tracking convictions of violations of municipal ordinances prohibiting driving while under the influence of intoxicating liquor or drugs and prohibiting domestic violence.

Section 3

Section 3. APPROPRIATION.--

A. Seven hundred twenty-six thousand dollars ($726,000) is appropriated from the general fund for expenditure in the eighty-second and eighty-third fiscal years to the following agencies in the following amounts and for the following purposes:

(1) two hundred twenty-six thousand dollars ($226,000) to the Bernalillo county metropolitan court to hire the necessary employees and acquire the necessary equipment and supplies for making metropolitan court a court of record to implement the provisions of Section 1 of this act; and

(2) five hundred thousand dollars ($500,000) to the department of finance and administration to allocate funds to the public defender department, the second judicial district court and the office of the district attorney in the second judicial district based on workload increases resulting from the metropolitan court being made a court of record for criminal action relating to driving while under the influence of intoxicating liquor or drugs and domestic violence.

B. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.SB 343 & 29

CHAPTER 68

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR; RESTRICTING ALCOHOLIC BEVERAGE SALES AT THE STATE FAIR; AMENDING THE LIQUOR CONTROL ACT; RESTRICTING TIME FOR LIQUOR SALES; SEGREGATING CERTAIN LIQUOR SALES; ENACTING THE ALCOHOL SERVER EDUCATION ACT; PROHIBITING CERTAIN SALES OR DELIVERIES;

IMPOSING PENALTIES; AMENDING SECTIONS OF THE MOTOR VEHICLE CODE; REQUIRING DWI PREVENTION AND EDUCATION IN DRIVER TRAINING COURSES AND IN SECONDARY SCHOOL DEFENSIVE DRIVING CLASSES; IMPOSING FEES; AMENDING THE DRIVING SCHOOL LICENSING ACT; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 7-24-1 NMSA 1978 (being Laws 1939, Chapter 236, Section 1103, as amended) is amended to read:

"7-24-1. LICENSE TAX IMPOSED BY MUNICIPALITIES.-- Municipalities within or composing local option districts may, by duly adopted ordinance, impose an annual, nonprohibitive municipal license tax upon the privilege of persons holding state licenses under the provisions of the Liquor Control Act to operate within such municipalities as retailers, dispensers, canopy licensees, restaurant licensees or club licensees. The amount of the license tax, which shall not exceed two hundred fifty dollars ($250), and the dates and manner of payment shall be fixed on or before June 1 of each year by the ordinance imposing the tax. In case any municipality permits the payment in installments, no bond shall be required to secure the payment of the deferred installments, but the remedy for the collection shall be that provided in Section 7-24-3 NMSA 1978."

Section 2

Section 2. Section 16-6-4 NMSA 1978 (being Laws 1913, Chapter 46, Section 4, as amended) is amended to read:

"16-6-4. POWERS AND DUTIES OF COMMISSION--ANNUAL FAIR--EXHIBITS--PREMIUMS.--

A. The state fair commission shall have power and authority to hold annually on suitable grounds a state fair at which shall be exhibited livestock, poultry, vegetables, fruits, grains, grasses and other farm products, minerals, ores and other mining exhibits, mining machinery and farm implements and all other things which the commissioners or a
majority thereof deem consonant with the purposes of a state fair for the purposes of advancing the agricultural, horticultural and stock raising, mining, mechanical and industrial pursuits of the state and shall have the care of its property and be entrusted with the entire direction of its business and its financial affairs consistent with the provisions of Sections 16-6-15 and 16-6-16 NMSA 1978.

B. The commission, among other duties, shall prepare, adopt, publish and enforce all necessary rules for the management of the New Mexico state fair, its meetings and exhibitions and for the guidance of its officers, employees and exhibitors. The commission shall determine the duties, compensation and tenure of office of all of its officers and employees and may remove from office or discharge any person appointed or employed by it at will and shall have the power to appoint all necessary fairgrounds police to keep order on the grounds and in the buildings of the state fair. The fairgrounds police so appointed shall be vested with the same authority for such purposes as peace officers. The commission shall have the power to charge entrance fees and admissions and lease stalls, stand and restaurant sites, give prizes and premiums, arrange entertainments and do all things which by the commission may be considered proper for the conduct of the state fair not otherwise prohibited by law. The commission shall prohibit the sale or consumption of alcoholic beverages on the grounds of the state fair except in controlled access areas within the licensed premises. The commission or its designees shall meet with the director of the alcohol and gaming division of the department of regulation and licensing and other parties in interest to designate the controlled access areas on which the sale and consumption of alcoholic beverages may be permitted. As used in this subsection, "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey rum, gin and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters."

Section 3

Section 3. Section 22-2-8.4 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended) is amended to read:

"22-2-8.4. GRADUATION REQUIREMENTS.--

A. At the end of the eighth grade or during the ninth grade, each student shall prepare an individual program
of study for grades nine through twelve. The program of study shall be signed by a student's parent or guardian.

B. Beginning with students entering the ninth grade in the 1986-87 school year, successful completion of a minimum of twenty-three units shall be required for graduation. These units shall be as follows:

(1) four units in English, with major emphasis on grammar and literature;

(2) three units in mathematics;

(3) two units in science, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography and government and economics;

(5) one unit in physical fitness;

(6) one unit in communication skills, with major emphasis on writing and speaking, which may include a language other than English; and

(7) nine elective units. Only the following elective units shall be counted toward meeting the requirements for graduation: fine arts, i.e., music, band, chorus and art; practical arts; physical education; languages other than English; speech; drama; vocational education; mathematics; science; English; R.O.T.C.; social science; computer science; health education; defensive driving; and other electives approved by the state board.

C. Effective with the 1987-88 school year, final examinations shall be administered to all students in all classes offered for credit.

D. Beginning with students entering the ninth grade in the 1986-87 school year, no student shall receive a high school diploma who has not passed a state competency examination in the subject areas of reading, English, math, science and social science. If a student exits from the school system at the end of grade twelve without having passed a state competency examination, he shall receive an appropriate state certificate indicating the number of credits earned and the grade completed.

E. The state board may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code.

F. Each public secondary school shall offer defensive driving instruction that includes a DWI education and prevention component. The curriculum shall be developed by the state department of public education and the traffic safety bureau."

Section 4

Section 4. A new section of the Liquor Control Act, Section 60-4B-4.1 NMSA 1978, is enacted to read:

"60-4B-4.1. LOCAL LAW ENFORCEMENT--DEPARTMENT OF PUBLIC SAFETY--REPORTING REQUIREMENTS--AUTHORITY TO DIRECT INVESTIGATIONS TO OCCUR.--

A. Within thirty days following the date of issuance of a citation pursuant to the provisions of the Liquor Control Act, the department of public safety or the law enforcement agency of a municipality or county shall report alleged violations of that act to the alcohol and gaming division of the regulation and licensing department.

B. The director of the alcohol and gaming division of the regulation and licensing department may direct the investigators of the special investigations division of the department of public safety to investigate licensees or activities that the director has reasonable cause to believe are in violation of the Liquor Control Act."

Section 5

Section 5. Section 60-6A-1 NMSA 1978 (being Laws 1981, Chapter 39, Section 18) is amended to read:

"60-6A-1. WHOLESALER'S LICENSE.--

A. In any local option district, a person qualified under the provisions of the Liquor Control Act may apply for and be issued a license as a wholesaler of alcoholic beverages.

B. No wholesaler shall sell, offer for sale or ship alcoholic beverages not received at and shipped from the premises specified in the wholesaler's license. As used in this section, "received at and shipped from" means that all alcoholic beverages shall be unloaded at the wholesaler's licensed premises and placed into inventory before being sold and shipped to a licensed retailer.

C. No wholesaler shall sell or offer for sale alcoholic beverages to any person other than the holder of a New Mexico wholesaler's, retailer's, dispenser's, canopy, restaurant or club license or a governmental licensee or its lessee.

D. Nothing contained in this section shall prevent the sale, transportation or shipment by a wholesaler to any person outside the state when shipped under permit from the department."

Section 6

Section 6. Section 60-6A-12 NMSA 1978 (being Laws 1981, Chapter 39, Section 29, as amended) is amended to read:

"60-6A-12. SPECIAL DISPENSER'S PERMITS--STATE AND LOCAL FEES.--

A. Any person holding a dispenser's license in any local option district where a public celebration is to be held may dispense alcoholic beverages at the public celebration upon receiving written approval from the board or other governing body in charge of the public celebration and upon the payment of fifty dollars ($50.00) to the department, for a special dispenser's permit.

B. As used in this section, "public celebration" includes any state fair, county fair, community fiesta, cultural or artistic performance or professional athletic competition of a seasonal nature or activities held on an intermittent basis.

C. In addition to the state fee and if previously provided for by ordinance, the governing body of the local option district in which the public celebration is held may charge an additional fee not to exceed twenty-five dollars ($25.00) per day for each day the permittee dispenses alcoholic beverages. The permittee shall be subject to all state laws and regulations and all local regulations regulating dispenser's privileges and disabilities. All fees collected by the governing body of the local option district may be used to fund free-ride home programs.

D. Any person holding a dispenser's license may be issued a special dispenser's permit by the director allowing the dispensing of alcoholic beverages at a function catered by that business provided the governing body of the local option district has given the person seeking the permit written approval to dispense alcoholic beverages at the catered function. The permit shall be valid for no more than twelve hours. To apply for the permit, the holder of a dispenser's license shall submit a fee of twenty-five dollars ($25.00), together with such information as the director may require. The permittee shall be subject to all state laws and regulations and all local regulations except that the permittee shall not be required to suspend the dispensing of alcoholic beverages at the licensed premises solely because of the issuance of the special dispenser's permit.

E. A special dispenser's permit shall not be issued if the application for the permit was received by the department less than ten days prior to the function for which the permit was sought. The person holding a dispenser's license and his employees shall be the only persons permitted to dispense alcohol during the function. Issuance of the special dispenser's permit is within the director's discretion and is subject to any reasonable requirements imposed by the director.

F. Any person holding a dispenser's license in a local option district in which Sunday sales of alcoholic beverages are not otherwise permitted under the Liquor Control Act may dispense beer and wine on Sunday at any public celebration for which it has received a concession from the board or other governing body in charge of the public celebration, provided the governing body of that local option district has by resolution expressly permitted such beer and wine sales on Sunday at that public celebration in accordance with the provisions of this section."

Section 7

Section 7. Section 60-6A-15 NMSA 1978 (being Laws 1981, Chapter 39, Section 32, as amended) is amended to read:

"60-6A-15. LICENSE FEES.--Every application for the issuance or annual renewal of the following licenses shall be accompanied by a license fee in the following specified amounts:

A. manufacturer's license as a distiller, except a brandy manufacturer, three thousand dollars ($3,000);

B. manufacturer's license as a brewer, three thousand dollars ($3,000);

C. manufacturer's license as a rectifier, one thousand fifty dollars ($1,050);

D. wholesaler's license to sell all alcoholic beverages for resale only, two thousand five hundred dollars ($2,500);

E. wholesaler's license to sell spirituous liquors and wine for resale only, one thousand seven hundred fifty dollars ($1,750);

F. wholesaler's license to sell spirituous liquors for resale only, one thousand five hundred dollars ($1,500);

G. wholesaler's license to sell beer and wine for resale only, one thousand five hundred dollars ($1,500);

H. wholesaler's license to sell beer for resale only, one thousand dollars ($1,000);

I. wholesaler's license to sell wine for resale only, seven hundred fifty dollars ($750);

J. retailer's license, one thousand two hundred fifty dollars ($1,250);

K. dispenser's license, one thousand two hundred fifty dollars ($1,250);

L. canopy license, one thousand two hundred fifty dollars ($1,250);

M. restaurant license, one thousand dollars ($1,000);

N. club license, one thousand two hundred fifty dollars ($1,250);

O. wine bottler's license to sell to wholesalers only, five hundred dollars ($500);

P. public service license, one thousand two hundred fifty dollars ($1,250);

Q. nonresident licenses, for a total billing to New Mexico wholesalers in excess of:

$3,000,000 annually	$3,500;
1,000,000 annually	1,750;
500,000 annually	1,250;
200,000 annually	900;
100,000 annually	600; and

50,000 or less annually 300;

R. wine wholesaler's license, for persons with sales of five thousand gallons of wine per year or less, twenty-five dollars ($25.00), and for persons with sales in excess of five thousand gallons of wine per year, one hundred dollars ($100); and

S. beer bottler's license, two hundred dollars ($200)."

Section 8

Section 8. Section 60-6A-21 NMSA 1978 (being Laws 1983, Chapter 280, Section 2) is amended to rad:

"60-6A-21. SHORT TITLE.--Sections 60-6A-21 through 60-6A-28 NMSA 1978 may be cited as the "Domestic Winery and Small Brewery Act"."

Section 9

Section 9. Section 60-6A-26.1 NMSA 1978 (being Laws 1985, Chapter 217, Section 5) is amended to read:

"60-6A-26.l. SMALL BREWER'S LICENSE.--

A. In any local option district, a person qualified under the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery and Small Brewery Act, may apply for and be issued a small brewer's license.

B. A small brewer's license authorizes the person to whom it is issued to do any of the following:

(l) become a manufacturer or producer of beer;

(2) to package, label and export beer, whether manufactured, bottled or produced by him or any other person;

(3) to sell only such beer as is packaged by or for him to a person holding a wholesaler's license or a small brewer's license;

(4) to deal in warehouse receipts for beer;

(5) to conduct beer tastings and sell for consumption on or off premises, but not for resale, beer produced and bottled by, or produced and packaged for, such licensee on the small brewer's premises; and

(6) to be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act."

Section 10

Section 10. A new section of the Domestic Winery and Small Brewery Act is enacted to read:

"BEER BOTTLER'S LICENSE.--

A. In any local option district, a person qualified under the provisions of the Liquor Control Act, before he bottles beer for a person holding a small brewer's license, shall procure from the department a beer bottler's license.

B. A beer bottler's license authorizes the person to whom it has been issued to do the following:

(1) bottle beer for the holder of a small brewer's license;

(2) hold or store beer in bulk that was produced by a small brewer until it is bottled; and

(3) hold or store beer that he has bottled on his premises.

C. A beer bottler's license shall not authorize the person to whom it has been issued to sell, serve, deliver or allow consumption of beer in unopened packages or by the drink at wholesale or retail on his licensed premises."

Section 11

Section 11. Section 60-6C-1 NMSA 1978 (being Laws 1981, Chapter 39, Section 97) is amended to read:

"60-6C-1. GROUNDS FOR SUSPENSION, REVOCATION OR ADMINISTRATIVE FINE--REPORTING REQUIREMENT.--

A. The director may suspend or revoke the license or permit or fine the licensee in an amount not more than ten thousand dollars ($10,000), or both when he finds that any licensee has:

(1) violated any provision of the Liquor Control Act or any regulation or order promulgated pursuant to that act;

(2) been convicted of a felony pursuant to the provisions of the Criminal Code, the Liquor Control Act or federal law; or

(3) permitted his licensed premises to remain a public nuisance in the neighborhood where it is located after written notice from the director that investigation by the department has revealed that the establishment is a public nuisance in the neighborhood.

B. The director shall suspend or revoke the license or permit and may fine the licensee in an amount not to exceed ten thousand dollars ($10,000) or both when he finds that any licensee or:

(1) his employee or agent knowingly has sold, served or given any alcoholic beverage to a minor in violation of Section 60-7B-1 NMSA 1978, or to an intoxicated person in violation of Section 60-7A-16 NMSA 1978, on two separate occasions within any twelve-month period; or

(2) his agent has made any material false statement or concealed any material facts in his application for the license or permit granted him pursuant to the provisions of the Liquor Control Act.

C. In addition to other penalties provided in this section, any retailer or dispenser who violates the provisions of Section 60-7A-16 or 60-7B-1 NMSA 1978 by selling, serving or delivering alcoholic beverages to an intoxicated person or a minor through a drive-up window at a minimum shall have:

(1) upon a first violation of this subsection, the privilege to sell alcoholic beverages or any other goods from his drive-up window suspended by the director for a period of two weeks;

(2) upon a second violation of this subsection, the privilege to sell alcoholic beverages or any other goods from his drive-up window suspended by the director for a period of thirty days;

(3) upon a third violation of this subsection, the privilege to sell alcoholic beverages or any other goods from his drive-up window suspended by the director for a period of sixty days; and

(4) upon a fourth violation of this subsection within two years of any other violations of Section 60-7A-16 or 60-7B-1 NMSA 1978, the privilege to sell alcoholic beverages or any other goods from his drive-up window revoked by the director and the drive-up window permanently closed.

D. Any licensee aggrieved by a revocation, suspension or fine proposed to be imposed by the director pursuant to this section shall be entitled to the hearing procedures set forth in Article 6C of Chapter 60 NMSA 1978 before the revocation, suspension or fine shall be effective.

E. Any charge filed against a licensee by the department and the resulting disposition of the charge shall be reported to the department of public safety and local law enforcement agencies whose jurisdictions include the licensed establishment."

Section 12

Section 12. Section 60-6C-2 NMSA 1978 (being Laws 1981, Chapter 39, Section 98, as amended) is amended to read:

"60-6C-2. HEARINGS--LOCATION--OPEN TO PUBLIC--HEARING OFFICER.--All hearings held pursuant to the provisions of the Liquor Control Act shall be conducted by the director or a hearing officer appointed by the director and shall be held in the county in which the licensed premises that are the subject matter of the hearing are located. All such hearings shall be open to the public."

Section 13

Section 13. Section 60-6C-4 NMSA 1978 (being Laws 1981, Chapter 39, Section 100) is amended to read:

"60-6C-4. ADMINISTRATIVE PROCEEDINGS--COMPLAINTS--INVESTIGATION--ORDER TO SHOW CAUSE--SERVICE--HEARINGS.--

A. Whenever a person lodges a signed, written complaint with the department alleging that a licensee has violated any of the provisions of the Liquor Control Act, unless the complaint is deficient on its face, the director shall request that the department of public safety investigate the complaint.

B. The department of public safety shall investigate the complaint and make a written report to the director.

C. If the director believes from the report that probable cause exists for filing charges against the licensee for the revocation or suspension of his license or permit or for fining him, or for both, he or his designee shall file in the department a charge against the licensee in the name of the state, stating the nature of the grounds relied upon for the filing, the approximate date of the alleged violation and the names and addresses of the witnesses who are expected to give testimony or evidence against the licensee.

D. After charges have been filed, the director shall issue a signed order for the licensee to appear at a hearing to explain, on the basis of any ground set out in the charge, why the license should not be revoked or suspended or why the licensee should not be fined, or both.

E. The director shall keep the original of the charge and the order to show cause on file in his office.

F. The director shall appoint a hearing officer no later than ten days prior to the date set for the hearing at which the licensee shall appear to explain why his license should not be revoked or suspended or why the licensee should not be fined, or both.

G. The director shall have a copy of the charge and a copy of the order to show cause sent to the licensee or the licensee's resident agent at the agent's last known address

by certified mail at least fourteen days before the date set for the hearing on the order to show cause.

H. At any hearing on an order to show cause, the director shall cause a record of hearing to be made, which shall record:

(1) the style of the proceedings;

(2) the nature of the proceedings, including a copy of the charge and a copy of the order to show cause;

(3) the place, date and time of the hearing and all continuances or recesses of the hearing;

(4) the appearance or nonappearance of the licensee;

(5) if the licensee appears with an attorney, the name and address of the attorney;

(6) a record of all evidence and testimony and a copy or record of all exhibits introduced in evidence;

(7) the findings of fact and law as to whether or not the licensee has violated the Liquor Control Act as set out in the charge; and

(8) the decision of the director.

I. If the licensee fails to appear without good cause at the time and place designated in the order to show cause for the hearing, the director shall order the nonappearance of the licensee to be entered in the record of hearing and shall order the license revoked or suspended or the licensee fined, or both, on all the grounds alleged in the charge, and shall cause the record of hearing to show the particulars in detail. In such a case, there shall be no reopening, appeal or review of the proceedings.

J. If the licensee admits guilt on all grounds set out in the charge, the director shall order the revocation or suspension of the license or the licensee fined, or both, and cause a record of hearing to be made showing the facts and particulars of his order of revocation or suspension of the license or fine of the licensee, or both. In such a case, there shall be no review or appeal of the proceedings.

K. If the licensee appears at the hearing and does not testify or denies guilt of any or all of the grounds set out in the charge, the hearing shall proceed as follows:

(1) the director or the hearing officer shall administer oaths to all witnesses, the department shall cause all testimony and evidence in support of the grounds alleged in the charge to be presented in the presence of the licensee and the director shall allow the licensee or his attorney to cross-examine all witnesses;

(2) the licensee shall be allowed to present testimony and evidence he may have in denial or in mitigation of the grounds set out in the charge;

(3) the department shall have the right to cross-examine the licensee or any witness testifying in his favor;

(4) the department shall present any evidence or testimony in rebuttal of that produced by the licensee;

(5) the director or the hearing officer shall make a finding on each ground alleged and a finding of the guilt or innocence of the licensee on each ground;

(6) if the licensee is found guilty on any ground alleged and proved, the director shall make his order of revocation or suspension of the license or fine of the licensee, or both; and

(7) the rules of evidence shall not be required to be observed, but the order of suspension or revocation or fine, or both, shall be based upon substantial, competent and relevant evidence and testimony appearing in the record of hearing.

L. No admission of guilt, admission against interest or transcript of testimony made or given in any hearing pursuant to this section shall be received or used in any criminal proceedings wherein the licensee is a defendant; provided, however, if the licensee commits perjury in a hearing, the evidence shall be admissible in a perjury trial if otherwise competent and relevant.

M. The director shall adopt reasonable
regulations setting forth uniform standards of penalties concerning fines and suspensions imposed by the director."

Section 14

Section 14. Section 60-7A-1 NMSA 1978 (being Laws 1981, Chapter 39, Section 47, as amended) is amended to read:

"60-7A-1. HOURS AND DAYS OF BUSINESS--SUNDAY SALES--CHRISTMAS DAY SALES--ELECTIONS.--

A. Alcoholic beverages shall be sold, served and consumed on licensed premises only during the following hours and days:

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

(2) on other weekdays from after midnight of the previous day until 2:00 a.m., then from 7:00 a.m. until midnight, except as provided in Subsections D, E and H of this section; and

(3) on Sundays only after midnight of the previous day until 2:00 a.m., except as provided in Subsections C and F of this section; provided, however, nothing in this section shall prohibit the consumption at any
time of alcoholic beverages in guest rooms of hotels.

B. Alcoholic beverages shall be sold by a dispenser or a retailer in unbroken packages, for consumption off the licensed premises and not for resale, on Mondays through Saturdays from 7:00 a.m. until 12:00 a.m. on the following day except as provided in Subsections D, E and H of this section.

C. Subject to the provisions of Subsections F and I of this section, a dispenser, restaurant licensee or club may, upon payment of an additional fee of one hundred dollars ($100), obtain a permit to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises on Sundays from 12:00 noon until midnight and in those years when December 31 falls on a Sunday from 12:00 noon until 2:00 a.m. of the following day, except as otherwise provided in Subsection F of this section. The permit shall expire on June 30 of each year and may be renewed from year to year upon application for renewal and payment of the required fee. The permit fee shall not be prorated. Sales made pursuant to this subsection or Subsection I of this section shall be called "Sunday sales".

D. Retailers, dispensers, canopy licensees, restaurant licensees, club licensees and governmental licensees or its lessees shall not sell, serve, deliver or allow the consumption of alcoholic beverages on the licensed premises during voting hours on the days of the primary election, general election, elections for officers of a municipality or any other election as prescribed by the rules and regulations of the director.

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

F. At the 1984 general election, the secretary of state shall order placed on the ballot in each local option district the question "Shall Sunday sales of alcoholic beverages by the drink for consumption on the licensed premises of licensees be allowed in this local option district?". If the secretary of state determines a need, he
may authorize the use of paper ballots for the purpose of the election provided for pursuant to this subsection. Until such election, Sunday sales shall be permitted on the same basis in any local option district as provided under any former act, and the election held at the first general election following the effective date of the Liquor Control Act shall have no effect on whether Sunday sales are permitted in any local option district. If the question is disapproved by a majority of those voting upon the question in the local option district, Sunday sales shall be unlawful in that local option

district upon certification of the election returns, and the question shall not again be placed on the ballot in that local option district until:

(1) at least one year has passed; and

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

G. The local governing body of a local option district in an eligible county shall:

(1) adopt a resolution within sixty days of April 7, 1989 calling for an election to place on the ballot the question "Shall a retailer or dispenser be allowed to sell or deliver alcoholic beverages at any time from a drive-up window?";

(2) arrange for the election to be held within sixty days after the date the resolution is adopted; and

(3) ensure that the election is called, conducted, counted and canvassed in the manner provided by law for elections within the county.

As used in this subsection, "eligible county" means any county that, according to motor vehicle statistics reported to the state highway and transportation department during the years 1985 and 1986, convicted more than twenty-five persons for each one thousand licensed drivers of driving while intoxicated offenses.

H. On and after July 1, 1989, dispensers, canopy licensees that were replaced by dispenser's licensees pursuant to Section 60-6B-16 NMSA 1978, restaurant licensees, club licensees and governmental licensees or lessees of these licensees may sell, serve or allow the consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day, except in a local option district in which pursuant to petition and election under this subsection a majority of the voters voting on the question votes against continuing such sales or consumption on Christmas day. An election shall be held on the question of whether to continue to allow the sale, service or consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day in a local option district, if a petition requesting the governing body of that district to call the election is signed by at least ten percent of the registered voters of the district and is filed with the clerk of the governing body of the district. Upon verification by the clerk that the petition contains the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of allowing the sale, service or consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day. The election shall be held within sixty days after the date the petition is verified, or it may be held in

conjunction with a regular election of the governing body if that election occurs within sixty days of such verification. The election shall be called, conducted, counted and canvassed in substantially the same manner as provided for general elections in the county under the Election Code or for special municipal elections in a municipality under the Municipal Election Code. If a majority of the voters voting on the question votes against continuing the sale, service or consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be prohibited. If a majority of the voters voting on the question votes to allow continued sale, service and consumption of beer and wine with meals on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be allowed to continue. The question then shall not be submitted again to the voters within two years of the date of the last election on the question.

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

Section 15

Section 15. Section 60-7A-4.1 NMSA 1978 (being Laws 1985, Chapter 179, Section 1, as amended) is amended to read:

"60-7A-4.1. UNLAWFUL SALE OF ALCOHOLIC BEVERAGES--CRIMINAL PENALTY--FORFEITURE.--

A. It is unlawful for any person to sell or attempt to sell alcoholic beverages at any place other than a licensed premises or as otherwise provided by the Liquor Control Act.

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony.

C. Any conveyance used or intended to be used for the purpose of unlawful sale of alcoholic beverages or money which is the fruit or instrumentality of the crime may be seized and upon conviction, in the discretion of the court, be forfeited and disposed of under the procedures set forth in Section 30-31-35 NMSA 1978."

Section 16

Section 16. A new section of the Liquor Control Act, Section 60-7A-4.2 NMSA 1978, is enacted to read:

"60-7A-4.2. RECORD OF SALES--ADMINISTRATIVE PENALTIES.--

A. It is a violation of the Liquor Control Act for any person licensed pursuant to the provisions of that act and any employee, agent or lessee of that person to fail to maintain a record of sales of distilled spirits, wine and beer in quantities of twenty gallons or more to a single purchaser. The record shall contain the following information:

(1) the date of the sale;

(2) the name and address of the purchaser;

(3) a description of the quantity and type of liquor sold; and

(4) when a full case of distilled spirits is included in the sale, the serial number of the case.

B. Any person who violates the provisions of Subsection A of this section by failing to maintain a record of sales may be assessed an administrative penalty by the director not to exceed one thousand dollars ($1,000).

C. Any person who violates the provisions of Subsection A of this section by failing to maintain, with the intent to defraud, a record of sales may be assessed an administrative penalty by the director not to exceed ten thousand dollars ($10,000)."

Section 17

Section 17. Section 60-7A-5 NMSA 1978 (being Laws 1981, Chapter 39, Section 51) is amended to read:

"60-7A-5. MANUFACTURE, SALE OR POSSESSION FOR SALE WHEN NOT PERMITTED BY LIQUOR CONTROL ACT--CRIMINAL PENALTY--FORFEITURE.--

A. It is unlawful for any person to manufacture for the purpose of sale, possess for the purpose of sale, offer for sale or sell any alcoholic beverages in the state except under the terms and conditions of the Liquor Control Act.

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any conveyance used or intended to be used for the unlawful manufacture or sale of alcoholic beverages or any money that is the fruit or instrumentality of unlawful manufacture or sale of alcoholic beverages may be seized and, upon conviction, in the discretion of the court, forfeited and disposed of pursuant to the provisions of Section 30-31-35 NMSA 1978."

Section 18

Section 18. Section 60-7A-6 NMSA 1978 (being Laws 1981, Chapter 39, Section 52) is amended to read:

"60-7A-6. POSSESSION OF LIQUOR MANUFACTURED OR SHIPPED IN VIOLATION OF LAW--FOURTH DEGREE FELONY--PENALTY--
FORFEITURE.--

A. It is unlawful for any person to have in his possession with the intent to sell or resell any alcoholic beverages which to that person's knowledge have been manufactured or transported into this state in violation of the laws of this state.

B. Any person who violates the provisions of Subsection A of this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any conveyance used or intended to be used for the unlawful manufacture or transportation of alcoholic beverages or any money that is the fruit or instrumentality of unlawful manufacture or transportation of alcoholic beverages may be seized and, upon conviction, in the discretion of the court, forfeited or disposed of pursuant to the provisions of Section 30-31-35 NMSA 1978."

Section 19

Section 19. Section 60-7A-16 NMSA 1978 (being Laws 1981, Chapter 39, Section 93) is amended to read:

"60-7A-16. SALE TO INTOXICATED PERSONS.--It is a violation of the Liquor Control Act for a person to sell or serve alcoholic beverages to or to procure or aid in the procurement of alcoholic beverages for an intoxicated person if the person selling, serving, procuring or aiding in procurement, knows or has reason to know that he is selling, serving, procuring or aiding in procurement of alcoholic beverages for a person that is intoxicated."

Section 20

Section 20. Section 60-7A-24 NMSA 1978 (being Laws 1981, Chapter 39, Section 110) is amended to read:

"60-7A-24. OBSTRUCTION OF THE ADMINISTRATION OF THE LIQUOR CONTROL ACT--CRIMINAL PENALTY--SENTENCING.--

A. Any person who forcibly or by bribe, threat or other corrupt practice obstructs, impedes or attempts to obstruct the administration of the provisions of the Liquor

Control Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. Any licensee who forcibly or by bribe, threat or other corrupt practice obstructs, impedes or attempts to
obstruct the administration of the provisions of the Liquor Control Act is guilty of violating the Liquor Control Act and shall be punished by fine, suspension or revocation under the procedures of the Liquor Control Act."

Section 21

Section 21. Section 60-7A-25 NMSA 1978 (being Laws 1981, Chapter 39, Section 111, as amended) is amended to read:

"60-7A-25. CRIMINAL PENALTIES.--

A. A person who violates any provision of the Liquor Control Act or any rule or regulation promulgated by the department that is not declared by the Liquor Control Act to be a felony is guilty of a misdemeanor and, upon conviction thereof, the person shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. Any person convicted of a violation of the Liquor Control Act which is declared by the Liquor Control Act to be a fourth degree felony shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

Section 22

Section 22. Section 60-7B-1 NMSA 1978 (being Laws 1981, Chapter 39, Section 81) is repealed and a new Section 60-7B-1 NMSA 1978 is enacted to read:

"60-7B-1. SELLING OR GIVING ALCOHOLIC BEVERAGES TO MINORS--POSSESSION.--

A. It is a violation of the Liquor Control Act for any person licensed pursuant to the provisions of the Liquor Control Act, or any employee, agent or lessee of that person, if he knows or has reason to know that he is violating the provisions of this section, to:

(1) sell, serve or give any alcoholic beverages to a minor or permit a minor to consume alcoholic beverages on the licensed premises;

(2) buy alcoholic beverages for or procure the sale or service of alcoholic beverages to a minor;

(3) deliver alcoholic beverages to a minor; or

(4) aid or assist a minor to buy, procure or be served with alcoholic beverages.

B. It is a violation of the Liquor Control Act for any minor to buy, attempt to buy, receive, possess or permit himself to be served with any alcoholic beverages.

C. In the event any person except a minor procures any other person to sell, serve or deliver any alcoholic beverages to a minor by actual or constructive misrepresentation of any facts calculated to cause, or by a concealment of any facts the concealment of which is calculated to cause the person selling, serving or delivering the alcoholic beverages to the minor, to believe that such minor is legally entitled to be sold, served or delivered alcoholic beverages and actually deceiving him by such misrepresentation or concealment, then that person, and not the person so deceived by such misrepresentation or concealment, shall have violated the Liquor Control Act.

D. As used in the Liquor Control Act, "minor" means any person under twenty-one years of age.

E. Violation of this section by a minor with respect to possession is a petty misdemeanor. Upon conviction, the offender may be sentenced in accordance with Section 31-19-1 NMSA 1978. Any sentence imposed pursuant to this subsection may be suspended in the discretion of the court upon the condition that:

(1) the minor accepts the suspension of his driver's license for a period not to exceed three months, whereupon the trial court may dismiss the possession of alcoholic beverage charge and it shall not be considered a conviction. In the event the minor's driver's license is to be suspended, the trial court shall inform the motor vehicle division of the taxation and revenue department of the action; provided, however, if the minor drives during the period of suspension, then the court may impose a fine, jail sentence or both, such fine and sentence not to exceed the maximums imposed for petty misdemeanors or may impose punishment pursuant to Paragraph (2) of this subsection; and

(2) the minor assist in a community project, designated by the court, up to fifty hours, whereupon the trial court may dismiss the possession of alcoholic beverage charge, and it shall not be considered a conviction."

Section 23

Section 23. Section 60-7B-5 NMSA 1978 (being Laws 1981, Chapter 39, Section 85, as amended) is amended to read:

"60-7B-5. REFUSAL TO SELL OR SERVE ALCOHOLIC BEVERAGES TO PERSON UNABLE TO PRODUCE IDENTITY CARD.--Any person licensed pursuant to the provisions of the Liquor Control Act or any employee, agent or lessee of that person shall refuse to sell or serve alcoholic beverages to any person who is unable to produce an identity card as evidence that he is twenty-one years of age or over."

Section 24

Section 24. Section 60-7B-7 NMSA 1978 (being Laws 1981, Chapter 39, Section 87, as amended) is amended to read:

"60-7B-7. PRESENTING FALSE EVIDENCE OF AGE OR IDENTITY.--A minor who presents to any person licensed pursuant to the provisions of the Liquor Control Act or any employee, agent or lessee of that person any written, printed or photostatic evidence of age or identity that is false, for the purpose of procuring or attempting to procure any alcoholic beverages, is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Section 25

Section 25. Section 60-7B-10 NMSA 1978 (being Laws 1981, Chapter 39, Section 90, as amended) is amended to read:

"60-7B-10. MINORS IN LICENSED PREMISES.--

A. Any person licensed pursuant to the provisions of the Liquor Control Act or any employee, agent or lessee of that person who permits a minor to enter and remain in the licensed premises without lawful business is guilty of a violation of the Liquor Control Act.

B. Any minor who enters and remains in the licensed premises without lawful business is guilty of a petty misdemeanor and shall be punished pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. As used in this section "lawful business" means any lawful activity including making deliveries or providing services on the licensed premises pursuant to a minor's employment, consuming food sold by the licensee or purchasing goods other than alcoholic beverages from a licensee."

Section 26

Section 26. Section 60-7B-11 NMSA 1978 (being Laws 1981, Chapter 39, Section 91) is amended to read:

"60-7B-11. EMPLOYMENT OF MINORS.--It shall be a violation of the Liquor Control Act for any person licensed pursuant to the provisions of the Liquor Control Act or for any employee, agent or lessee of that person knowingly to employ or use the service of any minor in the sale and service of alcoholic beverages."

Section 27

Section 27. A new section of the Liquor Control Act is enacted to read:

"STOCKING ALCOHOLIC BEVERAGES IN WET BARS IN HOTEL GUEST ROOMS PROHIBITED--ROOM SERVICE.--

A. It is a violation of the Liquor Control Act for the proprietor or manager of a hotel to stock alcoholic beverages in a wet bar located in any guest room or sleeping room in the hotel unless the alcoholic beverages are contained in a locked compartment, the key to which may be made available to a guest after he has produced evidence of his age and identity by any document that contains a picture of the guest issued by a federal, state, county or municipal government, or subdivision or agency thereof, including but not limited to a motor vehicle driver's license or an identification card issued to a member of the armed forces.

B. Nothing in this section shall be construed to prevent:

(1) the consumption of alcoholic beverages by any person in a hotel guest room or sleeping room; or

(2) the sale or delivery of alcoholic beverages through room service to persons in hotel guest rooms or sleeping rooms; provided any employee of a hotel proprietor or manager delivering alcoholic beverages to a sleeping room may require that an identity card showing proof of age be shown to assure that alcoholic beverages are not sold, delivered or served to a minor in violation of the Liquor Control Act.

C. As used in this section, "wet bar" means a refrigerator, ice chest, cabinet, cupboard, pantry or similar container or storage area that is customarily used to store alcoholic or nonalcoholic beverages for consumption."

Section 28

Section 28. A new section of the Liquor Control Act is enacted to read:

"SHORT TITLE.--Sections 28 through 35 of this act may be cited as the "Alcohol Server Education Act"."

Section 29

Section 29. A new section of the Liquor Control Act is enacted to read:

"PURPOSE.--The purpose of the Alcohol Server Education Act is to:

A. enhance the professionalism of persons employed in the alcoholic beverage service industry;

B. establish a program for servers, licensees and their lessees that includes study of:

(1) the effect alcohol has on the body and behavior, including the effect on a person's ability to operate a motor vehicle when intoxicated;

(2) state law concerning liquor licensure, liquor liability issues and driving under the influence of intoxicating liquor;

(3) methods of recognizing problem drinkers and techniques for intervening with problem drinkers;

(4) methods of identifying false driver's licenses and other documents used as evidence of age and identity to prevent the sale of alcohol to minors; and

(5) prevention of fetal alcohol syndrome;

C. reduce the number of persons who drive while under the influence of intoxicating liquor and mitigate the physical and property damage caused by that behavior; and

D. reduce the frequency of alcohol-related birth defects."

Section 30

Section 30. A new section of the Liquor Control Act is enacted to read:

"DEFINITIONS.--As used in the Alcohol Server Education Act:

A. "director" means the director of the alcohol and gaming division of the regulation and licensing department;

B. "division" means the alcohol and gaming division of the regulation and licensing department;

C. "licensee" means a person in possession of a license issued pursuant to the provisions of the Liquor Control Act;

D. "program" means an alcohol education server program and examination administered to servers and licensees pursuant to the provisions of the Alcohol Server Education Act;

E. "provider" means an individual, partnership, corporation, public or private school or any other legal entity certified by the director to provide a program; and

F. "server" means an individual who sells or serves alcoholic beverages for consumption on or off the premises of a business licensed pursuant to the provisions of the Liquor Control Act."

Section 31

Section 31. A new section of the Liquor Control Act is enacted to read:

"ALCOHOL SERVER TRAINING--REQUIRED FOR LICENSE RENEWAL.--Beginning July 1994 a licensee seeking renewal of a license shall submit to the department, as a condition of license renewal, proof that the licensee, his lessee and each server employed by the licensee or lessee during the prior licensing year have completed alcohol server programs certified by the alcohol server education advisory committee pursuant to provisions of the Liquor Control Act."

Section 32

Section 32. A new section of the Liquor Control Act is enacted to read:

"ADVISORY COMMITTEE CREATED--MEMBERS--MEETINGS.--

A. The "alcohol server education advisory committee" is created and is administratively attached to the division. The ten-member committee shall consist of:

(1) the director;

(2) the secretary of public safety or his designee;

(3) the secretary of health or his designee;

(4) the chief of the traffic safety bureau of the state highway and transportation department or his
designee;

(5) three representatives from the retail liquor industry;

(6) a representative from the wholesale liquor industry;

(7) a representative from the insurance industry; and

(8) a representative from a nonprofit organization whose primary purpose is to reduce drunk driving in New Mexico.

B. The representative members of the committee shall be selected by the director. The director shall serve as chairman of the committee.

C. The committee shall meet as often as necessary to conduct business, but no less than twice a year. Meetings shall be called by the director. Five members shall constitute a quorum."

Section 33

Section 33. A new section of the Liquor Control Act is enacted to read:

"ADVISORY COMMITTEE--DUTIES.--The alcohol server education advisory committee shall assist the division with development of:

A. standards, course requirements and materials for the program;

B. procedures attendant to the program;

C. certification standards for providers and instructors; and

D. certification of alcohol server education programs that meet the minimum standards of the alcohol server education advisory committee."

Section 34

Section 34. A new section of the Liquor Control Act is enacted to read:

"PROGRAM--CONTENT OF PROGRAM.--The program curriculum may include the following subjects:

A. the effect alcohol has on the body and behavior, including the effect on a person's ability to operate a motor vehicle when intoxicated;

B. the effect alcohol has on a person when used in combination with legal or illegal drugs;

C. state laws concerning liquor licensure, liquor liability issues and driving under the influence of intoxicating liquor;

D. methods of recognizing problem drinkers and techniques for intervening with problem drinkers;

E. methods of identifying false driver's licenses and other documents used as evidence of age and identity to prevent the sale of alcohol to minors; and

F. the incidence of alcohol-related birth defects."

Section 35

Section 35. A new section of the Liquor Control Act is enacted to read:

"COURSE CERTIFICATES.--The alcohol server education advisory committee shall:

A. prescribe forms for and supply serially numbered uniform certificates of course completion to providers of courses approved by the alcohol server education advisory

committee and charge a fee not to exceed one dollar ($1.00) per certificate. The uniform certificates of course completion shall be printed in a manner that will provide a control copy of the certificate that shall be retained by the course provider. Each certificate shall include an identifying number that will allow the director to verify its authenticity with the course provider and the date the certificate will expire. Upon successful completion of a course, providers shall issue to each student a certificate of completion;

B. require each provider to post a surety bond with the alcohol server education advisory committee in the amount of five thousand dollars ($5,000); and

C. certify servers, licensees and their lessees for a period of five years from the date on which the course was completed."

Section 36

Section 36. A new section of the Liquor Control Act is enacted to read:

"RETAILERS AND DISPENSERS--SEGREGATED SALES.--The director shall by regulation develop procedures for segregated alcohol sales by every retailer or dispenser who sells alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises and whose sales are less than sixty percent of their total sales, giving serious consideration in the regulation process to the potentially adverse impact of segregated sales on different sizes of the establishments of the retailer or dispenser."

Section 37

Section 37. A new section of the Liquor Control Act is enacted to read:

"STATE FAIR--ALCOHOLIC BEVERAGE SALES RESTRICTIONS.--Sales, service, delivery or consumption of alcoholic beverages shall be permitted on the grounds of the state fair only on the licensed premises in controlled access areas the designation of which has been negotiated as part of the license application or renewal process."

Section 38

Section 38. Section 66-1-4.2 NMSA 1978 (being Laws 1990, Chapter 120, Section 3) is amended to read:

"66-1-4.2. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels, except scooters and similar devices;

B. "bureau" means the traffic safety bureau of the state highway and transportation department;

C. "bus" means every motor vehicle designed and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation; and

D. "business district" means the territory contiguous to and including a highway when within any three hundred feet along the highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks or office buildings, railroad stations and public buildings that occupy at least fifty percent of the frontage on one side or fifty percent of the frontage collectively on both sides of the highway."

Section 39

Section 39. Section 66-5-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 227, as amended) is amended to read:

"66-5-5. PERSONS NOT TO BE LICENSED.--The division shall not issue a driver's license under the Motor Vehicle Code to any person:

A. who is under the age of sixteen years, except the division may, in its discretion, issue:

(1) a restricted instruction permit or a restricted license to students fourteen years of age or over, enrolled in and attending a driver-education course that includes a DWI education and prevention component approved by the bureau or offered by a public school;

(2) a license to any person fifteen years of age or older who has satisfactorily completed a driver-education course that is approved by the bureau or offered by a public school that includes both a DWI education and prevention component and practice driving; and

(3) to any person thirteen years of age or older who passes an examination prescribed by the division, a license restricted to the operation of a motorcycle, provided:

(a) the motor is not in excess of one hundred cubic centimeters displacement;

(b) no holder of an initial license may carry any other passenger while driving a motorcycle; and

(c) the director approves and certifies motorcycles as not in excess of one hundred cubic centimeters displacement and by regulation provides for a method of identification of such motorcycles by all law enforcement officers;

B. whose license or driving privilege has been suspended or denied, during the period of suspensionor denial, or to any person whose license has been revoked, except as provided in Section 66-5-32 NMSA 1978;

C. who is an habitual drunkard, an habitual user of narcotic drugs or an habitual user of any drug to a degree
which renders him incapable of safely driving a motor vehicle;

D. who, within any ten-year period, is three times convicted of driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug regardless of whether the convictions are under the laws or ordinances of this state or any municipality or county of this state or under the laws or ordinances of any other state, the District of Columbia or any governmental subdivision thereof. Ten years after being so convicted for the third time, the person may apply to any district court of this state for restoration of the license, and the court, upon good cause being shown, may order restoration of the license applied for; provided that the person has not been subsequently convicted of driving a motor vehicle while under the influence of intoxicating liquor or drug in the ten-year period prior to his request for restoration of his license. Upon issuance of the order of restoration, a certified copy shall immediately be forwarded to the division, and if the person is otherwise qualified for the license applied for, the three previous convictions shall not prohibit issuance of the license applied for. Should the person be subsequently once convicted of driving a motor vehicle while under the influence of intoxicating liquor or drug, the division shall revoke his license for five years, after which time he may apply for restoration of his license as provided in this subsection;

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

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

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

H. when the director has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare; or

I. as a motorcycle driver who is less than eighteen years of age and who has not presented a certificate or other evidence of having successfully completed a motorcycle driver-education program licensed or offered in conformance with regulations of the bureau."

Section 40

Section 40. Section 66-5-8 NMSA 1978 (being Laws 1978, Chapter 35, Section 230, as amended) is amended to read:

"66-5-8. INSTRUCTION PERMITS AND TEMPORARY LICENSES.--

A. Any person fifteen years of age or older who is enrolled in and attending a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school may apply to the division for an instruction permit. The division, in its discretion after the applicant has successfully passed all parts of the examination other than the driving test, may issue to the applicant an instruction permit. This permit entitles the applicant, while having the permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of six months when accompanied by a licensed driver who is occupying a seat beside the driver except in the event the permittee is operating a motorcycle. The instruction permit may be renewed or a new permit issued for an additional period of six months.

B. The division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a restricted period of a school year or more to an applicant fourteen years of age or older who is enrolled in and attending a driver education course that is approved by the bureau or offered by a public school that includes both a DWI education and prevention component and practice driving even though the applicant has not reached the legal age to be eligible for a driver's license. The instruction permit entitles the permittee, when he has the permit in his immediate possession, to operate a motor vehicle only on a designated highway or within a designated area but only when an approved instructor is occupying a seat beside the permittee.

C. The division in its discretion may issue a temporary driver's permit to an applicant for a driver's license permitting him to operate a motor vehicle while the division is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

D. Any holder of an instruction permit for a motorcycle shall not carry any other passenger while operating a motorcycle."

Section 41

Section 41. Section 66-5-9 NMSA 1978 (being Laws 1978, Chapter 35, Section 231, as amended) is amended to read:

"66-5-9. APPLICATION FOR LICENSE, TEMPORARY LICENSE OR INSTRUCTION PERMIT.--

A. Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the department. Every application shall be accompanied by the proper fee. For permits or driver's licenses other than those issued pursuant to the New Mexico Commercial Driver's License Act, submission of a complete application with payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of six months from the date of application.

B. Every application shall contain the full name, social security number, date of birth, sex and New Mexico residence address of the applicant and briefly describe the applicant, and indicate whether the applicant has previously been licensed as a driver and, if so, when and by what state or country and whether any such license has ever been suspended or revoked or whether an application has ever been refused and, if so, the date of and reason for the suspension, revocation or refusal.

C. Every applicant shall indicate whether he has been convicted of driving while under the influence of intoxicating liquor or drugs in this state or in any other jurisdiction. Failure to disclose any such conviction prevents the issuance of a driver's license, temporary license or instruction permit for a period of one year if the failure to disclose is discovered by the department prior to issuance. If the nondisclosure is discovered by the department subsequent to issuance, the department shall revoke the driver's license, temporary license or instruction permit for a period of one year. Intentional and willful failure to disclose, as required in this subsection, is a misdemeanor.

D. Every applicant less than eighteen years of age who is making an application to be granted his first New Mexico driver's license shall submit evidence that he has successfully completed a driver education course that included a DWI prevention and education program approved by the bureau or offered by a public school. The bureau may accept verification of driver education course completion from another state if the driver education course substantially meets the requirements of the bureau for a course offered in New Mexico.

E. Every applicant eighteen years of age and over who is making an application to be granted his first New Mexico driver's license shall submit evidence with his application that he has successfully completed a bureau-approved DWI prevention and education program.

F. Whenever application is received from a person previously licensed in another jurisdiction, the department may request a copy of the driver's record from the other jurisdiction. When received, the driver's record may become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

G. Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

H. This section does not apply to driver's licenses issued pursuant to the New Mexico Commercial Driver's License Act."

Section 42

Section 42. Section 66-5-44 NMSA 1978 (being Laws 1978, Chapter 35, Section 266, as amended) is amended to read:

"66-5-44. LICENSES AND PERMITS--DURATION AND FEE--APPROPRIATION.--

A. There shall be paid to the division a fee of ten dollars ($10.00) for each driver's license or duplicate driver's license. Each license shall be for a term provided for in Section 66-5-21 NMSA 1978.

B. For each permit and instruction permit, there shall be paid to the division a fee of two dollars ($2.00). The term for each permit shall be as provided in Sections 66-5-8 and 66-5-9 NMSA 1978.

C. The director with the approval of the governor may increase the amount of the fees provided for in this section by an amount not to exceed three dollars ($3.00) for the purpose of implementing an enhanced driver's license system. The additional amounts collected pursuant to this subsection are appropriated to the division to defray the expense of the new system of licensing.

D. There shall be paid to the division a driver safety fee of three dollars ($3.00) for each driver's license or duplicate driver's license. The fee shall be distributed to each school district for the purpose of providing defensive driving instruction through the state equalization guarantee distribution made annually pursuant to the General Appropriation Act."

Section 43

Section 43. Section 66-6-23 NMSA 1978 (being Laws 1978, Chapter 35, Section 358, as amended) is amended to read:

"66-6-23. DISPOSITION OF FEES.--

A. After the necessary disbursements for refunds and other purposes have been made, the money remaining, except for remittances received within the previous two months that are unidentified as to source or disposition, shall be distributed as follows:

(1) to each municipality, county or fee agent operating a motor vehicle field office, an amount equal to five dollars ($5.00) per driver's license and two dollars ($2.00) per identification card, registration or title transaction performed;

(2) to each municipality or county, other than a class A county or a municipality with a population in excess of two hundred thousand within a class A county, operating a motor vehicle field office, an amount equal to fifty cents ($.50) for each administrative service fee remitted by that county or municipality to the department under the provisions of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to one-half of each fee received from motorcycle endorsements; and

(b) the remainder of each driver's license fee collected by the department employees from an applicant
to whom a license is granted after deducting from the driver's license fee the amount of the distribution under Paragraph (1) of this subsection with respect to that collected driver's license fee;

(4) to the general fund, the amount of the fees provided for in Subsection A of Section 66-5-408 NMSA 1978; and

(5) to the division:

(a) an amount equal to one-half of each fee received from motorcycle endorsements; and

(b) an amount equal to the fees provided for in Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978; and

(6) to the state equalization guarantee distribution made annually pursuant to the General Appropriation Act, an amount equal to one hundred percent of the driver safety fee collected pursuant to Section 66-5-44 NMSA 1978.

B. The balance, exclusive of unidentified remittances, after having been reduced by the distributions required by Subsection A of this section, shall be further reduced by a distribution of forty-three percent of the balance to the state road fund, and the remainder of thebalance shall be transferred or distributed by the state treasurer on or before the last day of the month next after its receipt, as follows:

(1) forty-one and three-tenths percent shall be distributed to the state road fund;

(2) seventeen and six-tenths percent shall be transferred to each county in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties;

(3) seventeen and six-tenths percent shall be transferred to the counties, each county receiving an amount equal to the proportion, determined by the secretary of highway and transportation in accordance with Subsection E of this section, that the mileage of public roads maintained by
the county is to the total mileage of public roads maintained by all counties of the state. Amounts distributed to each county in accordance with this paragraph shall be credited to the respective county road fund and be used for the improvement and maintenance of the public roads in the county and to pay for the acquisition of rights-of-way and material pits. For this purpose, the board of county commissioners of each of the

respective counties shall certify by April 1 of each year to the secretary of highway and transportation the total mileage as of April 1 of that year; provided that in their report the boards of county commissioners shall identify each of the public roads maintained by them, by name, route and location. By agreement and in cooperation with the state highway and transportation department, the boards of county commissioners of the various counties may use or designate any of the funds provided in this paragraph for any federal aid program;

(4) nine and four-tenths percent shall be allocated among the counties in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the sum of net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, determined for the incorporated municipality is to the sum of net taxable value plus assessed value determined for all incorporated municipalities within the county. Amounts transferred to incorporated municipalities under the provisions of this paragraph shall be used for the construction, maintenance and repair of streets within the municipality and for payment of paving assessments against property owned by federal, county or municipal governments. In any county in which there are no incorporated municipalities, the amount allocated under this paragraph shall be transferred to the county road fund and used in accordance with the provisions of Paragraph (3) of this subsection; and

(5) fourteen and one-tenth percent shall be allocated among the counties in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the county and incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the computed taxes due for the county and each incorporated municipality within the county bear to the total computed taxes due for the county and incorporated municipalities within the county; for the purposes of this paragraph, the term "computed taxes due" for any jurisdiction means the sum of the net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, for that jurisdiction multiplied by an average of the rates for residential and nonresidential property imposed for that jurisdiction pursuant to Subsection B of Section 7-37-7 NMSA 1978.

C. To carry out the provisions of this section, during the month of June of each year:

(1) the department shall determine and certify to the department of finance and administration the proportions which the department is required to determine by Subsection B of this section using information for the preceding calendar year on the number of vehicles registered in each county based on the address of the owner or place where the vehicle is principally located, the registration fees for the vehicles registered in each county, the total number of vehicles registered in the state and the total registration fees for all vehicles registered in the state; and

(2) the department of finance and administration shall determine the proportions which the department of finance and administration is required to determine by Subsection B of this section based upon the net taxable values, as that term is defined in the Property Tax Code, and assessed values, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act, for the preceding tax year and the tax rates imposed pursuant to Subsection B of Section 7-37-7 NMSA 1978 in the preceding September.

D. By June 30 of each year, the department of finance and administration shall determine the appropriate
percentage of money to be transferred to each county and municipality for each purpose in accordance with Subsection A of this section based upon the proportions determined by or certified to the department of finance and administration. The percentages determined shall be used to compute the amounts to be transferred to the counties and municipalities during the succeeding fiscal year.

E. The board of county commissioners of each of the respective counties shall, by May 1, 1988 and by April 1 of every year thereafter, certify reports to the secretary of highway and transportation of the total mileage of public roads maintained by each county as of May 1, 1988 and by April 1 of every year thereafter; provided that in their reports the boards of county commissioners shall identify each of the public roads maintained by them by name, route and location. By July 1 of every year, the secretary of highway and transportation shall verify the reports of the counties and revise, if necessary, the total mileage of public roads maintained by each county and the mileage verified by the secretary of highway and transportation shall be the official mileage of public roads maintained by each county. After August 1, 1988, distribution of amounts to any county for road purposes shall be made in accordance with this section.

F. If a county has not made the required mileage certification pursuant to Section 67-3-28.3 NMSA 1978 by May 1, 1988 and by April 1 of every year thereafter, the secretary of highway and transportation shall estimate the mileage maintained by those counties for the purpose of making distribution to all counties, and the amount calculated to be distributed each month to those counties not certifying mileage shall be reduced by one-third each month for that fiscal year and that amount not distributed to those counties shall be distributed equally to all counties which have certified mileages.

G. The director shall review, at the end of each fiscal year, the aggregate total of motor vehicle transactions performed by each municipality, county or fee agent operating a

motor vehicle field office, and for each office exceeding ten thousand aggregate transactions per year, that municipality, county or fee agent shall be paid an additional one dollar ($1.00) per identification card, driver's license, registration or title transaction performed during the next fiscal year."

Section 44

Section 44. Section 66-7-506 NMSA 1978 (being Laws 1978, Chapter 35, Section 493, as amended) is amended to read:

"66-7-506. BUREAU--FUNCTIONS--POWERS--DUTIES.--The bureau shall have the following powers and duties:

A. organize, plan and conduct a statewide program of activities designed to prevent accidents and to reduce the incidence of DWI in New Mexico;

B. coordinate activities and programs of the departments, divisions and agencies of this state now engaged in promoting traffic safety;

C. provide accident prevention information and publicity to all appropriate media of information and develop other means of public information;

D. cooperate with all public and private agencies and organizations interested in the promotion of traffic safety and accident prevention;

E. serve as a clearinghouse for all traffic safety materials and information used throughout this state;

F. cooperate in promoting research, special studies and analysis of problems concerning the safety and welfare of the citizens of New Mexico;

G. cooperate fully with national safety organizations in bringing about greater effectiveness in nationwide accident prevention activities and programs;

H. make studies and suitable recommendations, through the director and the secretary of highway and transportation, to the legislature concerning safety regulations and laws;

I. prepare and submit each year a written report to the governor concerning the activities of the bureau and activities concerning assistance to local organizations and officials;

J. institute and administer a statewide motorcycle training program funded as provided for in Section 66-10-10 NMSA 1978;

K. institute and administer an accident prevention course for elderly drivers as provided for in Section
59A-32-14 NMSA 1978;

L. cooperate with the state department of public education to develop a regulatory framework for instructional and administrative processes, including licensure requirements for instructors, and a curriculum for instruction in defensive driving with a DWI education and prevention component to be offered statewide in secondary schools as an elective;

M. institute and administer a DWI prevention and education program for elementary and secondary school students, funded as provided for in Section 66-5-35 NMSA 1978; and

N. include at least two hours of DWI prevention and education training in all driver education courses approved by the bureau."

Section 45

Section 45. Section 66-10-1 NMSA 1978 (being Laws 1967, Chapter 185, Section 1) is amended to read:

"66-10-1. SHORT TITLE.-- Chapter 66, Article 10 NMSA 1978 may be cited as the "Driving School Licensing Act"."

Section 46

Section 46. Section 66-10-2 NMSA 1978 (being Laws 1967, Chapter 185, Section 2) is amended to read:

"66-10-2. DRIVER EDUCATION SCHOOLS--DRIVER EDUCATION INSTRUCTORS--LICENSE REQUIRED.--No person, firm, association or corporation shall operate a driver education school or engage in the business of giving instruction for hire in the driving of motor vehicles or in the preparation of an applicant for examination for a Class D, E or M driver's license unless a license has been secured from the bureau."

Section 47

Section 47. Section 66-10-3 NMSA 1978 (being Laws 1967, Chapter 185, Section 3) is amended to read:

"66-10-3. QUALIFICATIONS OF DRIVER EDUCATION SCHOOLS--FEES.--Every applicant in order to qualify to operate a driver education school shall meet the following requirements:

A. maintain bodily injury and public damage liability insurance on all motor vehicles used in driving
instruction in the amounts and form as prescribed by law or regulation of the bureau;

B. have the equipment necessary to the giving of proper instruction in the operation of motor vehicles; and

C. pay to the bureau an annual license fee to be set by regulation of the bureau."

Section 48

Section 48. Section 66-10-4 NMSA 1978 (being Laws 1967, Chapter 185, Section 4) is amended to read:

"66-10-4. QUALIFICATIONS OF DRIVER EDUCATION INSTRUCTORS.--Every person in order to qualify as an instructor for a driver education school shall meet te following requirements:

A. possess qualifications as prescribed by the bureau;

B. be physically able to operate safely a motor vehicle and to train others in the operation of motor vehicles;

C. hold a valid New Mexico operator's or chauffeur's license; and

D. pay to the bureau an annual license fee to be set by regulation of the bureau."

Section 49

Section 49. Section 66-10-5 NMSA 1978 (being Laws 1967, Chapter 185, Section 5) is amended to read:

"66-10-5. ISSUANCE OF LICENSES TO DRIVER EDUCATION SCHOOLS AND TO DRIVER EDUCATION INSTRUCTORS.--

A. The bureau shall issue a license certificate to each applicant to conduct a driver education school or to each driver education instructor when it is satisfied that the person has met the qualifications required under the Driving School Licensing Act and, if a school, complies with the minimum driver education program standards established by the bureau.

B. The bureau shall prescribe minimum driver training program standards.

C. All licenses issued pursuant to the provisions
of the Driving School Licensing Act shall expire on June 30 of each year, unless

canceled, suspended or revoked sooner. Licenses shall be renewed subject to application and payment of the required fee."

Section 50

Section 50. Section 66-10-6 NMSA 1978 (being Laws 1967, Chapter 185, Section 6) is amended to read:

"66-10-6. POWERS OF BUREAU.--The bureau shall:

A. prescribe the forms and procedures necessary for the making of applications and the licensing of driver education schools and driver education instructors pursuant to the provisions of the Driving School Licensing Act;

B. require periodic and annual reports from the licensed schools on the number and types of pupils enrolled and trained and such other matters as it deems necessary;

C. require the licensed schools to keep and maintain certain records;

D. prescribe forms for and supply serially numbered uniform certificates of course completion to owners, primary consignees or operators of courses approved by the bureau and charge a fee not to exceed one dollar ($1.00) per certificate. The uniform certificates of course completion shall be printed on copy resistant paper in not less than two self-copying parts so as to provide a control copy of the certificate that shall be retained by the course provider. Each certificate shall include an identifying number that will allow the court or bureau to verify its authenticity with the course provider. Upon successful completion of a course, licensed schools shall issue to each pupil a certificate of completion;

E. require each driver education school to post a surety bond with the bureau in the amount of five thousand dollars ($5,000);

F. suspend or revoke, subject to the procedures prescribed in the Uniform Licensing Act, any license issued to a driver education school or to a driver education instructor when it is found that the licensee has failed to maintain the qualifications or standards required by the Driving School Licensing Act for the issuance of the initial license;

G. develop and adopt rules and regulations needed to administer the Driving School Licensing Act and to license driver education schools and instructors;

H. set annual licensure fees for:

(1) driver education schools, not to exceed five hundred dollars ($500) per year;

(2) driver education instructors, not to exceed one hundred dollars ($100) per year; and

(3) driver education school extension locations, not to exceed thirty-five dollars ($35.00) per year; and

I. set by regulation the enrollment fees that may be charged to a student by a private driver education school."

Section 51

Section 51. Section 66-10-7 NMSA 1978 (being Laws 1967, Chapter 185, Section 7) is amended to read:

"66-10-7. DISPOSITION OF FEES.--All fees received by the bureau for licenses or certificates issued pursuant to the Driving School Licensing Act shall be deposited with the state treasurer and placed in the general fund."

Section 52

Section 52. Section 66-10-9 NMSA 1978 (being Laws 1973, Chapter 381, Section 3) is amended to read:

"66-10-9. MOTORCYCLE DRIVER EDUCATION PROGRAMS.--

A. Any driver education school licensed under the Driving School Licensing Act may offer a motorcycle driver education program in accordance with regulations promulgated by the bureau.

B. The bureau shall prescribe minimum motorcycle driver education program standards.

C. The Driving School Licensing Act applies to any program offered under this section."

Section 53

Section 53. Section 66-10-10 NMSA 1978 (being Laws 1983, Chapter 266, Section 1, as amended) is amended to read:

"66-10-10. MOTORCYCLE TRAINING FUND CREATED--PURPOSE.--

A. There is created in the state treasury the "motorcycle training fund". The fund shall be invested in accordance with the provisions of Section 6-10-10 NMSA 1978, and all income earned on the fund shall be credited to the fund.

B. The motorcycle training fund shall be used to institute and provide a statewide system of motorcycle training and driver awareness and education in the dangers of driving while under the influence of alcohol or drugs for first-time license applicants and to provide for the purchase of necessary equipment and provide for such support services as are necessary for the establishment and maintenance of the system.

C. First-time applicants for a motorcycle license or an endorsement on their New Mexico driver's license may be required to complete a motorcycle driver education program as prescribed by the rules and regulations of the bureau.

D. The bureau shall adopt rules and regulations as prescribed in the State Rules Act for the administration of a statewide motorcycle driver education program to be administered by the bureau. The program shall include, but not be limited to:

(1) helmet use and effectiveness;

(2) motorcycle accident and fatality statistics;

(3) drug and alcohol abuse information, laws and statistics;

(4) street and highway safe driving habits; and

(5) defensive driving.

E. The bureau shall cooperate with the state department of public education to distribute information through the public school systems.

F. All money in the motorcycle training fund is appropriated to the bureau for the purpose of carrying out the provisions of Subsection B of this section; provided that at the end of the seventy-second fiscal year and all subsequent fiscal years, all money in the motorcycle training fund in excess of the amount budgeted for the purposes delineated in Subsection B of this section shall revert to the state road fund."

Section 54

Section 54. A new section of the Driving School Licensing Act is enacted to read:

"DRIVING SAFETY TRAINING CONSIDERED BY THE COURT.--In addition to other sentencing or penalty provisions of law, when a person is convicted of a penalty assessment misdemeanor or other misdemeanor committed while operating a motor vehicle, each court is authorized to and shall consider ordering that offender to take any driving safety course certified by the bureau but shall not specify a particular provider."

Section 55

Section 55. A new section of the Driving School Licensing Act is enacted to read:

"EXEMPT PROVIDERS.--The Driving School Licensing Act shall not apply to nonprofit corporations that provide motor vehicle accident prevention courses that fulfill the requirements of Section 59A-32-14 NMSA 1978 and that are engaged in providing courses exclusively for drivers who are fifty-five years of age or older."

Section 56

Section 56. TEMPORARY PROVISION.--In order to provide the alcohol server education advisory committee and the alcohol and gaming division of the regulation and licensing department with a period of time to implement the provisions of the Alcohol Server Education Act, enforcement of the provisions of that act shall not commence until July 1, 1994.

Section 57

Section 57. REPEAL.--Sections 60-6C-3, 60-6C-7 and
66-5-3 NMSA 1978 (being Laws 1981, Chapter 39, Sections 99 and 103 and Laws 1978, Chapter 35, Section 225, as amended) are repealed.

Section 58

Section 58. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 59

Section 59. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1, 2 and 4 through 38 and 42 through 55 of this act is July 1, 1993.

B. The effective date of the provisions of Sections 3 and 39 through 41 of this act is July 1, 1994.SB 344,
28, et al

CHAPTER 69

RELATING TO EDUCATIONAL RETIREMENT; AMENDING AND REPEALING SECTIONS OF THE EDUCATIONAL RETIREMENT ACT.

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

Section 1

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

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

A. "member" means any employee except for a participant coming within the provisions of the Educational Retirement Act;

B. "regular member" means:

(1) a person regularly employed as a teaching, nursing or administrative employee of a state educational institution except for:

(a) a participant; or

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

(2) a person regularly employed as a teaching, nursing or administrative employee of a junior college or community college created pursuant to Chapter 21, Article 13 NMSA 1978;

(3) a person regularly employed as a teaching, nursing or administrative employee of a technical and vocational institute created pursuant to the Technical and Vocational Institute Act;

(4) a person regularly employed as a teaching, nursing or administrative employee of the New Mexico boys' school, the New Mexico girls' school, the Los Lunas mental hospital or a school district or as a certified school instructor of a state institution or agency providing an educational program and holding a standard or substandard certificate issued by the state board;

(5) a person regularly employed by the department of education or the board holding a standard or substandard certificate issued by the state board at the time of commencement of such employment;

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

(7) a person regularly employed by the New Mexico activities association holding a standard certificate issued by the state board at the time of commencement of such employment;

C. "provisional member" means a person not eligible to be a regular member but who is employed by a local administrative unit designated in Subsection B of this section; provided, however, that employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico shall not be provisional members;

D. "local administrative unit" means an employing agency however constituted that is directly responsible for the payment of compensation for the employment of members or participants;

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

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

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

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

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

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

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

L. "allowed service-credit" means that period of time during which a member has performed certain nonservice-employment with which he may be accredited, as provided in the Educational Retirement Act, for the purpose of computing retirement or disability benefits;

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

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

O. "board" means the educational retirement board;

P. "fund" means the educational retirement fund;

Q. "director" means the educational retirement director;

R. "medical authority" means a medical doctor within the state or as provided in Subsection D of Section 22-11-36 NMSA 1978 either designated or employed by the board to examine and report on the medical condition of applicants for or recipients of disability benefits;

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

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

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

V. "qualifying state educational institution" means the university of New Mexico, New Mexico state university, the New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university and western New Mexico university;

W. "participant" means:

(1) a person regularly employed as a faculty or professional employee of a qualifying state educational institution who first becomes employed with such an educational institution on or after July 1, 1991 and who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; and

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

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

Section 2

Section 2. Section 22-11-12 NMSA 1978 (being Laws 1967, Chapter 16, Section 136) is amended to read:

"22-11-12. FUND--DISBURSEMENTS.--The state treasurer shall make disbursements from the fund only on warrants issued by the department of finance and administration or through any other process as approved by the department of finance and administration. Warrants for disbursements from the fund shall be issued by the department of finance and administration only upon voucher of the director."

Section 3

Section 3. Section 22-11-13 NMSA 1978 (being Laws 1967, Chapter 16, Section 137, as amended) is amended to read:

"22-11-13. INVESTMENT OF THE FUND--INDEMNIFICATION OF BOARD.--

A. The board is authorized to invest or reinvest the fund and may invest the fund only in the following:

(1) obligations, including but not limited to bills, bonds or notes of the United States, United States government-sponsored enterprises or federal agency securities;

(2) obligations, including but not limited to bills, bonds and notes of governments other than the United States or their political subdivisions, agencies or instrumentalities, and these may be denominated in foreign currencies;

(3) obligations, including but not limited to bonds or notes of a municipality or political subdivision of the state that were issued pursuant to law; provided the issuer has not, within ten years prior to making the investment, been in default for more than three months in the payment of any part of the principal or interest on any debt evidenced by its bonds, notes or obligations; and provided the bonds are city or county utility, or utility-district revenue bonds with the revenue of such utility, other than for payment of operation and maintenance expenses, pledged wholly to payment of the interest on and the principal of such indebtedness, and the utility project has been completely self-supporting for a period of five years preceding the date of the investment;

(4) contracts for the present purchase and resale at a specified time in the future, not to exceed one year, of specific securities at specified prices at a price differential representing the interest income to be earned by the board. No such contract shall be entered into unless the contract is fully secured by obligations of the United States, or other securities backed by the United States, having a market value of at least one hundred two percent of the amount of the contract. The collateral required in this section shall be delivered to the state fiscal agent or his designee contemporaneously with the transfer of funds or delivery of the securities, at the earliest time industry practice permits, but in all cases settlement shall be on a same-day basis. No such contract shall be entered into unless the contracting bank, brokerage firm or

recognized institutional investor has a net worth in excess of five hundred million dollars ($500,000,000);

(5) obligations, including but not limited to bonds, notes or commercial paper of any corporation organized within the United States; preferred stock or common stock of any corporation organized within the United States whose securities are listed on at least one national stock exchange or on the N.A.S.D. national market or American depositary receipts of any corporation organized outside the United States whose securities are listed on at least one national stock exchange or on the N.A.S.D. national market; provided that the corporation shall have a minimum net worth of twenty-five million dollars ($25,000,000); and provided that the fund shall not at any one time own more than ten percent of the voting stock of a company;

(6) prime bankers' acceptances issued by money center banks;

(7) obligations, including but not limited to bonds, notes or commercial paper of any corporation organized outside of the United States, and these may be denominated in foreign currencies; preferred stock or common stock of any corporation organized outside of the United States whose securities are listed on at least one national or foreign stock exchange, and these may be denominated in foreign currencies; provided that the corporation shall have a minimum net worth of twenty-five million dollars ($25,000,000); and provided that the fund shall not at any one time own more than ten percent of the voting stock of a company;

(8) currency transactions, including spot or cash basis currency transactions, forward currency contracts and buying or selling options or futures on foreign currencies, but only for the purposes of hedging foreign currency risk and not for speculation;

(9) stocks or shares of a diversified investment company registered under the Investment Company Act of 1940, as amended, which invests primarily in United States or non-United States fixed income securities, equity securities or short-term debt instruments pursuant to Paragraphs (1), (2), (4), (5) and (7) of this subsection, provided that the investment company has total assets under management of at least one hundred million dollars ($100,000,000); individual, common or collective trust funds of banks or trust companies, which invest primarily in United States or non-United States fixed income securities, equity securities or short-term debt instruments pursuant to Paragraphs (1), (2), (4), (5) and (7) of this subsection, provided that the investment manager has assets under management of at least one hundred million dollars ($100,000,000); the board may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments; or

(10) industrial revenue bonds issued pursuant to the Industrial Revenue Bond Act, where both the principal and interest of the bonds are fully and unconditionally guaranteed by a lease agreement executed by a corporation organized and operating within the United States and which has net assets of at least twenty-five

million dollars ($25,000,000) and has issued securities traded on one or more national stock exchanges and where the senior securities of the guaranteeing corporation would have the equivalent of a BAA rating.

B. The board or its designated agent may enter into contracts for the temporary exchange of securities for the use by broker-dealers, banks or other recognized institutional investors, for periods not to exceed one year, for a specified fee or consideration. No such contract shall be entered into unless the contract is fully secured by a collateralized, irrevocable letter of credit running to the board, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. This collateral shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities. Such contract may authorize the board to invest cash collateral in instruments or securities that are authorized fund investments and may authorize payment of a fee from the fund or from income generated by the investment of cash collateral to the borrower of securities providing cash as collateral. The board may apportion income derived from the investment of cash collateral to pay its agent in securities lending transactions.

C. Commissions paid for the purchase or sale of any securities pursuant to the provisions of theEducational Retirement Act shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice.

D. Investment of the fund shall be made with the exercise of that degree of judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

E. Securities purchased for the fund shall be held in the custody of the state treasurer. At the direction of the board, the state treasurer shall deposit with a bank or trust company the securities for safekeeping or servicing.

F. The board may consult with the state investment council or the state investment officer; may request from the state investment council or the state investment officer any information, advice or recommendations with respect to investment of the fund; may utilize the services of the state investment council or the state investment officer; and may act upon any advice or recommendations of the state investment council or the state investment officer. The state investment council or the state investment officer shall render investment advisory services to the board upon request and without expense to the board. The board may employ investment advisory services and pay reasonable compensation from the fund for the services. The board may also employ investment management services and pay reasonable compensation from the fund for the services to make investment decisions on behalf of the board, within the investment objectives, policies and operating guidelines as directed by the board to the investment manager.

G. Members of the board, jointly and individually, shall be indemnified from the fund by the state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorneys' fees, and against all liability, losses and damages of any nature whatsoever that members shall or may at any time sustain by reason of any decision made in the performance of their duties pursuant to this section."

Section 4

Section 4. Section 22-11-15 NMSA 1978 (being Laws 1967, Chapter 16, Section 139, as amended) is amended to read:

"22-11-15. FUND--REFUNDS--PAYMENTS.--

A. After filing written demand with the director, a member is entitled to a refund of the total amount of the member's contributions plus interest at a rate equal to seventy-five percent of the average rate earned by the fund during the five fiscal years preceding the fiscal year of refund, reduced by the sum of any disability benefits previously received by the member, if:

(1) the member terminates employment for reasons other than by retirement, disability or death;

(2) the member has exempted himself from the Educational Retirement Act; or

(3) the member was not reemployed following a period of disability during which he received disability benefits.

B. The director may, at the request of a member, make payment on behalf of the member for any or all of the refund to an individual retirement account or a qualified retirement plan that accepts rollovers.

C. If the amount of a deceased member's contribution or residual contribution does not exceed the sum of one thousand dollars ($1,000) and no written claim is made to the board for it within one year from the date of the member's death, by his surviving beneficiary or the member's estate, payment thereof may be made to the named beneficiary or, if none is named, to the person the board determines to be entitled to the contribution under the laws of New Mexico. Any payment made by the board pursuant to this subsection shall be a bar to a claim by any other person.

D. The interest provided for in Subsection A of this section shall apply only to contributions paid to the fund after July l, 1971 and on deposit in the fund for a period of at least one fiscal year; provided that no such interest shall be allowed on refunds of contributions that were paid into the fund prior to July 1, 1971."

Section 5

Section 5. Section 22-11-17 NMSA 1978 (being Laws 1967, Chapter 16, Section 141, as amended) is amended to read:

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

A. A provisional member shall be covered by the provisions of the Educational Retirement Act but shall have the option to exempt himself from its coverage. A provisional member exempting himself from the provisions of the Educational Retirement Act shall not be entitled to the benefits or coverage under any other state retirement program except as otherwise provided in this section. This section shall not affect any rights a provisional member may have under the provisions of the federal Social Security Act. This option to exempt must be exercised within one year of employment according to the regulations adopted by the board. Any provisional member exempting himself pursuant to this section shall be entitled to a refund of any contributions made pursuant to the Educational Retirement Act prior to the exercise of the exemption.

B. A provisional member not exempt from the coverage of the Educational Retirement Act shall have the right to earned service-credit for periods of employment subsequent to July 1, 1957 and prior to July 1, 1961, provided that all contributions at the rates in effect during that period of employment are paid. If a provisional member chooses to make the contributions for that period, the local administrative unit employing a member during that period shall pay the employer's contribution at the rate in effect during that period of employment. Contributions prior to July 1, 1961 by both the provisional member and the local administrative unit shall bear interest at the rate of three percent a year from July 1, 1961 until paid.

C. A provisional member exempt from the coverage of the provisions of the Educational Retirement Act shall have the right to revoke the exemption at any time; however, within the first two weeks following the beginning of each school year, such provisional member shall be informed in writing of his right to revoke the exemption and shall sign a statement to the effect that he does or does not wish to revoke the exemption. A copy of such statement shall be kept in the personnel file of the provisional member.

D. A provisional member employed by the board, the department of education, the New Mexico school for the deaf, the northern New Mexico state school, the New Mexico school for the visually handicapped, the New Mexico girls' school, the New Mexico boys' school or the Los Lunas mental hospital shall have the option of qualifying for coverage under either the Educational Retirement Act or the public employees retirement association of New Mexico. This option shall be exercised by filing a written election with both the educational retirement director and the director of the public employees retirement association of New Mexico. This election shall be made within six months after employment and shall be irrevocable regardless of subsequent

employment or reemployment in any administrative unit enumerated in this subsection. Until this election is made, the provisional member shall be covered and shall be required to make contributions under the Educational Retirement Act."

Section 6

Section 6. Section 22-11-22 NMSA 1978 (being Laws 1967, Chapter 16, Section 145, as amended) is amended to read:

"22-11-22. PAYMENT--RECORDS.--

A. Contributions shall be deducted from the salaries of members by the local administrative units as the salaries are paid. These contributions shall be forwarded monthly to the director for deposit in the fund.

B. Contributions of local administrative units shall be derived from revenue available to the local administrative unit and shall be forwarded monthly to the director for deposit in the fund. The board may assess an interest charge and a penalty charge on any remittance not made by its due date.

C. Each local administrative unit shall record and certify quarterly to the director an itemized account of the contributions paid by each member and the local administrative unit. The director shall keep a record of these itemized accounts."

Section 7

Section 7. Section 22-11-23 NMSA 1978 (being Laws 1981, Chapter 293, Section 2, as amended) is amended to read:

"22-11-23. RETIREMENT ELIGIBILITY.--

A. On and after July 1, 1984:

(1) a member shall be eligible for retirement benefits pursuant to the Educational Retirement Act when either of the following conditions occurs:

(a) the sum of the member's age and years of earned service-credit equals seventy-five; or

(b) upon completion of five years of earned service-credit and upon becoming sixty-five years of age;

(2) a member under sixty years of age eligible to retire under Paragraph (1) of this subsection may retire and receive retirement benefits pursuant to the Educational Retirement Act that he would be eligible to receive if he were to retire at the age of sixty years reduced by six-tenths of one percent for each one-fourth, or portion

thereof, year that retirement occurs prior to the member's sixtieth birthdate but after the fifty-fifth birthdate, and one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to age fifty-five; or

(3) a member under sixty years of age acquiring twenty-five or more years of earned and allowed service-credit may retire and receive retirement benefits pursuant to the Educational Retirement Act computed on the same basis as if the member were sixty years of age.

B. A member shall be subject to the provisions of Paragraphs (2) and (3) of Subsection A of this section as they existed at the beginning of his last cumulated four quarters of earned service-credit, regardless of later amendment."

Section 8

Section 8. Section 22-11-26 NMSA 1978 (being Laws 1967, Chapter 16, Section 149, as amended) is amended to read:

"22-11-26. DEATH DURING REEMPLOYMENT.--If a member dies during a period of reemployment following retirement pursuant to the Educational Retirement Act, the benefits to be paid shall be determined according to the following:

A. if the member did not elect to exercise Option B or C pursuant to Section 22-11-29 NMSA 1978 at the time of first retirement, the member's beneficiary or estate shall receive the difference, if any, between the member's total contribution and total benefits received prior to last reemployment, plus contributions made by the member during the period of last reemployment; or

B. if a retirement benefit has been paid to the member pursuant to either Option B or Option C of Section 22-11-29 NMSA 1978 prior to reemployment, the reemployed member shall be considered as retiring on the day preceding the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall be commenced effective on the date of death in accordance with the terms of the option elected."

Section 9

Section 9. Section 22-11-30 NMSA 1978 (being Laws 1967, Chapter 16, Section 153, as amended) is amended to read:

"22-11-30. RETIREMENT BENEFITS.--

A. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1967 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first four thousand dollars ($4,000) of the member's average annual salary and one percent of the remainder of

the member's average annual salary multiplied by the number of years of the member's total service-credit.

B. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1967 but on or before June 30, 1971 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first six thousand six hundred dollars ($6,600) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service-credit.

C. Retirement benefits for a member retired pursuant to the Educatonal Retirement Act on or after July 1, 1971 but on or before June 30, 1974 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the member's average annual salary multiplied by the number of years of the member's total service-credit.

D. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of one or more years shall be computed pursuant to Subsection E of this section. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of less than one year shall be computed pursuant to Subsection A of this section if his date of last retirement was on or before June 30, 1967 or pursuant to Subsection B of this section if his date of last retirement was on or after July 1, 1967 but not later than June 30, 1971 or pursuant to Subsection C of this section if his date of last retirement was on or after July 1, 1971 but not later than June 30, 1974.

E. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1974 but not later than June 30, 1987, shall be paid monthly and shall be one-twelfth of a sum equal to:

(1) one and one-half percent of the member's average annual salary multiplied by the number of years of service-credit for:

(a) prior employment; and

(b) allowed service-credit for service performed prior to July 1, 1957, except United States military service credit purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978; plus

(2) two percent of the member's average annual salary multiplied by the number of years of service-credit for:

(a) contributory employment;

(b) allowed service-credit for service performed after July 1, 1957; and

(c) United States military service credit for service performed prior to July 1, 1957 and purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978.

F. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1987 but not later than June 30, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and fifteen hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service-credit; provided that this subsection shall not apply to any member who was retired in any of the four quarters ending on June 30, 1987 without having accumulated not less than 1.0 years earned service after June 30, 1987.

G. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service-credit; provided that this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 1991 without having accumulated at least one year earned service beginning on or after July 1, 1991.

H. A member's average annual salary, pursuant to this section, shall be computed on the basis of the last five years for which contribution was made or upon the basis of any consecutive five years for which contribution was made by the member, whichever is higher. Members shall begin receiving retirement benefits by age seventy and six months, or upon termination of employment, whichever occurs later."

Section 10

Section 10. Section 22-11-34 NMSA 1978 (being Laws 1967, Chapter 16, Section 157, as amended) is amended to read:

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

A. A member shall be certified to have acquired allowed service-credit for those periods of time when he was:

(1) employed prior to the effective date of the Educational Retirement Act in any federal educational program within New Mexico, including United States Indian schools and civilian conservation corps camps. This service-credit shall be allowed without contribution;

(2) engaged in military service that interrupted his employment in New Mexico, if he returned to his employment within eighteen months following honorable discharge. This service-credit shall be allowed without contribution;

(3) engaged in United States military service or the commissioned corps of the public health service from which he was honorably discharged if he contributes to the fund a sum equal to ten and one-half percent of his average annual salary for that period of time for which he has acquired earned service-credit under the Educational Retirement Act for each year of service-credit he desires to purchase. Average annual salary shall be determined in accordance with rules promulgated by the board but shall always be based upon actual salaries earned by the member where the actual salaries can be ascertained by the board. The employer's contributions for service-credit shall not be paid by the employer. The purchase of service-credit provided in this section shall be carried out by the member prior to July 1, 1992 or within three years after the date of the member's employment following service, whichever is later; or

(4) employed:

(a) in any public school or public institution of higher learning in another state, territory or possession of the United States;

(b) in any United States military dependents' school operated by a branch of the armed forces of the United States;

(c) as provided in Paragraph (1) of this subsection after the effective date of the Educational Retirement Act; or

(d) in any private school or institution of higher learning in New Mexico whose education program is accredited or approved by the state board at the time of employment.

B. The member or employer under Paragraph (4) of Subsection A of this section shall contribute to the fund for each year of allowed service-credit desired an amount equal to twelve percent of the member's annual salary at the time payment is made if the member is employed or twelve percent times the member's annual salary during the member's last year
of employment if the member is not employed at the time of payment. Contributions paid for the member who is not employed shall bear interest at the average rate earned by the fund during the five-fiscal-year period immediately preceding the date of payment. Such interest shall run from the date the member last terminated employment to the date of payment. Payment pursuant to Paragraph (4) of Subsection A of this section may be made in installments, at the discretion of the board, over a period of not to exceed one year, and, if the sum paid does not equal the amount required for any full year of allowed service-credit, the member shall acquire allowed service-credit for that period of time which is proportionate to the payment made. Half credit may be allowed without contribution for not more than ten years of the educational service described by

Subparagraph (a) of Paragraph (4) of Subsection A of this section if that service was prior to June 13, 1953 and if the member was employed in New Mexico prior to June 13, 1953 in any position covered by the Educational Retirement Act or any law repealed thereby.

C. No member shall be certified to have acquired allowed service-credit:

(1) under any single paragraph or the combination of only Paragraphs (1) and (4) or only Paragraphs (2) and (3) of Subsection A of this section in excess of five years; or

(2) in excess of ten years for any other combination of Paragraphs (1) through (4) of Subsection A of this section.

D. The provisions of this section are made applicable to the services described prior to as well as after the effective date of the Educational Retirement Act."

Section 11

Section 11. REPEAL.--Sections 22-11-20, 22-11-41 and 22-11-44.1 NMSA 1978 (being Laws 1967, Chapter 16, Section 143, Laws 1967, Chapter 16, Section 164 and Laws 1982, Chapter 37, Section 2, as amended) are repealed.SB 469

CHAPTER 70

RELATING TO PUBLIC SAFETY; AMENDING THE AGE REQUIREMENTS TO QUALIFY AS A STATE POLICE OFFICER.

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

Section 1

Section 1. Section 29-2-6 NMSA 1978 (being Laws 1941, Chapter 147, Section 6, as amended) is amended to read:

"29-2-6. QUALIFICATIONS OF MEMBERS.--

A. Members of the New Mexico state police, except the chief, shall:

(1) at the time of their appointment be citizens of the United States;

(2) at the time of their appointment have reached twenty-one years of age;

(3) have at least a high school education or its equivalent;

(4) be of good moral character and not have been convicted of a felony or any infamous crime in the courts of this state or any other state or country or in the federal courts; and

(5) successfully pass any physical examination the New Mexico state police may require.

B. No person shall be commissioned a member of the New Mexico state police who is related by blood or marriage within the fourth degree to any member of the department of public safety advisory commission."SB 535

CHAPTER 71

RELATING TO COURTS; REMOVING RESTRICTIONS ON DISTRICT COURT CHARGES TO GRAND JURIES; AMENDING A CERTAIN SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 31-6-9 NMSA 1978 (being Laws 1969, Chapter 276, Section 9) is amended to read:

"31-6-9. CHARGE TO GRAND JURY.--The district judge convening a grand jury shall charge it with its duties and direct it as to any special inquiry into violations of law that he wishes it to make." SB 551

CHAPTER 72

RELATING TO PUBLIC WORKS; PROVIDING FOR COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 13-1-66.1 NMSA 1978 (being Laws 1989, Chapter 69, Section 4) is amended to read:

"13-1-66.1. DEFINITION--LOCAL PUBLIC WORKS PROJECT.--"Local public works project" means a project of a local public body which uses architectural or engineering services requiring professional services costing twenty-five thousand dollars ($25,000) or more, or landscape architectural or surveying services requiring

professional services costing five thousand dollars ($5,000) or more, excluding applicable state and local gross receipts taxes."

Section 2

Section 2. Section 13-1-91 NMSA 1978 (being Laws 1984, Chapter 65, Section 64, as amended) is amended to read:

"13-1-91. DEFINITION--STATE PUBLIC WORKS PROJECT.--"State public works project" means a project of a state agency, not including projects of the state educational institutions, the supreme court building commission, the legislature or local public bodies, which uses architectural or engineering services requiring professional services costing twenty-five thousand dollars ($25,000) or more or landscape architectural or surveying services requiring professional services costing five thousand dollars ($5,000) or more, excluding applicable state and local gross receipts."

Section 3

Section 3. Section 13-1-120 NMSA 1978 (being Laws 1984, Chapter 65, Section 93, as amended) is amended to read:

"13-1-120. COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS--ARCHITECTS--ENGINEERS--LANDSCAPE ARCHITECTS--SURVEYORS--SELECTION PROCESS.--

A. For each proposed state public works project or local public works project, the architect, engineer, landscape architect and surveyor selection committee, state highway and transportation department selection committee or local selection committee, as appropriate, shall evaluate statements of qualifications and performance data submitted
by at least three businesses in regard to the particular project and may conduct interviews with and may require public presentation by all businesses applying for selection regarding their qualifications, their approach to the project and their ability to furnish the required services.

B. The selection committee shall select, ranked in the order of their qualifications, no less than three businesses deemed to be the most highly qualified to perform the required services, after considering the following criteria together with any criteria, except price, established by the using agency authorizing the project:

(1) specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required;

(2) capacity and capability of the business to perform the work, including any specialized services, within the time limitations;

(3) past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules;

(4) proximity to or familiarity with the area in which the project is located;

(5) the amount of design work that will be produced by a New Mexico business within this state; and

(6) the volume of work previously done for the entity requesting proposals which is not seventy-five percent complete with respect to basic professional design services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of assuring that the interest of the public in having available a substantial number of qualified businesses is protected; provided, however, that the principle of selection of the most highly qualified businesses is not violated.

C. Notwithstanding the requirements of Subsections A and B of this section, if fewer than three businesses have submitted a statement of qualifications for a particular project, the committee may:

(1) rank in order of qualifications and submit to the secretary or local public body for award those businesses which have submitted a statement of qualifications; or

(2) recommend termination of the selection process and sending out of new notices of the proposed procurement pursuant to Section 13-1-104 NMSA 1978.

D. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, final ranking and evaluation scores for all proposals shall become public information.
Businesses which have not been selected shall be so notified in writing within twenty-one days after an award is made."

Section 4

Section 4. Section 13-1-121 NMSA 1978 (being Laws 1984, Chapter 65, Section 94, as amended) is amended to read:

"13-1-121. COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS--ARCHITECTS--ENGINEERS--LANDSCAPE ARCHITECTS--SURVEYORS--SELECTION COMMITTEE--STATE PUBLIC WORKS PROJECTS.--

A. The "architect, engineer, landscape architect and surveyor selection committee" is created. The committee, which shall serve as the selection committee for state public works projects, except for highway projects of the state highway and transportation department, is composed of four members as follows:

(1) one member of the agency for which the project is being designed;

(2) the director of the property control division of the general services department who shall be chairman;

(3) one member designated by the architect-engineer-landscape architect joint practice committee; and

(4) one member designated by the secretary.

B. The staff architect or his designee of the property control division shall serve as staff to the architect, engineer, landscape architect and surveyor selection committee.

C. The members of the architect, engineer, landscape architect and surveyor selection committee shall be reimbursed by the property control division for per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

D. The state highway and transportation department shall create a selection committee by rule, after notice and hearing, which shall serve as the selection committee for highway projects of the department."

Section 5

Section 5. Section 13-1-122 NMSA 1978 (being Laws 1984, Chapter 65, Section 95, as amended) is amended to read:

"13-1-122. COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS--AWARD OF ARCHITECT, ENGINEERING, LANDSCAPE ARCHITECT AND SURVEYING CONTRACTS.--The secretary or his designee, or the secretary of the highway and transportation department or his designee or a designee of a local public body shall negotiate a contract with the highest qualified business for the architectural, landscape architectural, engineering or surveying services at compensation determined in writing to be fair and reasonable. In making this decision, the secretary or his designee or the designee of a local public body shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services. Should the secretary or his designee or the designee of a local public body be unable to negotiate a satisfactory contract with the business considered to be the most qualified at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The secretary or his designee or the designee of

a local public body shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the secretary or his designee or a designee of a local public body shall formally terminate negotiations with that business. The secretary or his designee or the designee of the local public body shall then undertake negotiations with the third most qualified business. Should the secretary or his designee or a designee of a local public body be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses shall be ranked in order of their qualifications and the secretary or his designee or the designee of a local public body shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated. The secretary or the representative of a local public body shall publicly announce the business selected for award."SB 560

CHAPTER 73

RELATING TO CHARITABLE ORGANIZATIONS; AMENDING SECTION 57-22-6 NMSA 1978 (BEING LAWS 1983,

CHAPTER 140, SECTION 6) TO IMPOSE ADDITIONAL REPORTING REQUIREMENTS ON CHARITABLE ORGANIZATIONS SUBJECT TO THE CHARITABLE ORGANIZATIONS AND SOLICITATIONS ACT.

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

Section 1

Section 1. Section 57-22-6 NMSA 1978 (being Laws 1983, Chapter 140, Section 6) is amended to read:

"57-22-6. FILING OF REQUIRED DOCUMENTS.--

A. Every charitable organization shall file with the office of the attorney general within six months of the effective date of the Charitable Organizations and Solicitations Act or within six months of the date on which the charitable organization becomes subject to the Charitable Organizations and Solicitations Act, whichever shall occur first:

(1) an initial registration to be submitted on the form provided for that purpose by the attorney general; and

(2) a copy of the articles of incorporation or other instrument creating the charitable organization and defining its purpose, powers and duties.

B. In addition to the documents required in Subsection A of this section, every charitable organization shall file, within seventy-five days of the close of the fiscal

year first following registration and of each fiscal year thereafter, an annual report, under oath, on the form provided by the attorney general for that purpose.

C. The attorney general may make such rules and regulations, in accordance with the State Rules Act, as are necessary for the proper administration of this section, including, but not limited to:

(1) requirements for filing additional information; and

(2) provisions for suspending the filing of reports where it is determined that such reports are no longer necessary for the protection of the public interest.

D. This section shall not apply to any local affiliate of a statewide or national organization for which all local fundraising expenses are paid by the parent organization if the parent organization files a report required by this section.

E. In addition to any other reporting requirements pursuant to the Charitable Organizations and Solicitations Act, every charitable organization to which that act applies and that has received tax-exempt status under Section 501(c)(3) of the federal Internal Revenue Code of 1986, as amended, and is required to file a form 990 or 990EZ pursuant to the Internal Revenue Code of 1986, as amended, shall file that form and the accompanying schedule A annually with the office of the attorney general. Such forms shall be public records and available for public inspection."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 582

CHAPTER 74

MAKING A CHANGE IN THE PURPOSE FOR WHICH SEVERANCE TAX BOND PROCEEDS WERE APPROPRIATED FOR THE TAOS ARC FACILITY PURSUANT TO SUBSECTION ZZZ OF SECTION 5 OF

CHAPTER 113 OF LAWS 1992; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SEVERANCE TAX BONDS--CHANGE IN PURPOSE FOR WHICH ISSUED.--The appropriation of one hundred fifty thousand dollars ($150,000) in severance tax bond proceeds for the purpose of constructing an ARC facility in Taos in

Taos county pursuant to Subsection ZZZ of Section 5 of Chapter 113 of Laws 1992 may be expended and there shall be no requirement for federal matching funds.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.SB 605

CHAPTER 75

RELATING TO COMMUNITY COLLEGES; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 21-13-9 NMSA 1978 (being Laws 1963, Chapter 17, Section 8, as amended) is amended to read:

"21-13-9. COMMUNITY COLLEGE BOARD MEETINGS.--Regular meetings of the community college board shall be held not less than quarterly each calendar year. Special meetings may be held upon call of the chairman or a majority of the board. The secretary of the board shall notify members of the time and place of each meeting, and all notices shall be mailed to each board member at least ten days prior to the date of the meeting. Upon agreement of all the members of the board, however, the period of notice of the meeting may be shortened or waived."

Section 2

Section 2. Section 21-13-18 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 16, Section 10, as amended) is amended to read:

"21-13-18. PROCEDURE FOR ELECTION.--

A. In all elections held under the Community College Act, the community college board shall issue a resolution calling for an election. The resolution shall be filed with each county clerk in the community college district. The community college in the district in which the community college is situated shall publish the resolution in a newspaper of general circulation in the community college district at least once a week for three consecutive weeks, the last insertion to be not less than thirty days prior to the proposed election.

B. All elections held under the Community College Act shall be conducted and canvassed in the same manner as municipal school elections, unless otherwise specifically provided in the Community College Act.

C. Any person or corporation may institute, in the district court of any county in which the community college district affected lies, an action or suit to contest the validity of any proceedings held under the Community College Act, but no such suit or action shall be maintained
unless it is instituted within ten days after the issuance by the proper official of a certificate or notification of the results of the election."

Section 3

Section 3. A new section of the Community College Act, Section 21-13-18.1 NMSA 1978, is enacted to read:

"21-13-18.1. REGULAR COMMUNITY COLLEGE ELECTION--RESOLUTION--PUBLICATION.--

A. The community college board shall issue a resolution in English and Spanish calling for a regular community college election within the community college district on the date prescribed by the Community College Act. The resolution shall be filed with each county clerk in the community college district on the third Friday in December of each even-numbered year.

B. The resolution shall specify:

(1) the date the election will be held;

(2) the positions on the board to be filled;

(3) the date on which declarations of candidacy are to be filed;

(4) the date on which declarations of intent to be a write-in candidate are to be filed;

(5) any questions to be submitted to the voters;

(6) the precincts in each county in which the election is to be held and the location of each polling place;

(7) the hours each polling place will be open; and

(8) the date and time of the closing of the registration books by the county clerks as required by law.

C. In the event that only one candidate files a declaration of candidacy for each position to be filled at an election and no declared write-in candidates have filed for any position in which there is any other candidate, and there are no questions or bond issues on the ballot, only one polling place for the election shall be designated and it shall be in the office of the county clerk of the county in which the community college is located.

D. In any election held under the Community College Act, the county clerk shall perform the duties of the precinct board and no other precinct board shall be appointed."

Section 4

Section 4. A new section of the Community College Act, Section 21-13-18.2 NMSA 1978, is enacted to read:

"21-13-18.2. DECLARATION OF CANDIDACY--WRITE-IN CANDIDATES--FILING DATE--PENALTY.--

A. A declaration of candidacy for membership on the community college board shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the forty-eighth day before an election and ending at 5:00 p.m. on the same day.

B. Write-in candidates for the office of board member shall be permitted in community college district elections.

C. A person may be a write-in candidate only if he has the qualifications to be a candidate for membership on the board as provided in the Community College Act.

D. A person desiring to be a write-in candidate for the office of board member shall file with the proper filing officer a declaration of intent to be a write-in candidate. The declaration shall be filed before 5:00 p.m. on the thirty-fifth day preceding the date of the election.

E. Any person knowingly making a false statement in his declaration of candidacy is guilty of a fourth degree felony.

F. As used in this section, "proper filing officer" means the county clerk of the county in which the community college is situated." SB 633

CHAPTER 76

RELATING TO TREES; PROVIDING FOR A DEFINITION OF TREE; DESIGNATING THE USE OF A PORTION OF THE CONSERVATION PLANTING REVOLVING FUND

FOR TREE PLANTING; AMENDING SECTIONS OF THE NEW MEXICO FOREST RE-LEAF ACT.

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

Section 1

Section 1. Section 68-2-31 NMSA 1978 (being Laws 1990, Chapter 96, Section 3) is amended to read:

"68-2-31. DEFINITION.--As used in the New Mexico Forest Re-Leaf Act:

A. "division" means the forestry division of the energy, minerals and natural resources department; and

B. "tree" means any living single-stemmed or multi-stemmed woody material."

Section 2

Section 2. Section 68-2-32 NMSA 1978 (being Laws 1990, Chapter 96, Section 4) is amended to read:

"68-2-32. TREE PLANTINGS--PROMOTIONS AND PROGRAMS--DUTIES OF THE DIVISION AND THE STATE FORESTER--AUTHORIZING REGULATIONS--TREE PLANTING PROGRAM APPLICATIONS.--

A. The division shall promote the importance of planting trees for soil, energy and water conservation, to enhance the state's beauty and generally to protect and improve the quality of the environment. The division shall attempt, through the promotion of tree planting campaigns and other efforts, including public education, to grant or sell trees to individuals and groups to provide for effective planting of trees throughout the state.

B. To promote tree planting, the division shall implement, in harmony, the New Mexico Forest Re-Leaf Act and the conservation planting revolving fund provided for in Section 68-2-21 NMSA 1978. The division is authorized to adopt regulations necessary or appropriate to administer and achieve the purposes of the New Mexico Forest Re-Leaf Act and the conservation planting revolving fund.

C. Persons may apply to the division, on forms and in accordance with rules and procedures the division may adopt, for grants or purchases of trees to plant in the state.
The division shall encourage applications from schools and universities, environmental education programs and civic and community groups. Each application shall indicate

whether any applicable local soil and water conservation district has reviewed and approved the application.

D. Applications to receive and plant trees shall be granted or denied by the division in accordance with criteria the division shall establish. In granting applications, the division shall ensure that no less than twenty percent of the balance of the conservation planting revolving fund shall be granted free to groups or individuals in any fiscal year for the purpose of planting trees."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 788

CHAPTER 77

RELATING TO CHILDREN; ENACTING THE CHILDREN'S CODE; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. A new section of the Criminal Sentencing Act is enacted to read:

"DEFINITIONS.--As used in the Criminal Sentencing Act:

A. "serious youthful offender" means an individual sixteen or seventeen years of age who is charged with and indicted or bound over for trial for first degree murder; and

B. "youthful offender" means a delinquent child subject to adult or juvenile sanctions who is:

(1) fifteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:

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

(b) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;

(c) kidnapping, as provided in Section 30-4-1 NMSA 1978;

(d) aggravated battery, as provided in Section 30-3-5 NMSA 1978;

(e) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;

(f) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(g) robbery, as provided in Section 30-16-2 NMSA 1978;

(h) aggravated burglary, as provided in Section 30-16-4 NMSA 1978; or

(i) aggravated arson, as provided in Section 30-17-6 NMSA 1978;

(2) fifteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a two-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees are not considered a prior adjudication for the purposes of this paragraph; or

(3) fifteen years of age and adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978."

Section 2

Section 2. Section 9-2A-8 NMSA 1978 (being Laws 1992, Chapter 57, Section 8) is amended to read:

"9-2A-8. DEPARTMENT--ADDITIONAL DUTIES.--In addition to other duties provided by law or assigned to the department by the governor, the department shall:

A. develop priorities for state services and resources arising out of state policy and local planning processes;

B. strengthen collaboration and coordination in state and local services for children, youth and families;

C. develop and maintain a statewide database, including client-tracking of services for children, youth and families;

D. develop and disseminate a readily accessible resource database;

E. develop and use community or regional councils to establish community priorities and service strategies in order to enhance community-level decision making and creative solutions;

F. develop standards of service that focus on coordination, monitoring and accountability, including the development of a plan for both process and outcome assessment and evaluation;

G. review and comment on policies of other departments that affect children, youth and families, including assisting in the development of common contracting procedures and common service definitions;

H. develop a uniform system of access to services for children, youth and families; and

I. enact regulations to control disposition and placement of children unde the Children's Code, including regulations to limit or prohibit the out-of-state placement of children, including those who are developmentally disabled or mentally disordered, when in-state alternatives are available.

Section 3

Section 3. A new section of the Criminal Sentencing Act is enacted to read:

"SERIOUS YOUTHFUL OFFENDER--DISPOSITION.--

A. An alleged serious youthful offender may be detained in any of the following places, prior to arraignment in metropolitan, magistrate or district court:

(1) a detention facility for delinquent children, licensed by the children, youth and families department;

(2) any other suitable place, other than a facility for the care and rehabilitation of delinquent children, that meets standards for detention facilities, as set forth in the Children's Code and federal law; or

(3) a county jail, if a facility described in Paragraph (1) or (2) of this subsection is not appropriate.

B. When an alleged serious youthful offender is detained in a juvenile detention facility prior to trial, the time spent in the juvenile detention facility shall count towards completion of any sentence imposed.

C. At arraignment, when a metropolitan or district court judge or a magistrate determines that an alleged serious youthful offender should remain in custody, the alleged serious youthful offender may be detained in an adult or juvenile

detention facility, subject to the facility's accreditation and the provisions of applicable federal law.

D. When an alleged serious youthful offender is found guilty of first degree murder, the court shall sentence the offender pursuant to the provisions of the Criminal Sentencing Act. The court may sentence the offender to less than, but not exceeding, the mandatory term for an adult. The determination of guilt becomes a conviction for purposes of the Criminal Sentencing Act.

E. Prior to the sentencing of an alleged serious youthful offender who is convicted of first degree murder, adult probation services shall prepare a presentence report and submit the report to the court and the parties five days prior to the sentencing hearing.

F. When the alleged serious youthful offender is convicted of a lesser offense than first degree murder, the court shall provide for disposition of the offender pursuant to the provisions of Section 32-2-19 or 32-2-20 NMSA 1978. When an offender is adjudicated as a delinquent child, the conviction shall not be used as a conviction for purposes of the Criminal Sentencing Act."

Section 4

Section 4. Section 31-18-13 NMSA 1978 (being Laws 1977, Chapter 216, Section 2) is amended to read:

"31-18-13. SENTENCING AUTHORITY--ALL CRIMES.--

A. Unless otherwise provided in this section, all persons convicted of a crime under the laws of New Mexico shall be sentenced in accordance with the provisions of the Criminal Sentencing Act; provided, that a person sentenced as a serious youthful offender or as a youthful offender may be sentenced to less than the basic or mandatory sentence prescribed by the Criminal Sentencing Act.

B. Whenever a defendant is convicted of a crime under the constitution of New Mexico, or a statute not contained in the Criminal Code, which specifies the penalty to be imposed on conviction, the court shall set as a definite term of imprisonment the minimum term prescribed by the statute or constitutional provision and may impose the fine prescribed by the statute or constitutional provision for the particular crime for which the person was convicted; provided, that a person sentenced as a serious youthful offender or as a youthful offender may be sentenced to less than the minimum term of imprisonment prescribed by the statute or the constitutional provision.

C. A crime declared to be a felony by the constitution or a statute not contained in the Criminal Code, without specification of the sentence or fine to be imposed on conviction, shall constitute a fourth degree felony as

prescribed under the Criminal Code for the purpose of the sentence, and the defendant shall be so sentenced.

D. Any other crime for which the sentence to be imposed upon conviction is not specified shall constitute, for the purpose of the sentence, a petty misdemeanor."

Section 5

Section 5. Section 31-18-14 NMSA 1978 (being Laws 1979, Chapter 150, Section 1) is amended to read:

"31-18-14. SENTENCING AUTHORITY--CAPITAL FELONIES.--

A. When a defendant has been convicted of a capital felony, he shall be punished by life imprisonment or death. The punishment shall be imposed after a sentencing hearing separate from the trial or guilty plea proceeding. However, if the defendant has not reached the age of majority at the time of the commission of the capital felony for which he was convicted, he may be sentenced to life imprisonment but shall not be punished by death.

B. In the event the death penalty in a capital felony case is held to be unconstitutional or otherwise invalidated by the supreme court of the state of New Mexico or the supreme court of the United States, the person previously sentenced to death for a capital felony shall be sentenced to life imprisonment."

Section 6

Section 6. Section 31-18-15.1 NMSA 1978 (being Laws 1979, Chapter 152, Section 2) is amended to read:

"31-18-15.1. ALTERATION OF BASIC SENTENCE--MITIGATING OR AGGRAVATING CIRCUMSTANCES--PROCEDURE.--

A. The court shall hold a sentencing hearing to determine if mitigating or aggravating circumstances exist and take whatever evidence or statements it deems will aid it in reaching a decision. The court may alter the basic sentence as prescribed in Section 31-18-15 NMSA 1978 upon a finding by the judge of any mitigating or aggravating circumstances surrounding the offense or concerning the offender. If the court determines to alter the basic sentence, it shall issue a brief statement of reasons for the alteration and incorporate that statement in the record of the case.

B. The judge shall not consider the use of a firearm or prior felony convictions as aggravating circumstances for the purpose of altering the basic sentence.

C. The amount of the alteration of the basic sentence for noncapital felonies shall be determined by the judge. However, in no case shall the alteration exceed one-third of the basic sentence; provided, that when the offender is a serious youthful offender or a youthful offender, the judge may reduce the sentence by more than one-third of the basic sentence."

Section 7

Section 7. Section 31-18-16 NMSA 1978 (being Laws 1977, Chapter 216, Section 5, as amended) is amended to read:

"31-18-16. USE OF FIREARM--ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL LIMITED.--

A. When a separate finding of fact by the court or jury shows that a firearm was used in the commission of a noncapital felony, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 shall be increased by one year, and the sentence imposed by this subsection shall be the first year served and shall not be suspended or deferred; provided, that when the offender is a serious youthful offender or a youthful offender, the sentence imposed by this subsection may be increased by one year.

B. For a second or subsequent noncapital felony in which a firearm is used, the basic sentence of imprisonment prescribed in Section 31-18-15 NMSA 1978 shall be increased by three years, and the sentence imposed by this subsection shall be the first three years served and shall not be suspended or deferred; provided, that when the offender is a serious youthful offender or a youthful offender, the sentence imposed by this subsection may be increased by three years.

C. If the case is tried before a jury and if a prima facie case has been established showing that a firearm was used in the commission of the offense, the court shall submit the issue to the jury by special interrogatory. If the case is tried by the court and if a prima facie case has been established showing that a firearm was used in the commission of the offense, the court shall decide the issue and shall make a separate finding of fact thereon."

Section 8

Section 8. Section 31-18-16.1 NMSA 1978 (being Laws 1980, Chapter 36, Section 1, as amended) is amended to read:

"31-18-16.1. NONCAPITAL FELONIES AGAINST PERSONS SIXTY YEARS OF AGE OR OLDER OR HANDICAPPED PERSONS--ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL LIMITED.--

A. When a separate finding of fact by the court or jury shows that in the commission of a noncapital felony a person sixty years of age or older or who is handicapped was intentionally injured, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 shall be increased as follows:

(1) if the injury inflicted to the person is not likely to cause death or great bodily harm but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, the basic sentence shall be increased by one year; provided, that when the offender is a serious youthful offender or a youthful offender, the sentence imposed by this paragraph may be increased by one year; and

(2) if the injury inflicted to the person causes great bodily harm or is done with a deadly weapon or is done in any manner whereby great bodily harm or death could be inflicted, the basic sentence shall be increased by two years; provided, that when the offender is a serious youthful offender or a youthful offender, the sentence imposed by this paragraph may be increased by two years.

B. If the case is tried before a jury and if a prima facie case has been established showing that in the commission of the offense a person sixty years of age or older or who is handicapped was intentionally injured, the court shall submit the issue to the jury by special interrogatory. If the case is tried by the court and if a prima facie case has been established showing that in the commission of the offense a person sixty years of age or older or who is handicapped was intentionally injured, the court shall decide the issue and shall make a separate finding of fact thereon.

C. Any alteration of the basic sentence of imprisonment pursuant to the provisions of this section shall be served concurrently with any other enhancement alteration of basic sentence pursuant to the provisions of the Criminal Sentencing Act.

D. As used in this section, "handicapped" means
that the person has a physical or mental impairment that substantially limits one or more of that person's functions such as caring for himself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working."

Section 9

Section 9. Section 31-18-17 NMSA 1978 (being Laws 1977, Chapter 216, Section 6, as amended) is amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC SENTENCE.--

A. For the purposes of this section, "prior felony conviction" means:

(1) a conviction for a prior felony committed within New Mexico whether within the Criminal Code or not; or

(2) any prior felony for which the person was convicted other than an offense triable by court-martial if:

(a) the conviction was rendered by a court of another state, the United States, a territory of the United States or the commonwealth of Puerto Rico;

(b) the offense was punishable, at the time of conviction, by death or a maximum term of imprisonment of more than one year; or

(c) the offense would have been classified as a felony in this state at the time of conviction.

B. Any person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred one prior felony conviction which was part of a separate transaction or ocurrence is an habitual offender and his basic sentence shall be increased by one year, and the sentence imposed by this subsection shall not be suspended or deferred; provided, that when the offender is a serious youthful offender or a youthful offender, the sentence imposed by this subsection may be increased by one year.

C. Any person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred two prior felony convictions which were parts of separate transactions or occurrences is an habitual offender and his basic sentence shall be increased by four years, and the sentence imposed by this subsection shall not be suspended or deferred; provided, that when the offender is a serious youthful offender or a youthful offender, the sentence imposed by this subsection may be increased by four years.

D. Any person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred three or more prior felony convictions which were parts of separate transactions or occurrences is an habitual offender and his basic sentence shall be increased by eight years, and the sentence imposed by this subsection shall not be suspended or deferred; provided, that when the offender is a serious youthful offender or a youthful offender, the sentence imposed by this subsection may be increased by eight years."

Section 10

Section 10. A new Section 32-1-1 NMSA 1978 is enacted to read:

"32-1-1. SHORT TITLE.--Chapter 32 NMSA 1978 may be cited as the "Children's Code".

Section 11

Section 11. A new Section 32-1-1.1 NMSA 1978 is enacted to read:

"32-1-1.1. SHORT TITLE--SCOPE.--

A. Chapter 32, Article 1 NMSA 1978 may be cited as the "Children's Code General Provisions Act".

B. The provisions of the Children's Code General Provisions Act apply to Chapter 32 NMSA 1978:

(1) unless the context otherwise requires; and

(2) subject to additional definitions contained in Chapter 32, Articles 2 through 6 NMSA 1978."

Section 12

Section 12. A new Section 32-1-2 NMSA 1978 is enacted to read:

"32-1-2. PURPOSE OF ACT.--The Children's Code shall be interpreted and construed to effectuate the following legislative purposes:

A. first to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of the Children's Code and then to preserve the unity of the family whenever possible. Permanent separation of the child from the family, however, would especially be considered when the child suffered permanent or severe injury or repeated abuse. It is the intent of the legislature that, to the maximum extent possible, children in New Mexico shall be reared as members of a family unit;

B. to provide judicial and other procedures through which the provisions of the Children's Code are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced;

C. to provide a continuum of services for children and their families, from prevention to treatment, considering whenever possible prevention, diversion and early intervention, particularly in the schools;

D. to provide children with services that are sensitive to their cultural needs;

E. to provide for the cooperation and coordination of the civil and criminal systems for investigation, intervention and disposition of cases, to minimize interagency conflicts and to enhance the coordinated response of all agencies to achieve the best interests of the child victim; and

F. to provide continuity for children and families appearing before the children's court by assuring that, whenever possible, a single judge hears all successive cases or proceedings involving a child or family."

Section 13

Section 13. A new Section 32-1-3 NMSA 1978 is enacted to read:

"32-1-3. DEFINITIONS.--As used in the Children's Code:

A. "adult" means an individual who is eighteen years of age or older;

B. "child" means an individual who is less than eighteen years old;

C. "court", when used without further qualification, means the children's court division of the
district court and includes the judge, special master or commissioner appointed pursuant to the provisions of the Children's Code or supreme court rule;

D. "court appointed special advocate" or "CASA" means a person appointed as a CASA, pursuant to the provisions of the Children's Court Rules and Forms, who assists the court in determining the best interests of the child by investigating the case and submitting a report to the court;

E. "custodian" means a person, other than a parent or guardian, who exercises physical control, care or custody of the child, including any employee of a residential facility or any persons providing out-of-home care;

F. "department" means the children, youth and families department, unless otherwise specified;

G. "foster parent" means a person, including a relative of the child, licensed by the department or a child placement agency to provide care for children in the custody of the department or agency;

H. "guardian" means the person having the duty and authority of guardianship;

I. "guardianship" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of a child and to be concerned about the child's general welfare and includes but is not necessarily limited in either number or kind to:

(1) the authority to consent to marriage, to enlistment in the armed forces of the United States or to major medical, psychiatric and surgical treatment;

(2) the authority to represent the child in legal actions and to make other decisions of substantial legal significance concerning the child;

(3) the authority and duty of reasonable visitation of the child;

(4) the rights and responsibilities of legal custody when the physical custody of the child is exercised by the child's parents, except when legal custody has been vested in another person; and

(5) when the rights of the child's parents have been terminated as provided for in the laws governing termination of parental rights or when both of the child's parents are deceased, the authority to consent to the adoption of the child and to make any other decision concerning the child that the child's parents could have made;

J. "guardian ad litem" means an attorney appointed by the children's court to represent and protect the best interests of the child in a court proceeding; provided that no party or employee or representative of a party to the proceeding shall be appointed to serve as a guardian ad litem;

K. "Indian child" means an unmarried person who is:

(1) less than eighteen years old;

(2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and

(3) the biological child of a member of an Indian tribe;

L. "Indian child's tribe" means:

(1) the Indian tribe in which an Indian child is a member or eligible for membership; or

(2) in the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts;

M. "judge", when used without further qualification, means the judge of the court;

N. "legal custody" means a legal status created by the order of the court or other court of competent jurisdiction that vests in a person or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, education and ordinary and emergency medical care; and the right to consent to the child's enlistment in the armed forces of the United States, all subject to the powers, rights, duties and

responsibilities of the guardian of the child and subject to
any existing parental rights and responsibilities. An individual granted legal custody of a child shall exercise the rights and responsibilities as custodian personally, unless otherwise authorized by the court entering the order;

O. "parent" or "parents" includes a natural or adoptive parent;

P. "person" means an individual or any other form of entity recognized by law; and

Q. "tribunal" means any judicial forum other than the court."

Section 14

Section 14. A new Section 32-1-4 NMSA 1978 is enacted to read:

"32-1-4. CHILDREN'S COURT ESTABLISHED AS DIVISION OF DISTRICT COURT--TRANSFER.--

A. There is established in the district court for each county a division to be known as the children's court. The district court of each judicial district shall designate one or more district judges to sit as judge of the children's court.

B. The supreme court shall adopt rules of procedure not in conflict with the Children's Code governing proceedings in the children's court, including rules and procedures for juries.

C. If, in a criminal action, it appears to a court other than the children's court division of the district court that jurisdiction is properly within the children's court division, the other court shall transfer the matter to the children's court division. Upon transfer, the children's court division obtains jurisdiction over the matter for proceedings in accordance with the provisions of the Children's Code."

Section 15

Section 15. A new Section 32-1-5 NMSA 1978 is enacted to read:

"32-1-5. CHILDREN'S COURT ATTORNEY.--

A. The office of children's court attorney is established in each judicial district. Except as provided by Subsection C or D of this section, each district attorney is the ex-officio children's court attorney for the judicial
district of the district attorney.

B. Except as provided by Subsection C or D of this section, the children's court attorney may represent the state in any matter arising under the Children's Code

when the state is the petitioner or complainant. The children's court attorney shall represent the petitioner in matters arising under the Children's Code when, in the discretion of the judge, the matter presents legal complexities requiring representation by the children's court attorney, whether or not the state is petitioner or complainant, but not in those matters when there is a conflict of interest between the petitioner or complainant and the state. A petitioner or complainant may be represented by counsel in any matter arising under the Children's Code.

C. In cases involving civil abuse or civil neglect and the periodic review of their dispositions, the attorney selected by and representing the department is the children's court attorney. The attorney selected by and representing the department shall provide to the district attorney of the appropriate judicial district reports, investigations and pleadings related to charges of abuse and neglect filed in that judicial district.

D. In cases involving families in need of services, the periodic review of their dispositions and voluntary placements, the attorney selected by and representing the department is the children's court attorney. The attorney selected by and representing the department shall provide to the district attorney of the appropriate judicial district reports, investigations and pleadings related to charges of abuse and neglect filed in that judicial district.

E. In those counties where the children's court attorney has sufficient staff and the workload requires it, the children's court attorney may delegate children's court functions to a staff attorney."

Section 16

Section 16. A new Section 32-1-6 NMSA 1978 is enacted to read:

"32-1-6. GUARDIAN AD LITEM--POWERS AND DUTIES.--

A. A guardian ad litem shall zealously represent the child's best interests.

B. A guardian ad litem shall represent the child during any appellate proceedings.

C. When a child's circumstances render the following duties and responsibilities reasonable and appropriate, the guardian ad litem shall:

(1) meet with and interview the child prior to custody hearings, adjudicatory hearings, dispositional hearings, judicial reviews and any other hearings scheduled in accordance with the provisions of the Children's Code;

(2) present the child's declared position to the court;

(3) communicate with health care, mental health care and other professionals involved with the child's case;

(4) review medical and psychological reports relating to the child and the respondents;

(5) contact the child prior to any proposed change in the child's placement;

(6) contact the child after changes in the child's placement;

(7) attend local substitute care review board hearings concerning the child, but if unable to attend the hearings, forward to the board a letter setting forth the child's status during the period since the last local substitute care review board review and include an assessment of the department's permanency and treatment plans;

(8) report to the court on the child's adjustment to placement, the department's and respondent's compliance with prior court orders and treatment plans and the child's degree of participation during visitations; and

(9) represent and protect the cultural needs of the child.

D. A guardian ad litem shall have the authority to retain separate counsel to represent the child in a tort action on a contingency fee basis in proceedings that are outside the jurisdiction of the children's court."

Section 17

Section 17. A new Section 32-1-7 NMSA 1978 is enacted to read:
"32-1-7. JURISDICTION OF THE COURT.--

A. The court has exclusive original jurisdiction of all proceedings under the Children's Code in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed or is a child alleged to be:

(1) a delinquent child;

(2) a child of a family in need of services;

(3) a neglected child;

(4) an abused child;

(5) a child subject to adoption; or

(6) a child subject to placement for a developmental disability or a mental disorder.

B. The court has exclusive original jurisdiction to emancipate a minor under other laws which will be controlled by the provisions of the other laws without regard to provisions of the Children's Code.

C. During abuse or neglect proceedings in which New Mexico is the home state, pursuant to the provisions of the Child Custody Jurisdiction Act, the court shall have jurisdiction over both parents to determine the best interest of the child and to decide all matters incident to the children's court proceedings.

D. Nothing in this section shall be construed to in any way abridge the rights of any Indian tribe to exercise jurisdiction over child custody matters as defined by and in
accordance with the federal Indian Child Welfare Act of 1978."

Section 18

Section 18. A new Section 32-1-8 NMSA 1978 is enacted to read:

"32-1-8. VENUE AND TRANSFER.--

A. Proceedings in the court under the provisions of the Children's Code shall begin in the county where the child resides. If delinquency is alleged, the proceeding may also be begun in the county where the act constituting the alleged delinquent act occurred or in the county in which the child is detained. Neglect, abuse, family in need of court-ordered services or mental health proceedings may also begin in the county where the child is present when the proceeding is commenced.

B. The venue for proceedings under other laws will be determined by the venue provisions of the other laws. If the other laws contain no venue provisions, then the venue and transfer provisions of Subsections A and C of this section apply.

C. If a proceeding is begun in a court for a county other than the county in which the child resides, that court, on its own motion or on the motion of a party made at any time prior to disposition of the proceeding, may transfer the proceeding to the court for the county of the child's residence for such further proceedings as the receiving court deems proper. A like transfer may be made if the residence of the child changes during the proceeding. Certified copies of all legal and social records pertaining to the proceeding shall accompany the case on transfer.

D. In neglect, abuse, family in need of court-ordered services or adoption proceedings for the placement of an Indian child, the court shall in the absence of good cause to the contrary transfer the proceeding to the jurisdiction of the Indian child's tribe upon the petition of the child's parent, the Indian child's custodian or the Indian child's

tribe. The transfer shall be barred if there is an objection to the transfer by a parent of the child or the Indian child's tribe."

Section 19

Section 19. A new Section 32-1-9 NMSA 1978 is enacted to read:

"32-1-9. PETITION--WHO MAY SIGN.--

A. A petition initiating proceedings pursuant to the provisions of Chapter 32, Article 2, 3B, 4 or 6 NMSA 1978 shall be signed by the children's court attorney.

B. An affidavit for an ex-parte custody order may be signed by any person who has knowledge of the facts alleged or is informed of them and believes that they are true."

Section 20

Section 20. A new Section 32-1-10 NMSA 1978 is enacted to read:

"32-1-10. PETITION--FORM AND CONTENT.--A petition initiating proceedings pursuant to the provisions of Chapter 32, Article 2, 3B, 4 or 6 NMSA 1978 shall be entitled, "In the Matter of ....., a child", and shall set forth with specificity:

A. the facts necessary to invoke the jurisdiction of the court;

B. if violation of a criminal statute or other law or ordinance is alleged, the citation to the appropriate law;

C. the name, birth date and residence address of the child;

D. the name and residence address of the parents, guardian, custodian or spouse, if any, of the child; and if no parent, guardian, custodian or spouse, if any, resides or can be found within the state, or if a residence address is unknown, the name of any known adult relative residing within the state, or, if there be none, the known adult relative residing nearest to the court;

E. whether the child is in custody, and, if so, the place of detention when alleging delinquency and the place of custody when alleging neglect, abuse or family in need of court-ordered services and the time the child was taken into custody;

F. whether the child is an Indian child; and

G. if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known."

Section 21

Section 21. A new Section 32-1-11 NMSA 1978 is enacted to read:

"32-1-11. SUMMONS--ISSUANCE AND CONTENT--WAIVER OF SERVICE.--

A. After a petition has been filed, summonses shall be issued directed to the child if the child is fourteen or more years of age, or is alleged in the petition to be delinquent, whether or not fourteen years of age and to the parent, guardian, custodian and spouse, if any, of the child, and to such other persons as the court considers proper or necessary parties.

B. The summons shall require the persons to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition. The summons shall advise the parties of their right to counsel under the Children's Code and shall have attached to it a copy of the petition.

C. The court may endorse upon the summons an order directing the parent, guardian, custodian or other person having the physical custody or control of the child to bring the child to the hearing.

D. If it appears from any sworn statement presented to the court that the child needs to be placed in detention, the judge may endorse on the summons an order that an officer serving the summons shall at once take the child into custody and take the child to the place of detention designated by the court; subject, however, to all of the provisions of the Children's Code relating to detention criteria and post-detention proceedings and the rights of the child in regard thereto.

E. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, the child's counsel, with the consent of the parent, guardian or custodian, may waive service of summons in the child's behalf."

Section 22

Section 22. A new Section 32-1-12 NMSA 1978 is enacted to read:

"32-1-12. SUMMONS--SERVICE.--

A. If a party to be served with a summons can be found within the state, the summons shall be served upon the party as provided by the Rules of Civil Procedure for the District Courts at least forty-eight hours before the hearing.

B. If a party to be served is within the state and cannot be found, but the party's address is known, service of the summons may be made by mailing a copy of the summons to the party by certified mail at least fifteen days before the hearing.

C. If, after reasonable effort, a party to be served cannot be found, or address ascertained, within or without the state, the court may order service of the summons by publication in accordance with the provisions of Rule 1-004 of the Rules of Civil Procedure for the District Courts in which event the hearing shall not be less than five days after the date of last publication.

D. The court may authorize the payment from court funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing."

Section 23

Section 23. A new Section 32-1-13 NMSA 1978 is enacted to read:

"32-1-13. NOTICE TO INDIAN TRIBES.--

A. In a case involving a family in need of services, if the child is an Indian child, the Indian child's tribe shall be notified when the petition is filed. The form of the notice shall comply with the provisions of the Indian Child Welfare Act of 1978.

B. In abuse, neglect or adoption proceedings, if the child is an Indian child, the Indian child's tribe shall be notified. The form of the notice shall comply with the provisions of the federal Indian Child Welfare Act of 1978."

Section 24

Section 24. A new Section 32-1-14 NMSA 1978 is enacted to read:

"32-1-14. RELEASE OR DELIVERY FROM CUSTODY.--In all cases begun pursuant to the provisions of the Children's Code, when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian in accordance with the conditions and time limits set forth in the Children's Court Rules and Forms."

Section 25

Section 25. A new Section 32-1-15 NMSA 1978 is enacted to read:

"32-1-15. BASIC RIGHTS.--

A. A child subject to the provisions of the Children's Code is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.

B. A person afforded rights under the Children's Code shall be advised of those rights at that person's first appearance before the court on a petition under the Children's Code."

Section 26

Section 26. A new Section 32-1-16 NMSA 1978 is enacted to read:

"32-1-16. APPEALS.--

A. Any party may appeal from a judgment of the court to the court of appeals in the manner provided by law. The appeal shall be heard by the court of appeals upon the files, records and transcript of the evidence of the children's court. The name of the child shall not appear in
the record on appeal.

B. The appeal to the court of appeals does not stay the judgment appealed from, but the court of appeals may order a stay upon application and hearing consistent with the provisions of the Children's Code if suitable provision is made for the care and custody of the child. If the order appealed from grants the legal custody of the child to, or withholds it from, one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

C. If the court of appeals does not dismiss the petition and order the child released, it shall affirm the court's judgment or it shall modify the court's judgment and remand the child to the jurisdiction of the children's court for disposition consistent with the appellate court's decision on the appeal. Any party may appeal to the supreme court in the manner provided by law.

D. A child who has filed notice of appeal shall be furnished a transcript of the proceedings, or as much of it as is requested, without cost upon the filing of an affidavit that the child, or the person who is legally responsible for the care and support of the child, is financially unable to purchase the transcript.

E. Appeals from the children's court to the court of appeals shall proceed in accordance with time limits to be established by the supreme court."

Section 27

Section 27. A new Section 32-1-17 NMSA 1978 is enacted to read:

"32-1-17. PROCEDURAL MATTERS.--

A. When it appears from the facts during the course of any proceeding under the Children's Code that some finding or remedy other than or in addition to those indicated by the petition or motion are appropriate, the court may, either on motion by the children's court attorney or that of counsel for the child, amend the petition or motion, and, provided all necessary parties consent, proceed to hear and determine the additional or other issues, findings or remedies as though originally properly sought.

B. Upon application of a party the court shall issue, and upon its own motion the court may issue, subpoenas requiring attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing.

C. Subject to the laws relating to the procedures therefor and the limitations thereon, the court may punish a person for contempt of court for disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders.

D. In any proceeding under the Children's Code, either on motion of a party or on the court's own motion, the court may make an order restraining the conduct of any party over whom the court has obtained jurisdiction if:

(1) the court finds that the person's conduct is or may be detrimental or harmful to the child and will tend to defeat the execution of the judgment of disposition made; and

(2) due notice of the motion and the grounds therefor and an opportunity to be heard thereon have been given to the person against whom the order is directed."

Section 28

Section 28. A new Section 32-1-18 NMSA 1978 is enacted to read:

"32-1-18. COURT COSTS AND EXPENSES.--

A. The following expenses shall be a charge upon the funds of the court upon their certification by the court:

(1) reasonable compensation for services and related expenses for counsel appointed by the court;

(2) reasonable compensation for services and related expenses of a guardian ad litem appointed by the court; and

(3) the expenses of service of summonses, notices, subpoenas, traveling expenses of witnesses and other like expenses incurred in any proceeding under the Children's Code.

B. The court may order the parent or other person legally obligated to care for and support a child to pay all or part of the costs and expenses pursuant to paragraph A of this section when:

(1) the child has been found to be a delinquent child, a child of a family in need of court-ordered services, an abused or neglected child, or a mentally ill or developmentally disabled child;

(2) the parent or other person legally obligated to care for and support a child is given notice and a hearing to determine the parent or person's financial ability to pay the costs and expenses; and

(3) the court finds that the parent or person is able to pay all or part of the costs and expenses. Unless otherwise ordered, payment shall be made to the court for remittance to those to whom compensation is due, or if costs and expenses have been paid by the court, to the court for remittance to the state. The court may prescribe the manner of payment.

C. Whenever legal custody of an adjudicated child is vested in someone other than the child's parents, including an agency, institution or department of this state, if the court, after notice to the parents or other persons legally obligated to support the child, and after a hearing, finds that they are financially able to pay all or part of the costs and expenses of the support and treatment, the court may order the parent or other legally obligated person to pay to the custodian in the manner the court directs a reasonable sum that will cover all or part of the expenses of the support and treatment of the child subsequent to the entry of the custody order. The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment. If the parent or other legally obligated person willfully fails or refuses to pay the sum ordered, the court may proceed with contempt charges and the order for payment may be filed and if filed shall have the effect of a civil judgment."

Section 29

Section 29. A new Section 32-1-19 NMSA 1978 is enacted to read:

"32-1-19. PURCHASE OF CARE FROM PRIVATE AGENCY BY PUBLIC AGENCY.--When the legal custody of a child is vested in a public agency under the provisions of the Children's Code, the public agency may transfer physical custody of the child to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the child is receiving and the child's responses to that care and treatment. These reports shall be made as frequently as the public agency deems necessary, but not less often than once each six months for each child. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the child as frequently as the public agency deems necessary."

Section 30

Section 30. A new Section 32-2-1 NMSA 1978 is enacted to read:

"32-2-1. SHORT TITLE.--Chapter 32, Article 2 NMSA 1978 may be cited as the "Delinquency Act"."

Section 31

Section 31. A new Section 32-2-2 NMSA 1978 is enacted to read:

"32-2-2. PURPOSE OF ACT.--The purpose of the Delinquency Act is:

A. consistent with the protection of the public interest, to remove from children committing delinquent acts the adult consequences of criminal behavior, but to still hold children committing delinquent acts accountable for their actions to the extent of the child's age, education, mental and physical condition, background and all other relevant factors, and to provide a program of supervision, care and rehabilitation, including rehabilitative restitution by the child to the victims of the child's delinquent act to the extent that the child is reasonably able to do so; and

B. to provide effective deterrents to acts of juvenile delinquency, including an emphasis on community-based alternatives."

Section 32

Section 32. A new Section 32-2-3 NMSA 1978 is enacted to read:

"32-2-3. DEFINITIONS.--As used in the Delinquency Act:

A. "delinquent act" means an act committed by a child which would be designated as a crime under the law if committed by an adult, including but not limited to the following offenses:

(1) pursuant to municipal traffic codes or the Motor Vehicle Code:

(a) any driving while under the influence of intoxicating liquor or drugs;

(b) any failure to stop in the event of an accident causing death, personal injury or damage to property;

(c) any unlawful taking of a vehicle or motor vehicle;

(d) any receiving or transferring of a stolen vehicle or motor vehicle;

(e) any homicide by vehicle;

(f) any injuring or tampering with a vehicle;

(g) any altering or changing of an engine number or other vehicle identification numbers;

(h) any altering or forging of a driver's license or permit or any making of fictitious license or permit;

(i) reckless driving;

(j) driving with a suspended or revoked license; or

(k) any offense punishable as a felony;

(2) buying, attempting to buy, receiving, possessing or being served any alcoholic liquor, or being preent in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse. As used in this paragraph, "restaurant" means any establishment where meals are prepared and served primarily for on-premises consumption and which has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals. "Restaurant" does not include establishments, as defined in regulations promulgated by the director of the special investigations division of the department of public safety, that serve only hamburgers, sandwiches, salads and other fast foods;

(3) any violation of the provisions of Sections 17-1-1 through 17-5-9 NMSA 1978 or any regulations adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped and for which a fine may be imposed or a civil damage awarded;

(4) any violation of Section 30-29-2 NMSA 1978, regarding the illegal use of a glue, aerosol spray product or other chemical substance;

(5) any violation of the Controlled Substances Act; or

(6) escape from the custody of a law enforcement officer or a juvenile probation or parole officer or from any placement made by the department by a child who has been adjudicated a delinquent child;

B. "delinquent child" means a child who has committed a delinquent act;

C. "delinquent offender" means a delinquent child who is subject to juvenile sanctions only and who is not a youthful offender or a serious youthful offender;

D. "detention facility" means a place where a child may be detained under the Children's Code pending court hearing and does not include a facility for the care and rehabilitation of an adjudicated delinquent child;

E. "felony" means an act that would be a felony if committed by an adult;

F. "misdemeanor" means an act that would be a misdemeanor or petty misdemeanor if committed by an adult;

G. "restitution" means financial reimbursement by the child to the victim or community service imposed by the court and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to a person and lost wages resulting from physical injury, which are a direct and proximate result of a delinquent act. "Restitution" does not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses. As used in this subsection, "victim" means any person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers or juvenile probation authorities. Nothing contained in this definition limits or replaces the provisions of Subsections A and B of Section 32-2-27 NMSA 1978;

H. "serious youthful offender" means an individual sixteen or seventeen years of age who is charged
with and indicted or bound over for trial for first degree murder. A "serious youthful offender" is not a delinquent child, as defined pursuant to the provisions of this section; and

I. "youthful offender" means a delinquent child subject to adult or juvenile sanctions who is:

(1) fifteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:

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

(b) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;

(c) kidnapping, as provided in Section 30-4-1 NMSA 1978;

(d) aggravated battery, as provided in Section 30-3-5 NMSA 1978;

(e) shooting at a dwelling or occupied building, or shooting at or from a motor vehicle, which results in great bodily harm to another person, as provided in Section 30-3-8 NMSA 1978;

(f) dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978;

(g) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(h) robbery, as provided in Section 30-16-2 NMSA 1978;

(i) aggravated burglary, as provided in Section 30-16-4 NMSA 1978; or

(j) aggravated arson, as provided in Section 30-17-6 NMSA 1978;

(2) fifteen to eighteen years of age at the time of the offense and adjudicated for any felony offense and who has had three prior, separate felony adjudications within a two-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees are not considered a prior adjudication for the purposes of this paragraph; or

(3) fifteen years of age and adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978."

Section 33

Section 33. A new Section 32-2-4 NMSA 1978 is enacted to read:

"32-2-4. DETENTION FACILITIES--STANDARDS--REPORTS.--

A. The department shall promulgate updated standards for all detention facilities, including standards for the site, design, construction, equipment, care, program, personnel and clinical services. The department shall certify as approved all detention facilities in the state meeting the standards promulgated. The department may establish by rule appropriate procedures for provisional certification and the waiving of any of its standards for facilities in existence at the time of the adoption of the standards, except that it shall not allow waiver of any standard pertaining to adequate health and safety protection of the residents and staff of the facility. No child shall be detained in a detention facility unless it is certified as approved by the department, except as otherwise provided in this article.

B. The department shall inspect all detention facilities in the state at least once each twelve months and shall require those reports it deems necessary from detention facilities in a form and containing the information determined by the department. If, as the result of an inspection, a certified detention facility is determined as failing to meet the required standards, its certification is subject to revocation or refusal for renewal by the department.

C. The department shall promulgate rules establishing procedures that provide for prior notice and public hearings on detention facilities standards adoption and changes. The department shall also promulgate rules establishing procedures for facility certification, renewal of certification, refusal to renew certification and revocation of certification. The procedures adopted on these matters shall provide for adequate prior notice of intended
action by the department, opportunity for the aggrieved person to have an administrative hearing and written notification of the administrative decision. Rules promulgated under this subsection shall not be effective unless filed in accordance with the State Rules Act.

D. Any person aggrieved by an administrative decision of the department rendered under the provisions of this section may petition for the review of the administrative decision by filing a petition requesting judicial review in the district court for the county in which the detention facility involved in the decision is located. The court's review shall be of the written transcript of the administrative hearing and the decision of the department. The court shall uphold the decision of the department unless it finds that decision to be:

(1) illegal or unconstitutional;

(2) the result of arbitrary or capricious department action; or

(3) not supported by substantial evidence;
in which cases it shall reverse the department's administrative decision and remand the matter for appropriate action by the department.

E. After January 1, 1994, no state or county detention facility shall hold juveniles sentenced by a federal court, unless the facility meets state standards promulgated by the department."

Section 34

Section 34. A new Section 32-2-5 NMSA 1978 is enacted to read:

"32-2-5. JUVENILE PROBATION AND PAROLE SERVICES--ESTABLISHMENT--JUVENILE PROBATION AND PAROLE OFFICERS--POWERS AND DUTIES.--

A. Juvenile probation and parole services shall be provided by the department.

B. To carry out the objectives and provisions of the Delinquency Act, but subject to its limitations, the department has the power and duty to:

(1) receive and examine complaints and allegations that a child is a delinquent child for the purpose of considering beginning a proceeding pursuant to the provisions of the Delinquency Act;

(2) make case referrals for services as appear appropriate or desirable;

(3) make predisposition studies and assessments and submit reports and recommendations to the court;

(4) supervise and assist a child placed on probation or parole or under supervision by court order or by the juvenile parole board;

(5) give notice to any individual who has been the subject of a petition filed pursuant to the provisions of the Delinquency Act of the sealing of that individual's records in accordance with that act;

(6) expunge of up to three misdemeanor charges brought against a child within two years;

(7) give notice to the children's court attorney of the receipt of any felony complaint and of any recommended adjustment of such felony complaint;

(8) identify an Indian child for the purpose of contacting the child's tribe in delinquency cases; and

(9) contact an Indian child's tribe to consult and exchange information for the purpose of preparing a predisposition report when commitment or placement of an Indian child is contemplated or has been ordered, and indicate in the report the name of the person contacted in the Indian child's tribe and the results of the contact.

C. A juvenile probation and parole officer does not have the powers of a law enforcement officer. A juvenile probation and parole officer may take into physical custody and place in detention a child who is under supervision as a delinquent child when there is reasonable cause to believe that the child has violated the conditions of his probation or parole or that the child may leave the jurisdiction of the court. Taking a child into custody under this subsection is subject to and shall proceed in accordance with the provisions of the Delinquency Act relating to custody and detention procedures and criteria."

Section 35

Section 35. A new Section 32-2-6 NMSA 1978 is enacted to read:
"32-2-6. TRANSFER OF JURISDICTION OVER CHILD FROM OTHER TRIBUNALS TO COURT.--

A. If it appears to a tribunal in a criminal matter that the defendant was under the age of eighteen years at the time the offense charged was alleged to have been committed and the offense charged is a delinquent act pursuant to the provisions of the Delinquency Act, the tribunal shall promptly transfer jurisdiction of the matter and the defendant to the court together with a copy of the accusatory pleading and other papers, documents and transcripts of testimony relating to the case. The tribunal shall not transfer a serious youthful offender.

B. Upon transfer the court shall have exclusive jurisdiction over the proceedings and the defendant. The transferring tribunal shall order that the defendant promptly be taken to the court, or taken to a place of detention designated by the court, or released to te custody of a parent, guardian, custodian or other person legally responsible for the defendant to be brought before the court at a time designated by the court. Upon transfer to the court a petition shall be prepared and filed in the court in accordance with the provisions of the Delinquency Act.
If the defendant is not a child at the time of transfer the court retains jurisdiction over the matter only until disposition is made by the court."

Section 36

Section 36. A new Section 32-2-7 NMSA 1978 is enacted to read:

"32-2-7. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY--TIME WAIVER.--

A. Complaints alleging delinquency shall be referred to probation services, which shall conduct a preliminary inquiry to determine the best interests of the child and of the public with regard to any action to be taken.

B. During the preliminary inquiry on a delinquency complaint, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of effecting adjustments or agreements that will obviate the necessity for filing a petition. At the commencement of the preliminary inquiry, the parties shall be advised of their basic rights pursuant to Section 32-2-14 NMSA 1978, and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The preliminary inquiry shall be completed within the time limits set forth in the Children's Court Rules and Forms.

C. When a child is in detention or custody, and the children's court attorney does not file a petition within the time limits authorized by the Children's Court Rules and Forms, the child shall be released immediately.

D. After completion of the preliminary inquiry on a delinquency complaint involving a misdemeanor, probation services may notify the children's court attorney and recommend an appropriate disposition for the case. If the child has been referred for three or more prior misdemeanors within two years of the instant offense, probation

services shall notify the children's court attorney and recommend an appropriate disposition for the case.

E. Probation services shall notify the children's court attorney of the receipt of any complaint involving an act that constitutes a felony under the applicable criminal law. Probation services shall also recommend a disposition to the children's court attorney.

F. The child, through counsel, and the children's court attorney may agree, without judicial approval, to a waiver of time limitations imposed after a petition is filed. A time waiver defers adjudication of the charges. The children's court attorney may place restrictions on a child's behavior as a condition of a time waiver. If the child completes the agreed upon conditions, and no new charges are filed against the child, the pending petition shall be dismissed. If the children's court attorney files a new petition against the child, the children's court attorney may proceed on both the original petition and the new charges. The department shall become a party if probation services are requested as a condition of the time waiver."

Section 37

Section 37. A new Section 32-2-8 NMSA 1978 is enacted to read:

"32-2-8. PETITION--AUTHORIZATION TO FILE.--A petition alleging delinquency shall not be filed in delinquency proceedings unless the children's court attorney, after consulting with probation services, has determined and endorsed upon the petition that the filing of the petition is in the best interest of the public and the child. The children's court attorney shall furnish legal services in connection with the authorization and preparation of the petition."

Section 38

Section 38. A new Section 32-2-9 NMSA 1978 is enacted to read:

"32-2-9. TAKING INTO CUSTODY.--A child may be taken into custody:

A. pursuant to the order of the court issued because a parent, guardian or custodian fails when requested to bring the child before the court after having promised to do so when the child was delivered upon release from custody;

B. pursuant to the laws of arrest for commission of a delinquent act; or

C. by a juvenile probation and parole officer proceeding pursuant to the provisions of Section 32-2-5 NMSA 1978."

Section 39

Section 39. A new Section 32-2-10 NMSA 1978 is enacted to read:

"32-2-10. RELEASE OR DELIVERY FROM CUSTODY.--

A. A person taking a child into custody shall, with all reasonable speed:

(1) release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate;

(2) release the child to the child's parent, guardian or custodian upon their written promise to bring the child before the court when requested by the court, and if the parent, guardian or custodian fails, when requested, to bring the child before the court as promised, the court may order the child taken into custody and brought before the court;

(3) deliver the child to a place of detention as provided in Section 32-2-11 NMSA 1978;

(4) deliver the child to a medical facility, if available, if the child is believed to be suffering from a serious illness that requires prompt treatment or prompt diagnosis; or

(5) deliver the child to an evaluation facility, if available, if the person taking the child into custody has reasonable grounds to believe the child presents a likelihood of serious harm to himself or others or is suffering from some other serious mental condition or illness that requires prompt treatment or prompt diagnosis.

B. When an alleged delinquent child is delivered to a place of detention as provided in Section 32-2-12 NMSA 1978, a department designee, prior to the placing of the child in detention, shall review the need for detention and shall release the child from custody unless detention is appropriate under criteria set forth in the Delinquency Act or has been ordered by the court pursuant to those criteria.

C. If a child is taken into custody and is not released to the child's parent, guardian or custodian, the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian and to the court together with a statement of the reason for taking the child into custody.

D. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian in accordance with the conditions and time limits set forth in the Children's Court Rules and Forms."

Section 40

Section 40. A new Section 32-2-11 NMSA 1978 is enacted to read:

"32-2-11. CRITERIA FOR DETENTION OF CHILDREN.--

A. Unless ordered by the court pursuant to the provisions of the Delinquency Act, a child taken into custody for a delinquent act shall not be placed in detention prior to the court's disposition unless probable cause exists to believe that:

(1) detention of the child is necessary to protect the community;

(2) the child will run away or be taken away so as to be unavailable for proceedings of the court or its officers;

(3) the child will commit injury to others; or

(4) if not detained, the child will cause injury to himself or be subject to injury by others.

B. The criteria for detention in this section shall govern the decisions of all persons responsible for determining whether detention is appropriate prior to the court's disposition.

C. The department shall promulgate guidelines by January 1, 1994 to implement the criteria for detention set forth in Subsection A of this section and shall collect data regarding the application of the criteria."

Section 41

Section 41. A new Section 32-2-12 NMSA 1978 is enacted to read:

"32-2-12. PLACEMENT OR DETENTION.--

A. A child alleged to be a delinquent child may be placed or detained pending court hearing in any of the following places:

(1) a licensed foster home or a home otherwise authorized under the law to provide foster or group care;

(2) a facility operated by a licensed child welfare services agency;

(3) a shelter-care facility provided for in the Children's Shelter Care Act or a detention facility certified by the department for children alleged to be delinquent children; or

(4) any other suitable place, other than a facility for the long-term care and rehabilitation of delinquent children to which children adjudicated as delinquent

may be confined under Section 32-2-19 NMSA 1978, designated by the court which meets the standards for detention facilities under the Children's Code and federal law.

B. A child alleged to be a serious youthful offender may be detained pending a hearing in any of the following places, prior to arraignment in metropolitan, magistrate or district court:

(1) a detention facility, licensed by the department, for children alleged to be delinquent children;

(2) any other suitable place, other than a facility for the long-term care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined under Section 32-2-19 NMSA 1978, designated by the court which meets the standards for detention facilities under the Children's Code and federal law; or

(3) a county jail, if a facility in Paragraph (1) or (2) of this subsection is not appropriate. In the event that a child is detained in a jail, the director of the facility shall presume that the child is vulnerable to victimization by detainees within the adult population because of his age, and shall take measures to provide protection to the child. However, no such protective measure should result in diminishing a child's civil rights to less than those existing for an incarcerated adult."

Section 42

Section 42. A new Section 32-2-13 NMSA 1978 is enacted to read:

"32-2-13. DETENTION HEARING REQUIRED ON DETAINED CHILDREN--PROBABLE CAUSE DETERMINATION--COURT DETERMINATION--DISPOSITION.--

A. When a child who has been taken into custody is not released but is detained:

(1) a judicial determination of probable cause shall be made by a judge or special master or magistrate within forty-eight hours including Saturdays, Sundays and legal holidays, except for children taken into custody under an arrest warrant pursuant to the Children's Court Rules and Forms. A statement by a law enforcement officer, which shall include the charges, may be the basis of a probable cause determination. The probable cause determination shall be nonadversarial, may be held in the absence of the child and counsel and may be conducted by telephone. If the court finds no probable cause to believe the child committed an offense, the child shall be released;

(2) a petition shall be filed within forty-eight hours from the time the child is taken into custody, excluding Saturdays, Sundays and legal holidays, and if not filed within the stated time the child shall be released; and

(3) a detention hearing shall be held within twenty-four hours, excluding Saturdays, Sundays and legal holidays, from the time of filing the petition to determine whether continued detention is required pursuant to the criteria established by the Children's Code.

B. The judge may appoint one or more persons to serve as special master on a full- or part-time basis for the purpose of holding detention hearings. A juvenile probation and parole officer shall not be appointed as a special master. The judge shall approve all contracts with special masters and shall fix their hourly compensation subject to the approval of the director of the administrative office of the court.

C. Notice of the detention hearing, either oral or written, stating the time, place and purpose of the hearing shall be given by the person designated by the court to the child's parents, guardian or custodian, if they can be found, and to the child. The department shall be provided with reasonable oral or written notification and an opportunity to be heard. At any hearing held pursuant to this subsection, the department may appear as a party.

D. At the commencement of the detention hearing, the judge or special master shall advise the parties of their basic rights provided in the Children's Code and shall appoint counsel, guardians and custodians, if appropriate.

E. If the judge or special master finds that the child's detention is appropriate under the criteria established by the Children's Code, the judge or special master shall order detention in an appropriate facility in accordance with the Children's Code.

F. If the judge or special master finds that detention of the child is not appropriate under the criteria established by the Children's Code, the judge or special master shall order the release of the child, but, in so doing, may order one or more of the following conditions:

(1) place the child in the custody of a parent, guardian or custodian or under the supervision of an agency agreeing to supervise the child;

(2) place restrictions on the child's travel, association with other persons or place of abode during the period of the child's release; or

(3) impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children established by the Children's Code, including a condition requiring that the child return to custody as required.

G. An order releasing a child on any conditions specified in this section may at any time be amended to impose additional or different conditions of release or to

return the child to custody or detention for failure to conform to the conditions originally imposed.

H. At the detention hearing, all relevant and material evidence helpful in determining the need for detention may be admitted by the judge or special master even though it would not be admissible in a hearing on the petition.

I. If the child is not released at the detention hearing and a parent, guardian or custodian was not notified of the hearing and did not appear or waive appearance at the detention hearing, the judge or special master shall rehear the detention matter without unnecessary delay upon the
filing of an affidavit stating the facts and a motion for rehearing."

Section 43

Section 43. A new Section 32-2-14 NMSA 1978 is enacted to read:

"32-2-14. BASIC RIGHTS.--

A. A child subject to the provisions of the Delinquency Act is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.

B. If after due notice to the parent, guardian or custodian, and after a hearing determining indigency, the parent, guardian or custodian is declared indigent by the court, the public defender shall represent the child. If the court finds that the parent, guardian or custodian is financially able to pay for an attorney but is unwilling to do so, the court shall order the parent, guardian or custodian to reimburse the state for public defender representation.

C. No person subject to the provisions of the Delinquency Act who is alleged or suspected of being a delinquent child shall be interrogated or questioned without first advising the child of the child's constitutional rights and securing a knowing, intelligent and voluntary waiver.

D. Before any statement or confession may be introduced at a trial or hearing when a child is alleged to be a delinquent child, the state shall prove that the statement or confession offered in evidence was elicited only after a knowing, intelligent and voluntary waiver of the child's constitutional rights was obtained.

E. In determining whether the child knowingly, intelligently and voluntarily waived the child's rights, the court shall consider the following factors:

(1) the age and education of the respondent;

(2) whether or not the respondent is in custody;

(3) the manner in which the respondent was advised of his rights;

(4) the length of questioning and circumstances under which the respondent was questioned;

(5) the condition of the quarters where the respondent was being kept at the time he was questioned;

(6) the time of day and the treatment of the respondent at the time that he was questioned;

(7) the mental and physical condition of the respondent at the time that he was questioned; and

(8) whether or not the respondent had the counsel of an attorney, friends or relatives at the time of being questioned.

F. Notwithstanding any other provision to the contrary, no confessions, statements or admissions may be introduced against a child under the age of thirteen years on the allegations of the petition. There is a rebuttable presumption that any confessions, statements or admissions made by a child thirteen or fourteen years old to a person in a position of authority are inadmissible.

G. An extrajudicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the delinquent acts alleged in the petition unless it is corroborated by other evidence.

H. The child and the parent, guardian or custodian of the child shall be advised by the court or its representative that the child shall be represented by counsel at all stages of the proceedings on a delinquency petition. If counsel is not retained for the child, or if it does not appear that counsel will be retained, counsel shall be appointed for the child.

I. A child under the age of thirteen alleged or adjudicated to be a delinquent child shall not be fingerprinted or photographed for identification purposes without obtaining a court order.

J. The court, at any stage of the proceeding on a petition under the Children's Code, may appoint a guardian ad litem for a child who is a party if the child has no parent, guardian or custodian appearing on behalf of the child or if the parent's, guardian's or custodian's interests conflict with those of the child. A party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

K. The court shall appoint a guardian for a child if the court determines that the child does not have a parent or a legally appointed guardian in a position to

exercise effective guardianship. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed guardian of the child except when parental rights have been terminated and the agency is authorized to place the child for adoption.

L. A person afforded rights under the Delinquency Act shall be advised of those rights at that person's first appearance before the court on a petition under that act.

M. A serious youthful offender who is detained prior to trial in an adult facility has a right to bail, as provided under SCRA 1986, Rule 5-401. A child held in a juvenile facility designated as a place of detention prior to adjudication does not have a right to bail but may be released pursuant to the provisions of the Delinquency Act."

Section 44

Section 44. A new Section 32-2-15 NMSA 1978 is enacted to read:

"32-2-15. TIME LIMITATIONS ON DELINQUENCY ADJUDICATORY HEARING.--The adjudicatory hearing in a delinquency proceeding shall be held in accordance with the time limits set forth in the Children's Court Rules and Forms."

Section 45

Section 45. A new Section 32-2-16 NMSA 1978 is enacted to read:

"32-2-16. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--DISPOSITIONAL MATTERS--PENALTY.--

A. Hearings on petitions shall be conducted by the court separate from other proceedings. A jury trial on the issues of alleged delinquent acts may be demanded by the child, parent, guardian, custodian or counsel in proceedings on petitions alleging delinquency when the offense alleged would be triable by jury if committed by an adult. If a jury is demanded and the child is entitled to a jury trial, the jury's function is limited to that of trier of the factual issue of whether the child committed the alleged delinquent acts. If no jury is demanded, the hearing shall be by the court without a jury. Jury trials shall be conducted in accordance with rules promulgated under the provisions of Subsection B of Section 32-1-4 NMSA 1978. A delinquent child facing a juvenile disposition shall be entitled to a six- member jury. If the children's court attorney has filed a motion to invoke an adult sentence, the child is entitled to a twelve-member jury. A unanimous verdict is required for all jury trials. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means.

B. All hearings to declare a person in contempt of court and all hearings on petitions pursuant to the provisions of the Delinquency Act shall be open to the

general public, except where the court in its discretion, after a finding of exceptional circumstances, deems it appropriate to conduct a closed delinquency hearing. Only the parties, their counsel, witnesses and other persons approved by the court may be present at a closed hearing. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition that they refrain from divulging any information concerning the exceptional circumstances that resulted in the need for a closed hearing. Accredited representatives of the news media shall be allowed to be present at closed hearings subject to the conditions that they refrain from divulging information concerning the exceptional circumstances that resulted in the need for a closed hearing and subject to such enabling regulations as the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Delinquency Act.

C. Those persons or parties granted admission to a closed hearing who intentionally divulge information in violation of Subsection B of this section are guilty of a petty misdemeanor.

D. The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court after hearing all of the evidence bearing on the allegations of delinquency shall make and record its findings on whether the delinquent acts subscribed to the child were committed by the child. If the court finds that the allegations of delinquency have not been established, it shall dismiss the petition and order the child released from any detention or legal custody imposed in connection with the proceedings.

E. The court shall make a finding of delinquency based on a valid admission of the allegations of the petition or on the basis of proof beyond a reasonable doubt.

F. If the court finds on the basis of a valid admission of the allegations of the petition or on the basis of proof beyond a reasonable doubt that the child is a delinquent, the court may proceed immediately or at a postponed hearing to make disposition of the case.

G. In that part of the hearings held under the Delinquency Act on dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues.

H. On the court's motion or that of a party, the court may continue the hearing on the petition for a reasonable time to receive reports and other evidence in connection with disposition. The court may continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and

received. During any continuances under this subsection, the court shall make an appropriate order for detention or legal
custody."

Section 46

Section 46. A new Section 32-2-17 NMSA 1978 is enacted to read:

"32-2-17. PREDISPOSITION STUDIES--REPORTS AND EXAMINATIONS.--

A. After a petition has been filed and either a finding with respect to the allegations of the petition has been made or a notice of intent to admit the allegations of the petition has been filed, the court may direct that a predisposition study and report to the court be made in writing by the department or an appropriate agency designated by the court concerning the child, the family of the child, the environment of the child and any other matters relevant to the need for treatment or to appropriate disposition of the case. The following predisposition reports shall be provided to the parties and the court five days before actual disposition or sentencing:

(1) the adult probation and parole division of the corrections department shall prepare a predisposition report for serious youthful offenders;

(2) the department shall prepare a predisposition report for serious youthful offenders who are convicted of an offense other than first degree murder;

(3) the department shall prepare a predisposition report for youthful offenders; and

(4) the department shall prepare a predisposition report for delinquent offenders, upon the court's request.

B. Where there are indications that the child may be mentally disordered or developmentally disabled, the court, on motion by the children's court attorney or that of counsel for the child, may order the child to be examined at a suitable place by a physician, a licensed psychologist or a licensed, independent social worker prior to a hearing on the merits of the petition. An examination made prior to the hearing or as a part of the predisposition study and report shall be conducted on an outpatient basis, unless the court finds that placement in a hospital or other appropriate facility is necessary.

C. The court, after a hearing, may order examination by a physician, a licensed psychologist or a licensed, independent social worker of a parent or custodian whose ability to care for or supervise a child is an issue before the court.

D. The court may order that a child adjudicated as a delinquent child be transferred to the facility designated by the secretary of the department for a period of

not more than fifteen days within a three hundred sixty-five day time period for purposes of diagnosis, with direction that the court be given a report indicating what disposition appears most suitable when the interests of the child and the public are considered.

E. Once committed, the department shall determine when the child is released. The release shall be any time after commitment, but not more than fifteen days after commitment. Upon petition by the department to the court, the judge may extend the commitment for an additional fifteen days upon good cause shown."

Section 47

Section 47. A new Section 32-2-18 NMSA 1978 is enacted to read:

"32-2-18. JUDGMENT--NONCRIMINAL NATURE--NONADMISSABILITY.--The court shall enter a judgment setting forth the court's findings and disposition in the proceeding. A judgment in proceedings on a petition under the Delinquency Act resulting in a juvenile disposition shall not be deemed a conviction of crime nor shall it impose any civil disabilities ordinarily resulting from conviction of a crime, nor shall it operate to disqualify the child in any civil service application or appointment. The juvenile disposition of a child, and any evidence given in a hearing in court, shall not be admissible as evidence against the child in any case or proceeding in any other tribunal whether before or after reaching the age of majority, except in sentencing proceedings after conviction of a felony and then only for the purpose of a presentence study and report. If a judgment on a proceeding under the Delinquency Act results in an adult sentence, the determination of guilt at trial becomes a conviction for purposes of the Criminal Code."

Section 48

Section 48. A new Section 32-2-19 NMSA 1978 is enacted to read:

"32-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT OFFENDER.--

A. At the conclusion of the dispositional hearing, the court may make and include in the dispositional judgment its findings on the following:

(1) the interaction and interrelationship of the child with the child's parent, siblings and any other person who may significantly affect the child's best interest;

(2) the child's adjustment to his home, school and community;

(3) the mental and physical health of all individuals involved;

(4) the wishes of the child as to his custodian;

(5) the wishes of the child's parent or parents as to the child's custody;

(6) whether there exists a relative of the child or other individual who, after study by the department, is found to be qualified to receive and care for the child;

(7) the availability of services recommended in the predisposition report; and

(8) the ability of the parents to care for the child in the home.

B. If a child is found to be delinquent, the court may impose a fine not to exceed the fine that could be imposed if the child were an adult and may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

(1) any disposition that is authorized for the disposition of a neglected or abused child, in accordance with the Abuse and Neglect Act;

(2) transfer legal custody to the department, an agency responsible for the care and rehabilitation of delinquent children, which shall receive the child at a facility designated by the secretary of the department as a juvenile reception facility. The department shall thereafter determine the appropriate placement, supervision and rehabilitation program for the child. The judge may include recommendations for placement of the child. Commitments are subject to limitations and modifications set forth in Section 32-2-23 NMSA 1978. The types of commitments include:

(a) a short-term commitment of one year, of which no more than six months may be in a facility for the long-term care and rehabilitation of adjudicated delinquent children; or

(b) a long-term commitment for no more than two years in a long-term facility for the care and rehabilitation of adjudicated delinquent children;

(3) place the child on probation under those conditions and limitations as the court may prescribe;

(4) place the child in a local detention facility that has been certified in accordance with the provisions of Section 32-2-4 NMSA 1978 for a period not to exceed fifteen days within a three hundred sixty-five day time period;

(5) if a child is found to be delinquent solely on the basis of Paragraph (3) of Subsection A of Section 32-2-3 NMSA 1978, the court shall only enter a judgment placing the child on probation or ordering restitution or imposing a fine not to

exceed the fine which could be imposed if the child were an adult or any combination of these dispositions; or

(6) if a child is found to be delinquent solely on the basis of Paragraph (2), (4) or (5) of Subsection A of Section 32-2-3 NMSA 1978, the court may make any disposition provided by this section and may enter its judgment placing the child on probation and, as a condition of probation, transfer custody of the child to the department for a period not to exceed six months without further order of the court; provided that this transfer shall not be made unless the court first determines that the department is able to provide or contract for adequate and appropriate treatment for the child and that the treatment is likely to be beneficial.

C. When the child is an Indian child, the Indian child's cultural needs shall be considered in the dispositional judgment and reasonable access to cultural practices and traditional treatment shall be provided.

D. No child found to be delinquent shall be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

E. Whenever the court vests legal custody in an agency, institution or department, it shall transmit with the dispositional judgment copies of the clinical reports, predisposition study and report and other information it has pertinent to the care and treatment of the child.

F. Prior to any child being placed in the custody of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard.

G. In addition to any other disposition pursuant to this section or any other penalty provided by law, if a child fifteen years of age or older is adjudicated delinquent on the basis of Paragraph (2), (4) or (5) of Subsection A of Section 32-2-3 NMSA 1978, the child's driving privileges may be denied or the child's driver's license may be revoked for a period of ninety days. For a second or a subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the dispositional judgment, the court may send to the motor vehicle division of the taxation and revenue department the order adjudicating delinquency. Upon receipt of an order from the court adjudicating delinquency, the director of the motor vehicle division of the taxation and revenue department may revoke or deny the delinquent's driver's license or driving privileges. Nothing in this section may prohibit the delinquent from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978, and nothing in this section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program."

Section 49

Section 49. A new Section 32-2-20 NMSA 1978 is enacted to read:

"32-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

A. The children's court judge has the discretion to invoke either an adult sentence or juvenile sanctions on a youthful offender. The children's court attorney must file a notice of intent to invoke an adult sentence within ten working days of the filing of the petition, provided that the court may extend the time for filing of the notice of intent to invoke an adult sentence, for good cause shown, prior to the adjudicatory hearing. A preliminary hearing by the children's court or a hearing before a grand jury shall be held, within ten days after the filing of the intent to invoke an adult sentence, to determine whether probable cause exists to support the allegations contained in the petition.

B. If the children's court attorney has filed a notice of intent to invoke an adult sentence and the child is adjudicated as a youthful offender, the court shall make the following findings in order to invoke an adult sentence:

(1) the child is not amenable to treatment or rehabilitation as a child in available facilities; and

(2) the child is not eligible for commitment to an institution for the developmentally disabled or mentally disordered.

C. In making the findings set forth in Subsection B of this section, the judge shall consider the following factors:

(1) the seriousness of the alleged offense;

(2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

(3) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;

(4) the sophistication and maturity of the child as determined by consideration of the child's home, environmental situation, emotional attitude and pattern of living;

(5) the record and previous history of the juvenile;

(6) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available; and

(7) any other relevant factor, provided that factor is stated on the record.

D. If a judge invokes an adult sentence, the judge may sentence the child to less than, but shall not exceed, the mandatory adult sentence. A youthful offender given an adult sentence shall be treated as an adult offender and shall be transferred to the legal custody of an agency responsible for incarceration of persons sentenced to adult sentences. This transfer terminates the jurisdiction of the court over the child with respect to the delinquent acts alleged in the petition.

E. If a juvenile disposition is appropriate, the judge shall follow the provisions set forth in Section 32-2-19 NMSA 1978. A youthful offender may be subject to extended commitment in the care of the department until the age of twenty-one, pursuant to the provisions of Section 32-2-23 NMSA 1978.

F. A sixteen or seventeen year old child charged with first degree murder, but convicted of an offense less than first degree murder, is subject to the dispositions set forth in this section."

Section 50

Section 50. A new Section 32-2-21 NMSA 1978 is enacted to read:

"32-2-21. DISPOSITION OF A MENTALLY DISORDERED OR DEVELOPMENTALLY DISABLED CHILD IN A PROCEEDING.--

A. If in a hearing at any stage of a proceeding on a delinquency petition the evidence indicates that the child is or may be developmentally disabled or mentally disordered, the court may:

(1) order the child detained if appropriate under the criteria established under the Delinquency Act;

(2) stay the delinquency petition; and

(3) initiate proceedings for the involuntary placement of the child as a mentally disordered or developmentally disabled minor pursuant to the provisions of the Children's Code.

B. If a child is involuntarily placed as a developmentally disabled or mentally disordered child under Subsection A of this section, the petition may be stayed pursuant to the Children's Court Rules and Forms.

C. Upon proper notice to parties pursuant to the provisions of the Children's Code, the court may proceed directly to an involuntary placement hearing.

D. If the child is placed for residential treatment or habilitation under the Children's Code, the department or department of health shall retain legal custody during the period of involuntary placement or until further order of the court.

E. If a child is committed to a psychiatric hospital for treatment or habilitation, and in the event that the department should be required to pay more than four hundred dollars ($400) per day because of the individualized treatment plan, the annual costs over four hundred dollars ($400) per child per day will be reported annually by the department to the legislative finance committee.

F. At such time as the child is to be released from residential treatment or habilitation, the court may
resume the delinquency proceedings.

G. Whenever a residential treatment or habilitation facility petitions for extended placement and the petition for extended placement is dismissed, the court may resume the delinquency proceedings. The child may remain in the residential treatment or habilitation facility pending the disposition of the delinquency petition.

H. If the department has reason to believe that a child in departmental custody needs residential mental health or developmental disability services as a result of a mental disorder or developmental disability, the department shall petition for that child's placement pursuant to the provisions of the Children's Code."

Section 51

Section 51. A new Section 32-2-22 NMSA 1978 is enacted to read:

"32-2-22. CONTINUANCE UNDER SUPERVISION WITHOUT JUDGMENT--CONSENT DECREE--DISPOSITION.--

A. At any time after the filing of a delinquency petition and before the entry of a judgment, the court may on motion of the children's court attorney or that of counsel for the child suspend the proceedings and continue the child under supervision in the child's own home under terms and conditions negotiated with probation services and agreed to by all the parties affected. The court's order continuing the child under supervision under this section shall be known as a "consent decree".

B. If the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case. If the child does not object but an objection is made by the children's court attorney after consultation with probation services, the court shall after considering the objections and the reasons given proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

C. A consent decree shall remain in force for six months unless the child is discharged sooner by probation services. Prior to the expiration of the six-month period and upon the application of probation services or any other agency supervising the child under a consent decree, the court may extend the decree for an additional six months in the absence of objection to extension by the child. If the child objects to the extension, the court shall hold a hearing and make a determination on the issue of extension.

D. If either prior to discharge by probation services or expiration of the consent decree the child allegedly fails to fulfill the terms of the decree, the children's court attorney may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted in the same manner as proceedings on petitions to revoke probation. If the child is found to have violated the terms of the consent decree, the court may:

(1) extend the period of the consent decree; or

(2) make any other disposition which would have been appropriate in the original proceeding.

E. A child who is discharged by probation services or who completes a period under supervision without reinstatement of the original delinquency petition shall not again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the child for damages arising from the child's conduct.

F. A judge who pursuant to this section elicits or examines information or material about a child that would be inadmissible in a hearing on the allegations of the petition shall not over the objection of the child participate in any subsequent proceedings on the delinquency if:

(1) a consent decree is denied and the allegations in the petition remain to be decided in a hearing where the child denies the allegations; or

(2) a consent decree is granted but the delinquency petition is subsequently reinstated.

G. If a consent decree has been entered pursuant to the filing of a delinquency petition based on Paragraph (2), (4) or (5) of Subsection A of Section 32-2-3 NMSA 1978 for a child who is fifteen years of age or older, a condition of the consent decree agreement may be the denial of the child's driving privileges or the revocation of the child's driver's license for a period of ninety days. For the second or subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the entry by the court of a decree consenting to the revocation or denial of the child's driver's license or driving privileges, the court shall send the decree to the motor vehicle division of the taxation

and revenue department. Upon receipt of the decree from the court consenting to the denial or revocation of the child's driving privilege or driver's license, the director of the motor vehicle division of the taxation and revenue department shall revoke or deny the delinquent child's driver's license or driving privileges. Nothing in this section shall prohibit the delinquent child from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978, and nothing in this section precludes the delinquent child's participation in an appropriate educational, counseling or rehabilitation program."

Section 52

Section 52. A new Section 32-2-23 NMSA 1978 is enacted to read:

"32-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

A. A judgment transferring legal custody of an adjudicated delinquent child to an agency responsible for the care and rehabilitation of delinquent children divests the court of jurisdiction at the time of transfer of custody, unless the transfer of legal custody is for a commitment not exceeding fifteen days pursuant to the provisions of Section 32-2-19 NMSA 1978, in which case the court retains jurisdiction, and:

(1) the juvenile parole board pursuant to the Juvenile Parole Board Act has the exclusive power to parole or release the child;

(2) the supervision of a child after release under Paragraph (1) of this subsection may be conducted by the juvenile parole board in conjunction with the department or any other suitable state agency or under any contractual arrangements the juvenile parole board deems appropriate; and

(3) the period of time a child absconds from parole or probation supervision shall toll all time limits for the requirement of filing a petition to revoke probation or parole and shall toll the computation of the period of probation or parole supervision pursuant to the provisions of the Delinquency Act.

B. A judgment of probation or protective supervision shall remain in force for an indeterminate period not to exceed the term of commitment from the date entered.

C. A child shall be released by an agency and probation or supervision shall be terminated by juvenile
probation and parole services or the agency providing supervision when it appears that the purpose of the order has been achieved before the expiration of the period of the judgment. A release or termination and the reasons therefor shall be reported promptly to the court in writing by the releasing authority.

D. Prior to the expiration of a long-term commitment, as provided for in Section 32-2-19 NMSA 1978, the court may extend the judgment for additional periods of one year until the child reaches the age of twenty-one, if the court finds that the extension is necessary to safeguard the welfare of the child or the public interest.

E. Prior to the expiration of a six-month commitment, as provided for in Section 32-2-19 NMSA 1978, the court may extend the judgment for additional periods of six months until the child reaches the age of twenty-one, if the court finds that the extension is necessary to safeguard the welfare of the child or the public interest.

F. Prior to the expiration of a judgment of probation, the court may extend the judgment for an additional period of one year until the child reaches the age of twenty-one, if it finds that the extension is necessary to protect the community or to safeguard the welfare of the child.

G. The court may dismiss a motion if it finds after preliminary investigation that the motion is without substance. If the court is of the opinion that the matter should be reviewed, it may upon notice to all necessary parties proceed to a hearing in the manner provided for hearings on petitions alleging delinquency. The court may terminate a judgment if it finds that the child is no longer in need of care, supervision or rehabilitation or it may enter a judgment extending or modifying the original judgment if it finds that action necessary to safeguard the child or the public interest.

H. A child may make a motion to modify a children's court or adult disposition within thirty days of the judge's decision. If the court is of the opinion that the matter should be reviewed, it may upon notice to all necessary parties proceed to a hearing in the manner provided for hearins on petitions alleging delinquency."

Section 53

Section 53. A new Section 32-2-24 NMSA 1978 is enacted to read:
"32-2-24. PROBATION REVOCATION--DISPOSITION.--

A. A child on probation incident to an adjudication as a delinquent child who violates a term of the probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be begun by filing in the original proceeding a petition styled as a "petition to revoke probation". Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging delinquency. Procedures of the Delinquency Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations.

B. The standard of proof in probation revocation proceedings shall be evidence beyond a reasonable doubt and the hearings shall be before the court without a jury. In all other respects, proceedings to revoke probation shall be governed by the

procedures, rights and duties applicable to proceedings on a delinquency petition. If a child is found to have violated a term of his probation the court may extend the period of probation or make any other judgment or disposition that would have been appropriate in the original disposition of the case."

Section 54

Section 54. A new Section 32-2-25 NMSA 1978 is enacted to read:

"32-2-25. PAROLE REVOCATION--PROCEDURES.--

A. A child on parole from an agency that has legal custody who violates a term of parole may be proceeded against in a parole revocation proceeding conducted by the department or the supervising agency in accordance with procedures established by the department in cooperation with the juvenile parole board. A juvenile probation and parole officer may detain a child on parole status who is alleged to have violated a term or condition of parole until the completion and review of a preliminary parole revocation hearing.

B. If a retake warrant is issued by the department upon the completion of the preliminary parole revocation hearing, the juvenile institution to which the warrant is issued shall promptly transport the child to that institution at the expense of the department. If a child absconds from parole supervision and is apprehended in another state after the issuance of a retake warrant by the department, the juvenile justice services division of the department shall cause the return of the child to this state at the expense of the department."

Section 55

Section 55. A new Section 32-2-26 NMSA 1978 is enacted to read:

"32-2-26. SEALING OF RECORDS.--

A. On motion by or on behalf of an individual who has been the subject of a delinquency petition or on the court's own motion, the court shall vacate its findings, orders and judgments on the petition, and order the legal and social files and records of the court, probation services and any other agency in the case sealed, and if requested in the motion the court shall also order law enforcement files and records sealed. An order sealing records and files shall be entered if the court finds that:

(1) two years have elapsed since the final release of the individual from legal custody and supervision or two years have elapsed since the entry of any other judgment not involving legal custody or supervision; and

(2) the individual has not, within the two years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor involving moral

turpitude, or been found delinquent by a court, and no proceeding is pending seeking such a conviction or finding.

B. Reasonable notice of the motion shall be given to:

(1) the children's court attorney;

(2) the authority granting the release;

(3) the law enforcement officer, department and central depository having custody of the law enforcement files and records if those records are included in the motion; and

(4) any other agency having custody of records or files subject to the sealing order.

C. Upon the entry of the sealing order the proceedings in the case shall be treated as if they never occurred, and all index references shall be deleted and the court, law enforcement officers and departments and agencies shall reply, and the individual may reply, to an inquiry that no record exists with respect to such person. Copies of the sealing order shall be sent to each agency or official named in the order.

D. Inspection of the files and records or the release of information in the records included in the sealing order may thereafter be permitted by the court only:

(1) upon motion by the individual who is the subject of the records and only to those persons named in the motion; and

(2) in its discretion, in an individual case, to any clinic, hospital or agency that has the individual under care or treatment or to persons engaged in fact finding or research.

E. Any finding of delinquency or need of services, or conviction of a crime, subsequent to the sealing order may at the court's discretion be used by the court as a basis to set aside the sealing order.

F. A person who has been the subject of a petition filed pursuant to the provisions of the Delinquency Act shall be notified in writing by the juvenile probation and parole officer of the right to have records sealed at the expiration of the disposition."

Section 56

Section 56. A new Section 32-2-27 NMSA 1978 is enacted to read:

"32-2-27. INJURY TO PERSON OR DESTRUCTION OF PROPERTY--LIABILITY--COSTS AND ATTORNEYS' FEES--RESTITUTION.--

A. Any person may recover damages not to exceed four thousand dollars ($4,000) in a civil action in a court or tribunal of competent jurisdiction from the parent, guardian or custodian having custody and control of a child when the child has maliciously or willfully injured a person or damaged, destroyed or deprived use of property, real or personal, belonging to the person bringing the action.

B. Recovery of damages under this section is limited to the actual damages proved in the action, not to exceed four thousand dollars ($4,000) taxable court costs and, in the discretion of the court, reasonable attorneys' fees to be fixed by the court or tribunal.

C. Nothing contained in this section limits the discretion of the court to issue an order requiring damages or restitution to be paid by the child when the child has been found to be within the provisions of the Delinquency Act.

D. Nothing contained in this section shall be construed so as to impute liability to any foster parent."

Section 57

Section 57. A new Section 32-2-28 NMSA 1978 is enacted to read:

"32-2-28. PARENTAL RESPONSIBILITY.--

A. In any complaint alleging delinquency, a parent of the child alleged to be delinquent may be made a party in the petition. If a parent is made a party and if a child is adjudicated a delinquent, the court may order the parent or parents to submit to counseling, participate in any probation or other treatment program ordered by the court and, if the child is committed for institutionalization, participate in any institutional treatment or counseling program including attendance at the site of the institution. The court shall order the parent to support the child committed for institutionalization by paying the reasonable costs of support, maintenance and treatment of the child that the parent is financially able to pay. The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment.

B. If a fine is imposed against a child by a court of this state, the parent of the child is not liable to pay the fine.

C. The court may enforce any of its orders issued pursuant to this section by use of its contempt power."

Section 58

Section 58. A new Section 32-2-29 NMSA 1978 is enacted to read:

"32-2-29. MOTOR VEHICLE CODE VIOLATIONS.--

A. The municipal, magistrate or metropolitan court shall have original exclusive jurisdiction over all Motor Vehicle Code or municipal traffic code violations when the person alleged to have committed the violation is a child, with the exception of those violations contained in Paragraph (1) of Subsection A of Section 32-2-3 NMSA 1978 and all traffic offenses alleged to have been committed by the child arising out of the same occurrence pursuant to Subsection B of this section.

B. If the children's court acquires jurisdiction over a child pursuant to any of those Motor Vehicle Code violations contained in Paragraph (1) of Subsection A of Section 32-2-3 NMSA 1978, it shall have jurisdiction over all traffic offenses alleged to have been committed by the child arising out of the same occurrence.

C. All traffic offenses which the child is found to have committed by the municipal, magistrate or metropolitan court or for which the child is adjudicated delinquent by the children's court shall be subject to the reporting requirements and the suspension and revocation provisions of the Motor Vehicle Code and shall not be subject to the confidentiality provisions of the Delinquency Act.

D. No tribunal may incarcerate any child who has been found guilty of any Motor Vehicle Code or municipal traffic code violations without first securing the approval of the children's court."

Section 59

Section 59. A new Section 32-2-30 NMSA 1978 is enacted to read:

"32-2-30. INDIGENCY STANDARD--FEE SCHEDULE--REIMBURSEMENT.--

A. The court shall use a standard adopted and information provided by the public defender department to determine indigency of children in proceedings on petitions alleging delinquency.

B. The court shall use a fee schedule adopted by the public defender department when appointing attorneys to represent children in proceedings on petitions alleging delinquency.

C. The court shall order reimbursement from the parents, guardians or custodians of a child who has received or desires to receive legal representation or another benefit under the Public Defender Act after a determination is made that the child was not indigent according to the standard for indigency of children adopted by the public defender department.

D. Any amounts recovered pursuant to this section shall be paid to the state treasurer for credit to the general fund."

Section 60

Section 60. A new Section 32-2-31 NMSA 1978 is enacted to read:

"32-2-31. CHILD ADJUDICATED DELINQUENT--VICTIM RESTITUTION--COMPENSATION--DEDUCTIONS.--

A. A delinquent child may be ordered by the court to pay restitution to the victim of the child's delinquent act.

B. The department may provide compensation to a delinquent child engaged in a rehabilitative work program and shall promulgate necessary rules and regulations to provide deductions from that compensation for:

(1) victim restitution ordered by the court and for transmitting those deductions to the clerk of that court;

(2) the crime victims reparation fund and for transmitting those deductions to the state treasurer for credit to that fund; and

(3) the reasonable costs incident to the confinement of the delinquent child.

C. The deductions provided by Subsection B of this section shall not exceed fifty percent of the compensation earned by the child and shall not be less than five percent of that compensation."

Section 61

Section 61. A new Section 32-2-32 NMSA 1978 is enacted to read:

"32-2-32. CONFIDENTIALITY--RECORDS.--

A. All social records, including diagnostic evaluation, psychiatric reports, medical reports, social studies reports, pre-parole reports and supervision histories obtained by the juvenile probation office, parole officers and parole board or in possession of the department are privileged and shall not be disclosed directly or indirectly to the public.

B. The records described in Subsection A of this section shall be open to inspection only by:

(1) court personnel;

(2) court appointed special advocates;

(3) the child's guardian ad litem;

(4) department personnel;

(5) any local substitute care review board or any agency contracted to implement local substitute care review boards;

(6) corrections department personnel;

(7) law enforcement officials;

(8) district attorneys;

(9) any state government social services agency in any state;

(10) those persons or entities of a child's Indian tribe specifically authorized to inspect such records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;

(11) tribal juvenile justice system and social service representatives;

(12) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent when the records concern the social, medical, psychological or educational needs of the child;

(13) school personnel involved with the child if the records concern the child's social or educational needs;

(14) health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardians, custodian or other family members;

(15) representatives of the protection and advocacy system, pursuant to the provisions of the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Act of 1991; and

(16) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

C. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to this section or releases or makes other unlawful use of records in violation of this section is guilty of a petty misdemeanor."

Section 62

Section 62. A new Section 32-3-1 NMSA 1978 is enacted to read:

"32-3-1. SHORT TITLE.--Chapter 32, Articles 3A and 3B NMSA 1978 may be cited as the "Family in Need of Services Act"."

Section 63

Section 63. A new Section 32-3A-1 NMSA 1978 is enacted to read:

"32-3A-1. PURPOSE.--Chapter 32, Article 3A NMSA 1978 shall be interpreted and construed to effectuate the following expressed legislative purposes:

A. to recognize that many instances of truancy and running away on the part of a child are symptomatic of a family in need of services and in some situations results in the inability of the parent and child to share a residence; and

B. to provide early intervention and services for a family in need of services in order to forestall the breakdown of the family unit and to avoid the need for court intervention."

Section 64

Section 64. A new Section 32-3A-2 NMSA 1978 is enacted to read:

"32-3A-2. DEFINITIONS.--As used in the Family in Need of Services Act:

A. "family in need of services" means:

(1) a family whose child, subject to compulsory school attendance, is absent from school without authorized excuse more than ten days during a school semester;

(2) a family whose child is absent from the child's place of residence for twenty-four hours or more without the consent of the parent, guardian or custodian;

(3) a family in which the parent, guardian or custodian of a child refuses to permit the child to live with the parent, guardian or custodian; or

(4) a family in which the child refuses to live with his parent, guardian or custodian;

B. "family needs assessment" means an evaluation of a child and family for the purpose of identifying the family's specific strengths as well as the problems and needs of the child and family;

C. "family services" means services that address specific needs of the family and include:

(1) family preservation services;

(2) child care services;

(3) homemaker services;

(4) crisis counseling;

(5) transportation services;

(6) community mental health services;

(7) individual, family or group counseling services;

(8) parent training services;

(9) recreational services; and

(10) community based services;

D. "plan for family services" or "plan" means an intervention plan based on the needs of the child and family that incorporates the family's strengths and is developed as part of the assessment and referral process."

Section 65

Section 65. A new Section 32-3A-3 NMSA 1978 is enacted to read:

"32-3A-3. REQUEST ON BEHALF OF FAMILY IN NEED OF SERVICES--WITHDRAWAL OF REQUEST--PRESUMPTION OF GOOD FAITH.--

A. Any child or family member who has a reasonable belief that the family is a family in need of services may request family services from the department.

B. Any person who has a reasonable belief that a family is a family in need of services may submit a referral on behalf of the family to the department.

C. Any authorized representative of a local school board or governing authority of a private school may submit a request for family services on behalf of a family to the department if:

(1) a child in that family is absent from school without an authorized excuse for more than ten days during a school semester; and

(2) the request is accompanied by an affidavit in which the authorized representative swears to the following:

(a) that a representative of the school met with the child's parent, guardian or custodian to discuss the child's chronic absence from school or that the child's parent, guardian or custodian refused to attend a meeting to discuss the child's chronic absence from school;

(b) that the school has offered the child counseling services to determine whether the child's educational needs were being met and that when the school provides an alternative education program, the child has been provided with an opportunity to enroll in the alternative education program; and

(c) that the school has conducted a review of the child's educational status, which may include psychological or educational testing of the child, in accordance with regulations adopted by the state board of education, to determine whether learning problems are a cause of the child's absence from school and, if so, what steps were taken to overcome the learning problems.

D. A family that requests or accepts family services may withdraw its request for or acceptance of family services at any time.

E. Any person who refers a family for family services is presumed to be acting in good faith and shall be immune from civil or criminal liability, unless the person acted in bad faith or with malicious purpose."

Section 66

Section 66. A new Section 32-3A-4 NMSA 1978 is enacted to read:

"32-3A-4. ASSESSMENT AND REFERRAL PROCESS.--

A. The department, the state department of public education and the department of health shall cooperatively design and implement an assessment and referral process for the purpose of assessing the needs of a family in need of services and making appropriate referrals.

B. The assessment and referral process shall include, to the extent possible given the availability of resources:

(1) the child;

(2) the parent, guardian or custodian of the child;

(3) the department;

(4) an appropriate school official; and

(5) a mental health professional.

C. The assessment and referral process may include any appropriate person recommended by the child's family, including:

(1) the child's teacher;

(2) the child's school counselor; or

(3) a physician.

D. When the child involved in the assessment and referral process is an Indian child, the assessment and referral process shall include contact with the Indian child's tribe for the purpose of consulting and exchanging information."

Section 67

Section 67. A new Section 32-3A-5 NMSA 1978 is enacted to read:

"32-3A-5. PLAN FOR FAMILY SERVICES--FAMILY NEEDS ASSESSMENT--REFERRAL.--

A. Upon receipt of a request or referral for family services for a child or family, the department, the department of health and an appropriate school official shall, to the extent possible given the availability of resources, initiate a family needs assessment as soon as possible and produce an interim plan within fourteen days of the request or referral or prior to a protective custody hearing.

B. Within sixty days of a request or referral for family services, the department, the department of health and an appropriate school official, to the extent possible given the availability of resources, produce a plan for family services. The plan shall rely on the following assessments:

(1) an educational assessment of the child;

(2) a psychological assessment of the child's family; and

(3) any other individual or family assessment that may be needed.

C. The plan for family services shall include:

(1) a statement of the problem;

(2) the child's needs;

(3) the family's needs;

(4) the type of service or treatment that the family needs; and

(5) the available resources in the department and the family's community to which the family may be referred.

D. When the child is an Indian child, the plan for family services shall indicate the person contacted in the Indian child's tribe and the results of that contact.

E. During the assessment and referral process, the department, the department of health and an appropriate school official shall, to the extent possible given the availability of resources, provide appropriate referrals for the child and the family consistent with the recommendations set forth in the plan for family services.

F. The department, the department of health and the state department of public education shall develop a system to monitor the results and effectiveness of referrals made to children and families and shall conduct a yearly evaluation of the assessment and referral process."

Section 68

Section 68. A new Section 32-3A-6 NMSA 1978 is enacted to read:

"32-3A-6. VOLUNTARY PLACEMENT OF CHILD OUTSIDE HOME--DOCUMENTATION.--

A. Upon written application by a parent, guardian or custodian, and if good cause is shown, the department may accept custody of a minor child for temporary voluntary placement outside the home.

B. Prior to accepting any child for voluntary placement, the department shall document the following:

(1) the efforts made by the department to provide or arrange for services by other public or private agencies that would be affordable to the family and that would alleviate the conditions leading to the placement request;

(2) any determination that the services are not available;

(3) any refusal by the parent, guardian or custodian to accept the services; and

(4) the fact that conditions leading to the placement request could not be alleviated by services aimed at keeping the child in the home.

C. If the department accepts custody of a child, the department shall provide the child with shelter in an appropriate facility, pursuant to the provisions of Section 32-3B-6 NMSA 1978, that is located as close as possible to the child's residence. The child shall not be held in a jail or other facility intended or used for the incarceration of adults charged or convicted of criminal offenses or a facility for the detention of children alleged to be or adjudicated as delinquent children."

Section 69

Section 69. A new Section 32-3A-7 NMSA 1978 is enacted to read:

"32-3A-7. VOLUNTARY PLACEMENT--TIME LIMITATION.--

A. No child shall remain in voluntary placement for longer than ninety consecutive days or for more than ninety days in any calendar year; provided that a child may remain in voluntary placement up to an additional ninety consecutive days upon order of the children's court after the filing of a petition by the department for extension of voluntary placement, a hearing and a finding that additional voluntary placement is in the best interests of the child.

B. In no event shall a child remain in voluntary placement for a period in excess of one hundred eighty consecutive days or for more than one hundred eighty days in any three hundred sixty-five day period.

C. Any placement described in this section shall not be considered abandonment by a parent, guardian or custodian or other family member."

Section 70

Section 70. A new Section 32-3A-8 NMSA 1978 is enacted to read:

"32-3A-8. DUTY TO FILE A PETITION.--If any child has remained in voluntary placement for longer than one hundred eighty consecutive days or for more than one hundred eighty days in any three hundred sixty-five day period and the parent, guardian or custodian of the child refuses to or cannot accept the child back into the parent's, guardian's or custodian's custody, the department shall immediately file a petition alleging that the child is a neglected child or that the child's family needs court-ordered family services."

Section 71

Section 71. A new section 32-3A-9 NMSA 1978 is enacted to read:

"32-3A-9. RIGHT TO REGAIN CUSTODY.--A parent, guardian or custodian may at any time demand and obtain the return of a child voluntarily placed outside the home. The child shall be returned within seventy-two hours of the demand; however, the department may prevent the immediate return by requesting the children's court attorney to file a petition alleging neglect or abuse and by obtaining temporary custody of the child before the expiration of the seventy-two hours."

Section 72

Section 72. A new Section 32-3A-10 NMSA 1978 is enacted to read:

"32-3A-10. VOLUNTARY PLACEMENT--RIGHTS OF PARENT.--Any parent, guardian or custodian whose child is in voluntary placement shall have the following rights with respect to the
child:

A. the right of reasonable visitation with the child;

B. the right to be informed of changes in the child's school or of changes in the child's placement by the department; and

C. the right of decision as to all nonemergency and nonroutine medical care provided for the child."

Section 73

Section 73. A new Section 32-3B-1 NMSA 1978 is enacted to read:

"32-3B-1. PURPOSE.--Chapter 32, Article 3B NMSA 1978 shall be interpreted and construed to effectuate the following expressed legislative purposes:

A. through court intervention, to provide services for a family in need of services when voluntary services have been exhausted; and

B. to recognize that many instances of truancy and running away by a child are symptomatic of a family in need of services and that in some family situations the child and parent are unable to share a residence."

Section 74

Section 74. A new Section 32-3B-2 NMSA 1978 is enacted to read:

"32-3B-2. DEFINITIONS.--As used in Chapter 32, Article 3B NMSA 1978 "family in need of court-ordered services" means the child or the family has refused family

services or the department has exhausted appropriate and available family services and court intervention is necessary to provide family services to the child or family and the following circumstances exist:

A. it is a family whose child, subject to compulsory school attendance, is absent from school without an authorized excuse more than ten days during a school semester;

B. it is a family whose child is absent from the child's place of residence for a time period of twenty-four hours or more without consent of the child's parent, guardian or custodian;

C. it is a family whose child refuses to return home and there is good cause to believe that the child will run away from home if forced to return to his parent, guardian or custodian; or

D. it is a family in which the child's parent, guardian or custodian refuses to allow the child to return home and a petition alleging neglect of the child is not in the child's best interests."

Section 75

Section 75. A new Section 32-3B-3 NMSA 1978 is enacted to read:

"32-3B-3. PROTECTIVE CUSTODY--INTERFERENCE WITH PROTECTIVE CUSTODY--PENALTY.--

A. A child may be taken into protective custody by a law enforcement officer without a court order when the officer has reasonable grounds to believe that:

(1) the child has run away from the child's parent, guardian or custodian;

(2) the child without parental supervision is suffering from illness or injury;

(3) the child has been abandoned; or

(4) the child is endangered by his surroundings and removal from those surroundings is necessary to ensure the child's safety.

B. A child may be taken into protective custody pursuant to a court order issued after an agency legally charged with the supervision of the child has notified a law enforcement agency that the child has run away from a placement.

C. When a child is taken into protective custody, the department shall make a reasonable effort to determine whether the child is an Indian child.

D. Any person, other than the child taken into protective custody, who interferes with placing the child in protective custody is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Section 76

Section 76. A new Section 32-3B-4 NMSA 1978 is enacted to read:

"32-3B-4. PROTECTIVE CUSTODY--RESTRICTIONS--TIME LIMITATIONS.--

A. A law enforcement officer who takes a child into protective custody shall, with all reasonable speed:

(1) inform the child of the reasons for the protective custody; and

(2) contact the department.

B. When the department is contacted by a law enforcement officer who has taken a child into protective custody, the department may:

(1) accept custody of the child and designate an appropriate facility in which to place the child; or

(2) return the child to the child's parent, guardian or custodian, if the child's safety is assured.

C. A child taken into protective custody shall not be placed in or transported in a law enforcement vehicle or any other vehicle that contains an adult placed under arrest, unless circumstances exist in which any delay in transporting the child to an appropriate facility would be likely to result in substantial danger to the child's physical safety. When such circumstances exist, the circumstances shall be described in writing by the driver of the vehicle and submitted to the driver's supervisor within forty-eight hours after the driver transported the child.

D. A child taken into protective custody shall not be held involuntarily for more than forty-eight hours, unless a petition to extend the custody is filed pursuant to the provisions of the Family in Need of Services Act or the Abuse and Neglect Act.

E. When a petition is filed or any time thereafter, the children's court or district court may issue an ex-parte custody order based upon a sworn written statement of facts showing that probable cause exists to believe that protective custody of the child is necessary.

F. The protective custody order shall be served on the respondent by a person authorized to serve arrest warrants and shall direct the law enforcement officer to take custody of the child and deliver the child to a place designated by the court.

G. The Rules of Evidence do not apply to the issuance of an ex-parte custody order."

Section 77

Section 77. A new Section 32-3B-5 NMSA 1978 is enacted to read:

"32-3B-5. NOTIFICATION TO FAMILY--RELEASE FROM PROTECTIVE CUSTODY.--

A. When the department takes a child into protective custody and the child is not released to the child's parent, guardian or custodian, the department shall provide written notice as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian, with a statement of the reasons for taking the child into protective custody.

B. When the department releases a child placed in protective custody to the family, the department shall refer the family for voluntary family services.

C. When the department releases a child from protective custody and the child's parent, guardian or custodian refuses to allow the child to return home, the department shall file a petition pursuant to the provisions of the Abuse and Neglect Act."

Section 78

Section 78. A new Section 32-3B-6 NMSA 1978 is enacted to read:

"32-3B-6. PLACE OF CUSTODY.--Unless a child from a family in need of services who has been placed in department custody is also alleged or adjudicated delinquent, the child shall not be held in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be delinquent children, but may be placed in the following community-based shelter-care facilities:

A. a licensed foster-care home or any home authorized under the law for the provision of foster care, group care or use as a protective residence;

B. a facility operated by a licensed child welfare services agency;

C. a facility provided for in the Children's Shelter Care Act; or

D. in a home of a relative of the child, when the relative provides the court with a sworn statement that the relative will not return the child to the dangerous surroundings that prompted protective custody for the child."

Section 79

Section 79. A new Section 32-3B-7 NMSA 1978 is enacted to read:

"32-3B-7. PROTECTIVE CUSTODY HEARING--TIME LIMITATIONS.--

A. When a child of an alleged family in need of court-ordered services is taken into protective custody by the department or the department petitions the court for protective custody of the child, a custody hearing shall be held within ten days from the date the petition is filed to determine if the child should remain with the family or be placed in the custody of the department pending adjudication. Upon written request of the respondent, the hearing may be held earlier, but in no event shall the hearing be held sooner than two days after the date the petition was filed.

B. The parent, guardian or custodian of the child shall be given reasonable notice of the time and place of the hearing.

C. When the custody hearing is conducted, the court shall release the child to his parent, guardian or custodian unless probable cause exists to believe that:

(1) the child is in immediate danger from his surroundings and the child's removal from those surroundings is necessary for his safety or well-being;

(2) the child will be subject to injury by others if not placed in the protective custody of the department; or

(3) a parent, guardian or custodian of the child or any other person is unable or unwilling to provide adequate supervision and care for the child.

D. At the conclusion of the protective custody hearing, if the court determines that protective custody pending adjudication is appropriate, the court may:

(1) award custody of the child to the department; or

(2) return the child to the child's parent, guardian or custodian, subject to conditions that will reasonably assure the safety and well-being of the child.

E. In addition to any disposition made by the court pursuant to the provisions of Subsection D of this section, the court may order the child and family to participate in an assessment and referral process. Copies of any diagnostic or evaluation reports ordered by the court shall be provided to the parties at least five days

before the adjudicatory hearing is scheduled. The diagnostic and evaluation reports shall not be sent to the court.

F. The Rules of Evidence shall not apply to protective custody hearings conducted pursuant to the provisions of this section."

Section 80

Section 80. A new Section 32-3B-8 NMSA 1978 is enacted to read:

"32-3B-8. BASIC RIGHTS.--

A. A child subject to the provisions of the Children's Code is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.

B. In proceedings on a petition alleging a family in need of court-ordered services, the court may appoint counsel if appointment of counsel would serve the interests of justice.

C. In proceedings on a petition alleging a family in need of court-ordered services, the court shall appoint a guardian ad litem for the child at the inception of the proceedings. An officer or employee of an agency vested with legal custody of the child shall not be appointed as a guardian ad litem for the child.

D. Whenever it is reasonable and appropriate, the court shall appoint a guardian ad litem who is knowledgeable about the child's cultural background.

E. A person afforded rights pursuant to the provisions of the Children's Code shall be advised of those rights at that person's first appearance before the court on a petition filed under the Children's Code.

F. A child of an alleged or adjudicated family in need of court-ordered services shall not be fingerprinted or photographed for identification purposes, unless pursuant to a court order."

Section 81

Section 81. A new Section 32-3B-9 NMSA 1978 is enacted to read:

"32-3B-9. CHANGE IN PLACEMENT.--

A. When the child's placement is changed, including a return to the child's home, written notice of the placement change shall be given to the child's guardian ad litem, parent, guardian or legal custodian ten days prior to the placement change, unless an emergency situation requires moving the child prior to sending notice.

B. When the child's guardian ad litem requests a court hearing to contest the proposed placement change, the department shall not change the child's placement pending the result of the court hearing, unless an emergency requires changing the child's placement prior to the hearing.

C. When a child's placement is changed and notice pursuant to the provisions of Subsection A of this section is not provided, written notice shall be sent to the child's guardian ad litem, parent, guardian or legal custodian within three days after the placement change.

D. Notice pursuant to the provisions of this section is not required for removal of the child from temporary emergency care, emergency foster care or respite care."

Section 82

Section 82. A new Section 32-3B-10 NMSA 1978 is enacted to read:

"32-3B-10. PETITION--ENDORSEMENT OF PETITION.--A petition regarding an alleged family in need of court-ordered services shall not be filed unless the children's court attorney, after consultation with the department, determines and endorses upon the petition that filing is in the best interests of the child and family."

Section 83

Section 83. A new Section 32-3B-11 NMSA 1978 is enacted to read:

"32-3B-11. PETITION--ALLEGATIONS.--

A. A petition to initiate a proceeding regarding an alleged family in need of court-ordered services shall include the following allegations:

(1) that the child or the family are in need of court-ordered family services;

(2) that the child and the family participated in or refused to participate in a plan for family services and that the department has exhausted appropriate and available services; and

(3) that court intervention is necessary to assist the department in providing necessary services to the child and the family.

B. In addition to the allegations required pursuant to the provisions of Subsection A of this section, a petition that alleges a child's chronic absence from school shall be accompanied by an affidavit filed by a school official, in accordance with the provisions of Section 32-3A-3 NMSA 1978."

Section 84

Section 84. A new Section 32-3B-12 NMSA 1978 is enacted to read:

"32-3B-12. ADJUDICATORY HEARING--TIME LIMITATIONS.--

A. An adjudicatory hearing for an alleged family in need of court-ordered services shall be commenced within ninety days after the latest of the following dates:

(1) the date that the petition is served on the respondent;

(2) if the trial court orders a mistrial or a new trial, the date the order is filed; or

(3) in the event of an appeal, the date that the mandate or order disposing of the appeal is filed in district court.

B. The children's court attorney shall represent the state at the adjudicatory hearing.

C. When the adjudicatory hearing is not commenced within the time limits specified in this section or within the period of any extension of those time limits, the petition shall be dismissed with prejudice."

Section 85. A new Section 32-3B-13 NMSA 1978 is enacted to read:

"32-3B-13. CONDUCT OF HEARINGS--PENALTY.--

A. All hearings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means.

B. All hearings regarding a family in need of court-ordered services shall be closed to the general public, subject to the following exceptions:

(1) the parties, the parties' counsel, witnesses and other persons approved by the court may be present at the hearings. Those other persons the court finds to have a proper interest in the case or in the work of the court, may be admitted by the court to closed hearings on the condition that they refrain from divulging any information which would identify the child or family involved in the proceedings; and

(2) accredited representatives of the news media shall be allowed to be present at the hearings, subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent, guardian or custodian of that child and further subject to enabling regulations the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Children's Code.

C. When the cour finds that it is in the best interest of the child, the child may be excluded from a family in need of court-ordered services hearing. The court may also exclude the child from a hearing on dispositional issues.

D. A person or party granted admission to a closed hearing who intentionally divulges information concerning the hearing in violation of the provisions of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Section 86

Section 86. A new Section 32-3B-14 NMSA 1978 is enacted to read:

"32-3B-14. FINDINGS--DISMISSAL--DISPOSITIONAL MATTERS.--

A. The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court, after hearing all of the evidence regarding an alleged family in need of court-ordered services, shall make and record its findings.

B. If the court finds, on the basis of a valid admission of the allegations set forth in the petition or on the basis of clear and convincing evidence that is competent, material and relevant in nature, that the child is a child of a family in need of court-ordered services, the court may proceed immediately or at a postponed hearing to make disposition of the case. If the court does not find that the child is a child of a family in need of court-ordered services, the court shall dismiss the petition.

C. In that part of the hearings regarding dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though not competent had it been offered during the part of the hearings regarding adjudicatory issues.

D. On the court's motion or motion of a party, the court may continue the hearing on the petition for a reasonable time to receive reports and other evidence regarding disposition. The court shall continue the hearing pending the receipt of the plan for family services if that document has not been prepared and received. During any continuance granted pursuant to this subsection, the court shall make an appropriate order for legal custody of the child."

Section 87

Section 87. A new Section 32-3B-15 NMSA 1978 is enacted to read:

"32-3B-15. PLAN FOR FAMILY SERVICES.--

A. Prior to holding a dispositional hearing, the court shall direct the department to prepare a written family services plan for submission to the court.

B. The plan for family services shall contain the following information:

(1) a statement of the problem;

(2) the needs of the child;

(3) the needs of the family;

(4) a description of the specific progress needed to be made by both the parent and the child, the reasons why the plan is likely to be useful, the availability of any proposed services and the department's overall plan for ensuring that the services will be delivered;

(5) if removal from the home or continued residence outside the home is recommended for the child, a statement of the likely harm the child will suffer as a result of removal from the home, including emotional harm resulting from separation from the child's parents;

(6) if removal from the home or continued residence outside the home is recommended for the child, a description of any previous efforts to work with the parent and the child in the home and a description of any in-home treatment programs that have been considered and rejected;

(7) a description of the steps that will be taken to minimize any harm to the child that may result if separation from the child's parent occurs or continues;

(8) if removal from the home or continued residence outside the home is recommended for the child and the child is sixteen years of age or older, a description of the specific skills the child requires for successful transition into independent living as an adult, what programs are necessary to develop the skills, the reasons why the programs are likely to be useful, the availability of any proposed programs and the department's overall plan for ensuring that the child will be adequately prepared for adulthood; and

(9) when the child is an Indian child, contact shall be made with the child's Indian tribe for the purpose of consultation and exchange of information and the plan shall indicate the person contacted in the child's Indian tribe and the results of that contact.

C. A copy of the plan shall be provided by the department to all parties at least five days before the dispositional hearing.

D. If the child is a member of an adjudicated family in need of court-ordered services, any temporary
custody orders shall remain in effect until the court has received and considered the plan at the dispositional hearing."

Section 88

Section 88. A new Section 32-3B-16 NMSA 1978 is enacted to read:

"32-3B-16. DISPOSITIONAL JUDGMENT.--

A. At the conclusion of the dispositional hearing, the court shall set forth its findings on the following issues in the dispositional judgment:

(1) the ability of the parent and child to share a residence;

(2) the interaction and interrelationship of the child with his parent, his siblings and any other person who may significantly affect the child's best interest;

(3) the child's adjustment to his home, school and community;

(4) whether the child's educational needs are being met;

(5) the mental and physical health of all individuals involved;

(6) the wishes of the child as to his custodian;

(7) the wishes of the child's parent, guardian or custodian as to the child's custody;

(8) whether there exists a relative of the child or any other individual who, after study by the department, is found to be qualified to receive and care for the child;

(9) the availability of services recommended in the treatment plan;

(10) the department's efforts to work with the parent and child in the home and a description of the in-home treatment programs that the department has considered and rejected;

(11) whether the placement preferences set
forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been incorporated into the plan. When placement preferences have not been incorporated into the plan, an explanation shall be clearly stated and supported; and

(12) when the child is an Indian child, whether the family service plan provides for maintaining the Indian child's cultural ties.

B. When there is an adjudication regarding a family in need of court-ordered services, the court shall enter judgment and make any of the following dispositions:

(1) permit the child to remain with the child's parent, guardian or custodian, subject to conditions and limitations the court may prescribe;

(2) place the child under the protective supervision of the department;

(3) transfer legal custody of the child to:

(a) the department;

(b) an agency responsible for the care of neglected or abused children; or

(c) the child's noncustodial parent, if that is found to be in the child's best interests; or

(4) if the evidence indicates that the child's educational needs are not being met, the local education agency may be joined as a party and directed to assess the child's needs within forty-five days, attempt to meet the child's educational needs and document its efforts to meet the child's educational needs.

C. Unless a child of an adjudicated family in need of court-ordered services is also found to be a delinquent child, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children or in a facility for the detention of alleged delinquent children.

D. When the child is an Indian child, the child's cultural needs shall be considered during dispositional judgment and, when reasonable, access to cultural practices and traditional treatment shall be provided to the Indian child."

Section 89

Section 89. A new Section 32-3B-17 NMSA 1978 is enacted to read:

"32-3B-17. DISPOSITION OF DEVELOPMENTALLY DISABLED OR MENTALLY DISORDERED CHILD.--

A. If, during any stage of a proceeding regarding a family in need of court-ordered services petition, the evidence indicates that the child is or may be developmentally disabled or mentally disordered, the court may order the department to:

(1) secure an assessment of the child;

(2) prepare appropriate referrals for services for the child; and

(3) if necessary, initiate proceedings for the involuntary placement of the child as mentally disordered or developmentally disabled pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

B. When the department has reason to believe that a child in department custody needs residential mental health or developmental disability services, the department shall petition for that child's placement pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act."

Section 90

Section 90. A new Section 32-3B-18 NMSA 1978 is enacted to read:

"32-3B-18. DISPOSITIONAL JUDGMENTS--TIME LIMITATIONS--MODIFICATION, TERMINATION OR EXTENSION OF COURT ORDER.--

A. A judgment vesting legal custody of a child in an agency shall remain in force for an indeterminate period not exceeding two years from the date entered.

B. A judgment vesting legal custody of a child in an individual, other than the child's parent, shall remain in force for two years from the date entered unless terminated sooner by court order.

C. A judgment vesting legal custody of a child in the child's parent or a permanent guardian shall remain in force for an indeterminate period from the date entered until
terminated by court order or until the child is emancipated or reaches the age of majority.

D. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by a party or the guardian ad litem.

E. Prior to the expiration of a judgment transferring legal custody to an agency, the court may extend the judgment for additional periods of one year if it finds that the extension is necessary to safeguard the welfare of the child or the public interest.

F. When a child reaches eighteen years of age, all family in need of court-ordered services orders affecting the child then in force automatically terminate. The termination of the orders shall not disqualify a child from eligibility for transitional services."

Section 91

Section 91. A new Section 32-3B-19 NMSA 1978 is enacted to read:

"32-3B-19. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS.--

A. Within six months of any original dispositional order and within six months of any subsequent continuation of the order, the department shall petition the court for a review of the disposition of the family in need of court-ordered services order. The review may be carried out by either of the following:

(1) a judicial review hearing conducted by the court; or

(2) a judicial review hearing conducted by a special master, provided, however, that the court approve any findings made by the special master.

B. The children's court attorney shall give twenty days written notice to all parties of the time, place and purpose of any judicial review hearing held pursuant to Subsection A of this section.

C. At any judicial review hearing held pursuant to Subsection A of this section, the department and all persons given notice of the judicial review shall have the opportunity to present evidence and to cross-examine witnesses. At the hearing, the department shall not only show that it has made reasonable effort to implement the family services plan approved by the court in its dispositional order, but shall also present an updated plan for any period of extension of the dispositional order. The parent, guardian or custodian of the child shall demonstrate to the court the family's effort to comply with the plan for family services approved by the court in its dispositional order and, if applicable, that the family's effort to maintain contact with the child was diligent and made in good faith, given the family's circumstances and abilities.

D. The Rules of Evidence shall not apply to hearings held pursuant to this section.

E. At the conclusion of any hearing held pursuant to this section, the court shall make findings of fact and conclusions of law.

F. The court shall determine, during a review of a dispositional or continuation order, whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have

been followed and whether the child's treatment plan provides for maintaining the child's cultural ties. When placement preferences have not been incorporated into an order, good cause for noncompliance shall be clearly stated and supported.

G. Based on its findings, the court shall order one of the following dispositions:

(1) permit the child to remain with the child's parent, guardian or custodian, subject to conditions and limitations the court may prescribe, including protective supervision of the child by the department;

(2) return the child to his parents and place the child under the protective supervision of the department;

(3) transfer or continue legal custody of the child to:

(a) the department, subject to the provisions of Paragraph (6) of this subsection;

(b) a relative or other individual who, after study by the department or other agency designated by the court, is found by the court to be qualified to receive and care for the child with protective supervision by the department; or

(c) to the noncustodial parent, if that is found to be in the child's best interests;

(4) dismiss the action and return the child to the child's parent without supervision;

(5) continue the child in the legal custody of the department with or without any required parental involvement in a treatment plan;

(6) make additional orders regarding the treatment plan or placement of the child to protect the child's best interests, if the court determines the department has failed in implementing any material provision of the treatment plan or abused its discretion in the placement or proposed placement of the child;

(7) if, at any judicial review, the court finds that the child's parent, guardian or custodian has not complied with the court-ordered treatment plan, the court may order the child's parent, guardian or custodian to show cause why he should not be held in contempt of court and subject to sanctions;

(8) provide for a culturally appropriate treatment plan, access to cultural practices and traditional treatment for an Indian child;

(9) direct the department to show cause why an abuse or neglect action has not been filed; or

(10) if the local education agency has been made a party, direct the local education agency to show cause why it has not met the child's educational needs.

H. Dispositional orders entered pursuant to this section shall remain in force for a period of six months."

Section 92

Section 92. A new Section 32-3B-20 NMSA 1978 is enacted to read:

"32-3B-20. PARENTAL RESPONSIBILITY.--

A. The court shall order the parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay if a child is adjudicated to be a child of a family in need of court-ordered services and the court orders the child placed with an agency or individual other than the parent. The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment.

B. The court may enforce any of its orders issued pursuant to this section by use of its contempt power."

Section 93

Section 93. A new Section 32-3B-21 NMSA 1978 is enacted to read:

"32-3B-21. EXPUNGEMENT OF RECORDS.--

A. On motion by or on behalf of an individual who has been the subject of a petition filed under the Children's Code, or on the court's own motion, the court shall vacate its findings, orders and judgments on the petition, and order the legal and social files and records of the court, the department and any other agency in the case expunged, and if requested in the motion the court shall also order law enforcement files and records expunged. An order expunging records and files shall be entered if the court finds that:

(1) two years have elapsed since the final release of the individual from legal custody and supervision or two years have elapsed since the entry of any other judgment not involving legal custody or supervision; and

(2) the individual has not, within the two years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor involving moral

turpitude or found delinquent by a court, and no proceeding is pending seeking such a conviction or finding.

B. Reasonable notice of the motion shall be given to:

(1) the children's court attorney;

(2) the authority granting the release if the final release was from an agency, parole or probation;

(3) the law enforcement officer, department and central depository having custody of the law enforcement files and records if those records are included in the motion; and

(4) any other agency having custody of records or files subject to the expungement order.

C. Upon the entry of the expungement order, the proceedings in the case shall be treated as if they never occurred, and all index references shall be deleted and the court, law enforcement officers and departments and agencies shall reply, and the individual may reply, to an inquiry that no record exists with respect to such person. Copies of the expungement order shall be sent to each agency or official named in the order.

D. Any finding of delinquency or conviction of a crime, subsequent to the expungement order may at the court's discretion be used by the court as a basis to set aside the expungement order.

E. A person who has been the subject of a petition filed under the Children's Code shall be notified of the right to have records expunged."

Section 94

Section 94. A new Section 32-3B-22 NMSA 1978 is enacted to read:

"32-3B-22. CONFIDENTIALITY--RECORDS--PENALTY.--

A. All records concerning a family in need of services, including social records, diagnostic evaluation, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse or medical reports, that are in the possession of the court or the department or that were produced or obtained by the department during an investigation in anticipation of or incident to a family in need of court-ordered services proceeding, shall be confidential and closed to the public.

B. The records described in Subsection A of this section shall be open to inspection only by:

(1) court personnel;

(2) court appointed special advocates;

(3) the child's guardian ad litem;

(4) department personnel;

(5) any local substitute care review board or any agency contracted to implement local substitute care review boards;

(6) law enforcement officials;

(7) district attorneys;

(8) any state government social services agency in any state;

(9) those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;

(10) tribal juvenile justice system and social service representatives;

(11) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent and the records concern the social, medical, psychological or educational needs of the child;

(12) school personnel involved with the child, if the records concern the child's social or educational needs;

(13) health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardian, custodian or other family members;

(14) protection and advocacy representatives, pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Act of 1991; and

(15) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

C. Whoever intentionally and unlawfully releases any information or records that are closed to the public pursuant to the provisions of the Children's Code or releases or makes other unlawful use of records in violation of that code is guilty of a petty misdemeanor."

Section 95

Section 95. A new Section 32-4-1 NMSA 1978 is enacted to read:

"32-4-1. SHORT TITLE.--Chapter 32, Article 4 NMSA 1978 may be cited as the "Abuse and Neglect Act"."

Section 96

Section 96. A new Section 32-4-2 NMSA 1978 is enacted to read:

"32-4-2. DEFINITIONS.--As used in the Abuse and Neglect Act:

A. "abandonment" includes, but is not limited to, instances when the parent, without justifiable cause:

(1) left the child without provision for the child's identification for a period of fourteen days; or

(2) left the child with others, including the other parent or an agency, without provision for support and without communication for a period of:

(a) three months if the child was under six years of age at the commencement of the three-month period; or

(b) six months if the child was over six years of age at the commencement of the six-month period;

B. "abused child" means a child:

(1) who has suffered physical abuse, emotional abuse or psychological abuse inflicted by the child's parent, guardian or custodian;

(2) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;

(3) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(4) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

C. "neglected child" means a child:

(1) who has been abandoned by the child's parent, guardian or custodian;

(2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the neglect or refusal of the parent, guardian or custodian, when able to do so, to provide them;

(3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;

(4) whose parent, guardian or custodian is unable to discharge his responsibilities to and for the child because of incarceration, hospitalization or other physical or mental disorder or incapacity; or

(5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;

D. "physical abuse" includes, but is not limited to, any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

(1) there is not a justifiable explanation for the condition or death;

(2) the explanation given for the condition is at variance with the degree or nature of the condition;

(3) the explanation given for the death is at variance with the nature of the death; or

(4) circumstances indicate that the condition or death may not be the product of an accidental occurrence;

E. "sexual abuse" includes, but is not limited to, criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law; and

F. "sexual exploitation" includes, but is not limited to:

(1) allowing, permitting or encouraging a child to engage in prostitution;

(2) allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or

(3) filming or depicting a child for obscene or pornographic commercial purposes; as those acts are defined by state law."

Section 97

Section 97. A new Section 32-4-3 NMSA 1978 is enacted to read:

"32-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT--PENALTY.--

A. Every person, including but not limited to a licensed physician, a resident or an intern examining, attending or treating a child, a law enforcement officer, a judge presiding during any proceeding, a registered nurse, a visiting nurse, a schoolteacher, or a school official or social worker acting in an official capacity who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:

(1) a local law enforcement agency;

(2) the department office in the county where the child resides; or

(3) tribal law enforcement or social services agencies for any Indian child residing in Indian country.

B. Any law enforcement agency receiving the report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department office in the county where the child resides and shall transmit the same information in writing within forty-eight hours. Any office of the department receiving a report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency
and shall transmit the same information in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible for the injuries. The written report shall be

submitted upon a standardized form agreed to by the law enforcement agency and the department.

C. The recipient of the report under Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect.

D. Upon a determination by the department that any child may have suffered or is in imminent danger of suffering abuse or neglect while in the care or control of or in a child care facility or family day-care home, the department shall immediately notify the parents of the child and the agency responsible for licensing the child care facility or family day-care home. No determination shall be made prior to consultation with the facility.

E. If the child alleged to be abused or neglected is in the care or control of or in a facility administratively connected to the department, the report shall be investigated through the office of the district attorney. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect.

F. A law enforcement agency or the department shall have access to any of the records pertaining to a child abuse or neglect case maintained by any of the persons enumerated in Subsection A of this section, except as otherwise provided in the Abuse and Neglect Act.

G. Any person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Section 98

Section 98. A new Section 32-4-4 NMSA 1978 is enacted to read:

"32-4-4. COMPLAINTS--REFERRAL--PRELIMINARY INQUIRY.--

A. Complaints alleging neglect or abuse shall be referred to the department, which shall conduct an investigation to determine the best interests of the child with regard to any action to be taken.

B. During the investigation of a complaint alleging neglect or abuse, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of effecting adjustments or agreements that will obviate the necessity for filing a petition. At the commencement of the investigation, the parties

shall be advised of their basic rights and no party may be compelled to appear at any conference, to produce any papers or to visit any place. The investigation shall be completed within a reasonable period of time from the date the complaint was made.

C. After completion of the investigation on a neglect or abuse complaint, the department shall either recommend or refuse to recommend the filing of a petition.

D. The department shall file a petition within two days after the date that the child is taken into custody. When a petition is not filed in a timely manner, the child shall be released to the child's parent, guardian or custodian."

Section 99

Section 99. A new Section 32-4-5 NMSA 1978 is enacted to read:

"32-4-5. ADMISSIBILITY OF REPORT IN EVIDENCE--IMMUNITY OF REPORTING PERSON.--

A. In any proceeding alleging neglect or abuse under the Children's Code resulting from a report required by Section 32-4-3 NMSA 1978 or in any proceeding in which that report or any of its contents are sought to be introduced in evidence, the report or its contents or any other facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

B. Anyone reporting an instance of alleged child neglect or abuse or participating in a judicial proceeding brought as a result of a report required by Section 32-4-3 NMSA 1978 is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by the law, unless the person acted in bad faith or with malicious purpose.

C. After properly verifying the identity of the public official, any school personnel or other person who has the duty to report child abuse pursuant to Section 32-4-3 NMSA 1978 shall permit a member of a law enforcement agency, including tribal police officers or an employee of the department to interview the child with respect to a report without the permission of the child's parent, guardian or custodian. Any person permitting an interview pursuant to this subsection is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by law, unless the person acted in bad faith or with malicious purpose.

D. All law enforcement personnel and all employees of the department shall conduct interviews in a manner and place that protects the child and family from unnecessary trauma and embarrassment."

Section 100

Section 100. A new Section 32-4-6 NMSA 1978 is enacted to read:

"32-4-6. TAKING INTO CUSTODY--PENALTY.--

A. A child may be held or taken into custody:

(1) by a law enforcement officer when the officer has reasonable grounds to believe that the child is suffering from illness or injury as a result of alleged abuse or neglect or has been abandoned or is in danger from the child's surroundings and removal from those surroundings is necessary; or

(2) by medical personnel when there are reasonable grounds to believe that the child has been injured as a result of abuse or neglect and that the child may be at risk of further injury if returned to the child's parent, guardian or custodian. The medical personnel shall hold the child until a law enforcement officer is available to take custody of the child or until a law enforcement officer has authorized release of the child to the department.

B. When a child is taken into custody by the department, the department shall make reasonable efforts to determine whether the child is an Indian child.

C. If a child taken into custody is an Indian child and is alleged to be neglected or abused, the department shall give notice to the agent of the Indian child's tribe in accordance with the federal Indian Child Welfare Act of 1978.

D. Any person who intentionally interferes with protection of a child, as provided by Subsection A of this section, is guilty of a petty misdemeanor."

Section 101

Section 101. A new Section 32-4-7 NMSA 1978 is enacted to read:

"32-4-7. RELEASE OR DELIVERY FROM CUSTODY.--

A. A person taking a child into custody shall, with all reasonable speed:

(1) release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or

(2) deliver the child to the department or to an appropriate shelter-care facility; and in the case of a child who is believed to be suffering from a serious physical or mental condition or illness that requires prompt treatment or diagnosis, deliver the child to a medical facility. If a law enforcement officer delivers a child to a shelter-care facility, the officer shall immediately notify the department that the child has been placed in the department's custody.

B. When an alleged neglected or abused child is delivered to the department, a department caseworker shall review the need for placing the child in custody and shall release the child from custody unless custody is appropriate or has been ordered by the court. When a child is delivered to an appropriate shelter-care facility, a department caseworker shall review the need for retention of custody within a reasonable time after delivery of the child to the facility and shall release the child from custody unless custody is appropriate or has been ordered by the court.

C. If a child is placed in the custody of the department and is not released to the child's parent, guardian or custodian, the department shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian together with a statement of the reason for taking the child into custody.

D. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian, unless the department files a petition within two days from the date that the child was taken into custody."

Section 102

Section 102. A new Section 32-4-8 NMSA 1978 is enacted to read:

"32-4-8. PLACE OF TEMPORARY CUSTODY.--Unless a child alleged to be neglected or abused is also alleged or adjudicated delinquent, the child shall not be held in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be delinquent children, but may be placed in the following community-based shelter-care facilities:

A. with a relative of the child who is willing to guarantee to the court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the court;

B. a licensed foster home or any home authorized under the law for the provision of foster care, group care or use as a protective residence;

C. a facility operated by a licensed child welfare services agency; or

D. a facility provided for in the Children's Shelter Care Act."

Section 103

Section 103. A new Section 32-4-9 NMSA 1978 is enacted to read:

"32-4-9. INDIAN CHILD PLACEMENT--PREFERENCES.--

A. An Indian child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting that most closely approximates a family in which his special needs, if any, may be met. The Indian child shall also be placed within reasonable proximity to the Indian child's home, taking into account any special needs of the Indian child. In any foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

(1) a member of the Indian child's extended family;

(2) a foster care home licensed, approved and specified by the Indian child's tribe;

(3) an Indian foster care home licensed or approved by an authorized non-Indian licensing authority; or

(4) an institution for children approved by the Indian child's tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

B. When the placement preferences set forth in Subsection A of this section are not followed or if the Indian child is placed in an institution, a plan shall be developed to ensure that the Indian child's cultural ties are protected and fostered."

Section 104

Section 104. A new Section 32-4-10 NMSA 1978 is enacted to read:

"32-4-10. BASIC RIGHTS.--

A. A child subject to the provisions of the Children's Code is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.

B. In proceedings on a petition alleging neglect or abuse, counsel shall be appointed for the parent, guardian or custodian of the child at the inception of the proceeding. The appointed counsel shall represent the parent, guardian or custodian until an indigency determination is made at the custody hearing. Counsel shall also be appointed if, in the court's discretion, appointment of counsel is required in the interest of justice.

C. During an abuse and neglect proceeding, the court shall appoint a guardian ad litem for a child at the inception of the proceeding. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed as guardian ad litem of the child.

D. When reasonable and appropriate, the court shall appoint a guardian ad litem who is knowledgeable about the child's particular cultural background.

E. The court shall assure that the child receives zealous representation by the child's guardian ad litem, pursuant to the provisions of Section 32-1-6 NMSA 1978.

F. A person afforded rights under the Children's Code shall be advised of those rights at that person's first appearance before the court on a petition under the Children's Code."

Section 105

Section 105. A new Section 32-4-11 NMSA 1978 is enacted to read:

"32-4-11. USE IMMUNITY.--

A. At any stage of a proceeding under the Abuse and Neglect Act, the children's court attorney may apply for use immunity for a respondent for in-court testimony. The in-court testimony of an immunized respondent shall not be used against that respondent in a criminal prosecution; provided, however, that the respondent may be prosecuted for perjury that occurs during the respondent's testimony in children's court.

B. At any stage of a proceeding under the Abuse and Neglect Act, the children's court attorney may apply for use immunity for any records, documents or other physical objects produced by the immunized respondent in that children's court proceeding, production of which was compelled by a court order.

C. At any stage of a proceeding under the Abuse and Neglect Act, the children's court attorney may apply for use immunity for a respondent for any statement that a respondent makes in the course of a court-ordered psychological evaluation or treatment program to the professional designated by the department in furtherance of the court's order. Such immunity shall attach only to those statements made during the course of the actual evaluation or treatment and specifically does not attach to statements made to other department employees, agents or other representatives in the course of the investigation of alleged child abuse or neglect.

D. Any other information available to the professional designated by the department to perform the court-ordered evaluation or treatment shall not be the subject of any application or order for immunity.

E. All immunized statements referred to in subsection C that are subsequently reduced to writing shall be deleted before any report is released to law enforcement officers or district attorneys.

F. Use immunity orders shall not be entered nunc pro tunc.

G. The children's court attorney shall request a hearing on any application for immunity and shall give at least forty-eight hours notice to all parties and to the district attorney for the county in which the alleged abuse or neglect occurred. The district attorney shall have standing to object to the order for immunity."

Section 106

Section 106. A new Section 32-4-11.1 NMSA 1978 is enacted to read:

"32-4-11.1. PROTECTIVE ORDERS.--

A. At any stage of a proceeding under the Abuse and Neglect Act, the children's court attorney may apply to the court for a protective order restricting the release of immunized testimony, immunized verbal statements for the purpose of psychological evaluation or treatment, or records, documents or other physical objects produced by an immunized respondent pursuant to a court order. The protective order shall apply to any person, except as designated by court order. The purpose of the protective order is to allow the respondents to engage in evaluation and treatment programs as ordered by the court and to ensure that any statement by the respondents will remain privileged and confidential and will not be divulged to any other person, including law enforcement officers and district attorneys.

B. The children's court attorney shall apply for the protective order and request a hearing, and shall give at least forty-eight hours notice to all parties and to the district attorney for the county in which the alleged abuse or neglect occurred. The district attorney shall have standing to object to the protective order.

C. After the hearing, the court may issue a protective order, if issuance of the order will reasonably assist in the delivery of diagnostic and therapeutic services to the respondent and the respondent is otherwise likely to refuse to make statements on the basis of his privilege against self-incrimination."

Section 107

Section 107. A new section 32-4-11.2 NMSA 1978 is enacted to read:

"32-4-11.2 CONTEMPT POWER.--

A. At any stage of a proceeding under the Abuse and Neglect Act, the court shall have the power and authority to issue orders to compel the appearance of witnesses, the giving of testimony and production of evidence by witnesses, including any party. Production of evidence includes an order to a respondent to undergo a psychological diagnostic evaluation and treatment.

B. Failure or refusal to obey the court's order may be punished by the court as contempt. A claim that giving testimony or producing evidence might tend to

incriminate the person who is the subject of the order shall not excuse the person from complying with the court's order.

C. The children's court attorney shall make application to the court to compel compliance with the orders of the court."

Section 108

Section 108. A new Section 32-4-12 NMSA 1978 is enacted to read:

"32-4-12. CHANGE IN PLACEMENT.--

A. When the child's placement is changed, including a return to the child's home, written notice shall be sent to the child's guardian ad litem, all parties, the child's CASA, the child's foster parents and the court ten days prior to the placement change, unless an emergency situation requires moving the child prior to sending notice.

B. When the child's guardian ad litem requests a court hearing to contest the proposed change, the department shall not change the child's placement pending the results of the court hearing, unless an emergency requires changing the child's placement prior to the hearing.

C. When a child's placement is changed without prior notice as provided for in Subsection A of this section, written notice shall be sent to the child's guardian ad litem, all parties, the child's CASA, the child's foster parents and the court within three days after the placement change.

D. Written notice is not required for removal of
a child from temporary emergency care, emergency foster care or respite care. The department shall provide oral notification of the removal to the child's guardian ad litem.

E. No notice need be given to the parties, the child's foster parents or the court when placement is changed at the request of the substitute care provider. Notice shall be given to the child's guardian ad litem."

Section 109

Section 109. A new Section 32-4-13 NMSA 1978 is enacted to read:

"32-4-13. PETITION--AUTHORIZATION TO FILE.--A petition alleging neglect or abuse shall not be filed unless the children's court attorney has determined and endorsed upon the petition that the filing of the petition is in the best interests of the child. The children's court attorney shall, upon request of a person authorizing the filing of a petition, furnish legal services in connection with the authorization and preparation of the petition and the representation of the petitioner if the petitioner so requests."

Section 110

Section 110. A new Section 32-4-14 NMSA 1978 is enacted to read:

"32-4-14. EX-PARTE CUSTODY ORDERS.--

A. At the time a petition is filed or any time thereafter, the children's court or the district court may issue an ex-parte custody order upon a sworn written statement of facts showing probable cause exists to believe that the child is abused or neglected and that custody under the criteria set forth in Section 32-4-16 NMSA 1978 is necessary.

B. The ex-parte custody order shall be served on the respondent by a person authorized to serve arrest warrants and shall direct the officer to take custody of the child and deliver him to a place designated by the court.

C. The Rules of Evidence do not apply to the issuance of an ex-parte custody order."

Section 111

Section 111. A new Section 32-4-15 NMSA 1978 is enacted to read:

"32-4-15. SUMMONS--CONTENT.--In addition to the requirements set forth in Section 32-1-11 NMSA 1978, in abuse
and neglect proceedings, the summons shall clearly state that the proceeding could ultimately result in termination of the respondents' parental rights."

Section 112

Section 112. A new Section 32-4-16 NMSA 1978 is enacted to read:

"32-4-16. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--PROBABLE CAUSE.--

A. When a child alleged to be neglected or abused has been taken into custody by the department or the department has petitioned the court for temporary custody, a custody hearing shall be held within ten days from the date the petition is filed to determine if the child should remain in or be placed in the department's custody pending adjudication. Upon written request of the respondent, the hearing may be held earlier, but in no event shall the hearing be held sooner than two days after the date the petition was filed.

B. The parent, guardian or custodian of the child alleged to be abused or neglected shall be given reasonable notice of the time and place of the custody hearing.

C. At the custody hearing, the court shall release the child to his parent, guardian or custodian unless probable cause exists to believe that:

(1) the child is suffering from an illness or injury, and the parent, guardian or custodian is not providing adequate care for the child;

(2) the child is in immediate danger from his surroundings, and removal from those surroundings is necessary for the child's safety or well-being;

(3) the child will be subject to injury by others if not placed in the custody of the department;

(4) there has been an abandonment of the child by his parent, guardian or custodian; or

(5) the parent, guardian or custodian is not able or willing to provide adequate supervision and care for the child.

D. At the conclusion of the custody hearing, if the court determines that custody pending adjudication is
appropriate, the court may:

(1) return the child to his parent, guardian or custodian upon such conditions as will reasonably assure the safety and well-being of the child; or

(2) award custody of the child to the department with or without provision for visitation rights for the parent, guardian or custodian of the child.

E. At the conclusion of the custody hearing, the court may order the respondent or the child alleged to be neglected or abused, or both, to undergo appropriate diagnostic examinations or evaluations. Copies of any diagnostic or evaluation reports ordered by the court shall be provided to the parties at least five days before the adjudicatory hearing is scheduled. The reports shall not be sent to the court.

F. The Rules of Evidence shall not apply to custody hearings."

Section 113

Section 113. A new Section 32-4-17 NMSA 1978 is enacted to read:

"32-4-17. ADJUDICATORY HEARINGS--TIME LIMITATIONS.--

A. The adjudicatory hearing in a neglect or abuse proceeding shall be commenced within ninety days after the latest of the following dates:

(1) the date that the petition is served on the respondent;

(2) if the trial court orders a mistrial or a new trial, the date that the order is filed; or

(3) in the event of an appeal, the date that the mandate or order is filed in the district court disposing of the appeal.

B. The children's court attorney shall represent the state at the adjudicatory hearing.

C. When the adjudicatory hearing on any petition is not begun within the time period specified in Subsection A of this section or within the period of any extension granted, the petition shall be dismissed with prejudice."

Section 114

Section 114. A new Section 32-4-18 NMSA 1978 is enacted to read:

"32-4-18. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--DISPOSITIONAL MATTERS--PENALTY.--

A. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means.

B. All abuse and neglect hearings shall be closed to the general public.

C. Only the parties, their counsel, witnesses and other persons approved by the court may be present at a closed hearing. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition that they refrain from divulging any information that would identify the child or family involved in the proceedings.

D. Accredited representatives of the news media shall be allowed to be present at closed hearings, subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent, guardian or custodian of that child and subject to enabling regulations as the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Children's Code.

E. If the court finds that it is in the best interest of the child, the child may be excluded from a neglect or an abuse hearing. Under the same conditions, a child may be excluded by the court during a hearing on dispositional issues.

F. Those persons or parties granted admission to a closed hearing who intentionally divulge information in violation of this section are guilty of a petty misdemeanor.

G. The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court after hearing all of the evidence bearing on the allegations of neglect or abuse shall make and record its findings on whether the child is a neglected child, an abused child or both.

H. If the court finds on the basis of a valid admission of the allegations of the petition or on the basis of clear and convincing evidence, competent, material and relevant in nature, that the child is neglected or abused, the court may proceed immediately or at a postponed hearing to make disposition of the case. If the court does not find that the child is neglected or abused, the court shall dismiss the petition and may refer the family to the department for appropriate services.

I. In that part of the hearings held under the Children's Code on dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues.

J. On the court's motion or that of a party, the court may continue the hearing on the petition for a reasonable time to receive reports and other evidence in connection with disposition. The court shall continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuances under this subsection, the court shall make an appropriate order for legal custody."

Section 115

Section 115. A new Section 32-4-19 NMSA 1978 is enacted to read:

"32-4-19. NEGLECT OR ABUSE PREDISPOSITION STUDIES, REPORTS AND EXAMINATIONS.--

A. Prior to holding a dispositional hearing, the court shall direct that a predisposition study and report be made in writing to the court by the department.

B. The predisposition study shall contain the following information:

(1) a statement of the specific harm to the child that intervention is designed to alleviate;

(2) if removal from or continued residence outside the home is recommended, a statement of the likely harm the chld will suffer as a result of removal, including emotional harm resulting from separation from the child's parents; and

(3) a treatment plan consisting of:

(a) a description of the specific progress needed to be made by both the parent and the child in order to prevent further harm to the child, the reasons why the program is likely to be useful, the availability of any proposed services and the department's overall plan for ensuring that the services will be delivered;

(b) if removal from the home or continued residence outside the home is recommended, a description of any previous efforts to work with the parent and the child in the home and the in-home treatment programs that have been considered and rejected;

(c) a description of the steps that will be taken to minimize any harm to the child that may result if separation from the child's parent occurs or continues;

(d) a description of the behavior that will be expected before a determination is made that supervision of the family or placement is no longer necessary; and

(e) if removal from or continued residence outside the home is recommended and the child is sixteen years of age or older, a description of the specific skills the child requires for successful transition into independent living as an adult, what program, educational or otherwise, will provide the skills, the reasons why the program is likely to be useful, the availability of any proposed programs and the department's overall plan for ensuring that the child will be adequately prepared for adulthood.

C. A copy of the predisposition report shall be provided by the department to counsel for all parties five days before the dispositional hearing.

D. If the child is an adjudicated abused child, any temporary custody orders shall remain in effect until the court has received and considered the predispositional study at the dispositional hearing."

Section 116

Section 116. A new Section 32-4-20 NMSA 1978 is enacted to read:

"32-4-20. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED CHILD.--

A. At the conclusion of the dispositional hearing, the court shall make and include in the dispositional judgment its findings on the following:

(1) the interaction and interrelationship of the child with his parent, siblings and any other person who may significantly affect the child's best interest;

(2) the child's adjustment to his home, school and community;

(3) the mental and physical health of all individuals involved;

(4) the wishes of the child as to his custodian;

(5) the wishes of the child's parent, guardian or custodian as to the child's custody;

(6) whether there exists a relative of the child or other individual who, after study by the department, is found to be qualified to receive and care for the child;

(7) the availability of services recommended in the treatment plan prepared as a part of the predisposition study in accordance with the provisions of Section 32-4-19 NMSA 1978;

(8) the ability of the parent to care for the child in the home so that no harm will result to the child;

(9) whether reasonable efforts were utilized by the department to prevent removal of the child from the home prior to placement in substitute care and whether reasonable efforts were utilized to attempt reunification of the child with the natural parent; and

(10) if the child is an Indian child, whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been followed and whether the Indian child's treatment plan provides for maintaining the Indian child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.

B. If a child is found to be neglected or abused, the court may enter its judgment making any of the following dispositions to protect the welfare of the child:

(1) permit the child to remain with his parent, guardian or custodian, subject to those conditions and limitations the court may prescribe;

(2) place the child under protective supervision of the department; or

(3) transfer legal custody of the child to any of the following:

(a) to the noncustodial parent, if it is found to be in the child's best interest;

(b) an agency responsible for the care of neglected or abused children; or

(c) a child-placement agency willing and able to assume responsibility for the education, care and maintenance of the child and licensed or otherwise authorized by law to receive and provide care for the child.

C. If a child is found to be neglected or abused, in its dispositional judgment the court shall also order the department to implement and the child's parent, guardian or custodian to cooperate with any treatment plan approved by the court.

D. Any parent, guardian or custodian of a child who is placed in the legal custody of the department or other person pursuant to Subsection B of this section shall have reasonable rights of visitation with the child as determined by the court, unless the court finds that the best interests of the child preclude any visitation.

E. The court may order reasonable visitation between a child placed in the custody of the department and the child's siblings or any other person who may significantly affect the child's best interest, if the court finds the visitation to be in the child's best interest.

F. Unless a child found to be neglected or abused is also found to be delinquent, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children.

G. When the court vests legal custody in an agency, institution or department, the court shall transmit with the dispositional judgment copies of the clinical reports, the predisposition study and report and any other information it has pertinent to the care and treatment of the child.

H. Prior to any child being placed in the custody or protective supervision of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard. At any hearing held pursuant to this subsection, the department may appear as a party.

I. When a child is placed in the custody of the department, the department shall investigate whether the child is eligible for enrollment as a member of an Indian tribe and, if so, the department shall pursue the enrollment on the child's behalf."

Section 117

Section 117. A new Section 32-4-21 NMSA 1978 is enacted to read:

"32-4-21. DISPOSITION OF A MENTALLY DISORDERED OR DEVELOPMENTALLY DISABLED CHILD IN A PROCEEDING.--

A. If in a hearing, at any stage of a proceeding on a neglect or abuse petition, the evidence indicates that the child is developmentally disabled or mentally disordered, the court shall adjudicate the issue of neglect or abuse under the provisions of the Children's Code.

B. If the neglect or abuse petition is not dismissed and there is probable cause to believe the child may be mentally disordered or developmentally disabled, the court shall order the department to prepare an assessment of the child's medical, psychological or social treatment needs and to make appropriate referrals.

C. If the department has reason to believe that a child in department custody needs residential mental health or developmental disability services as a result of a mental disorder or developmental disability, the department shall petition for that child's placement pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act.

D. Any child in department custody who is placed for residential treatment or habilitation pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act shall remain in the legal custody of the department while in residential treatment or habilitation or until further order of the court.

E. Prior to the child's release from residential treatment or habilitation, the court shall hold a dispositional hearing. The court may make any of the dispositions available pursuant to the provisions of the Abuse and Neglect Act.

F. When a residential treatment or habilitation facility petitions for extended placement and the petition for extended placement is dismissed, the court shall hold a dispositional hearing within ten days. The child may remain in the residential treatment or habilitation facility pending the dispositional hearing."

Section 118

Section 118. A new Section 32-4-22 NMSA 1978 is enacted to read:

"32-4-22. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--MODIFICATION, TERMINATION OR EXTENSION OF COURT ORDERS.--

A. A judgment vesting legal custody of a child in an agency shall remain in force for an indeterminate period not exceeding two years from the date entered.

B. A judgment vesting legal custody of a child in an individual, other than the child's parent or permanent guardian, shall remain in force for two years from the date entered, unless sooner terminated by court order.

C. A judgment vesting legal custody of a child in the child's parent or a permanent guardian shall remain in force for an indeterminate period from the date entered until terminated by court order or until the child is emancipated or reaches the age of majority.

D. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by a party or the child's guardian ad litem.

E. Prior to the expiration of a judgment transferring legal custody to an agency, the court may extend the judgment for additional periods of one year if it finds that the extension is necessary to safeguard the welfare of the child or the public interest.

F. When a child reaches eighteen years of age, all neglect and abuse orders affecting the child then in force automatically terminate. The termination of the orders shall not disqualify a child from eligibility for transitional services."

Section 119

Section 119. A new Section 32-4-23 NMSA 1978 is enacted to read:

"32-4-23. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS.--

A. Within six months of any original dispositional order and within six months of any subsequent continuation of the order, the department shall petition the court for a review of the disposition of an adjudicated neglected or abused child. Prior to the review, the department shall submit a progress report to the local substitute care review board for that judicial district created under the Citizen Substitute Care Review Act. Prior to any judicial review by the court pursuant to this section, the local substitute care review board may review the dispositional order or the continuation of the order and the department's progress report and report its findings and recommendations to the court. The review may be carried out by either of the following:

(1) a judicial review hearing conducted by the court; or

(2) a judicial review hearing conducted by a special master appointed by the court; provided, however, that the court approve any findings made by the special master.

B. The children's court attorney shall give notice to all parties, the child's guardian ad litem, the child's CASA and the child's foster parent or substitute care provider of the time, place and purpose of any judicial review hearing held pursuant to Subsection A of this section.

C. At any judicial review hearing held pursuant to Subsection A of this section, the department, the child's guardian ad litem and all parties given notice under Subsection B of this section shall have the opportunity to present evidence and to cross-examine witnesses. At the hearing, the department shall show that it has made reasonable effort to implement any treatment plan approved by the court in its dispositional order and shall present a treatment plan consistent with the purposes of the Children's Code for any period of extension of the dispositional order. The respondent shall demonstrate to the court that efforts to comply with the treatment plan approved by the court in its dispositional order and efforts to maintain contact with the child were diligent and made in good faith. The court shall determine the extent of compliance with the treatment plan and whether progress is being made toward establishing a stable and permanent placement for the child.

D. The Rules of Evidence shall not apply to hearings held pursuant to this section. The court may admit testimony by any person given notice of the hearing who has information about the status of the child or the status of the treatment plan.

E. At the conclusion of any hearing held pursuant to this section, the court shall make findings of fact and conclusions of law.

F. When the child is an Indian child, the court shall determine during review of a dispositional order whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe were followed and whether the child's treatment plan provides for maintaining the child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.

G. Based on its findings, the court shall order one of the following dispositions:

(1) dismiss the action and return the child to his parent without supervision if the court finds that conditions in the home that led to abuse have been corrected and it is now safe for the return of the abused child;

(2) permit the child to remain with his parent, guardian or custodian subject to those conditions and limitations the court may prescribe, including protective supervision of the child by the department;

(3) return the child to his parent and place the child under the protective supervision of the department;

(4) transfer or continue legal custody of the child to:

(a) the noncustodial parent, if that is found to be in the child's best interests;

(b) a relative or other individual who, after study by the department or other agency designated by the court, is found by the court to be qualified to receive and care for the child and is appointed as a permanent guardian of the child; or

(c) the department subject to the provisions of Paragraph (6) of this subsection;

(5) continue the child in the legal custody of the department with or without any required parental involvement in a treatment plan;

(6) make additional orders regarding the treatment plan or placement of the child to protect the child's best interests if the court determines the department has failed in implementing any material provision of the treatment plan or abused its discretion in the placement or proposed placement of the child; or

(7) if, during a judicial review, the court finds that the child's parent, guardian or custodian has not complied with the court-ordered treatment plan, the court may order:

(a) the child's parent, guardian or custodian to show cause why he should not be held in contempt of court; or

(b) a hearing on the merits of terminating parental rights.

H. Dispositional orders entered pursuant to this section shall remain in force for a period of six months, except for orders that provide for transfer of the child to the child's noncustodial parent or to a permanent guardian.

I. The report of the local substitute care review board submitted to the court pursuant to Subsection A of this section shall become a part of the child's permanent court record."

Section 120

Section 120. A new Section 32-4-24 NMSA 1978 is enacted to read:

"32-4-24. PARENTAL RESPONSIBILITY.--

A. The court shall order the parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay if a child is adjudicated to be neglected or abused and the court orders the child placed with an agency or individual other than the parent. The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment.

B. The court may enforce any of its orders issued pursuant to this section by use of its contempt power."

Section 121

Section 121. A new Section 32-4-25 NMSA 1978 is enacted to read:

"32-4-25. INTERVENTION--PERSONS PERMITTED TO INTERVENE.--

A. At any stage of an abuse or neglect proceeding, a person described in this subsection may be permitted to intervene as a party with a motion for affirmative relief:

(1) a foster parent whom the child has resided with for at least six months;

(2) a relative within the fifth degree of consanguinity with whom the child has resided;

(3) a stepparent with whom the child has resided; or

(4) a person who wishes to become the child's permanent guardian.

B. When determining whether a person described in Subsection A of this section should be permitted to intervene, the court shall consider:

(1) the person's rationale for the purposed intervention; and

(2) whether intervention is in the best interest of the child.

C. When the court determines that the child's best interest will be served as a result of intervention by a person described in Subsection A of this section, the court may permit intervention unless the party opposing intervention can demonstrate that a viable plan for reunification with the respondents is in progress and that intervention could impede the progress of the reunification plan.

D. The persons described in this subsection shall be permitted to intervene during any stage of an abuse or neglect proceeding:

(1) a parent of the child who is not named in the petition alleging abuse or neglect; and

(2) when the child is an Indian child, the child's Indian tribe.

E. The child's foster parent shall be permitted to intervene when:

(1) the foster parent desires to adopt the child;

(2) the child has resided with the foster parent for at least six months within the year prior to the termination of parental rights;

(3) a motion for termination of parental rights has been filed by a person other than the foster parent; and

(4) bonding between the child and the child's foster parent is alleged as a reason for terminating parental rights in the motion for termination of parental rights."

Section 122

Section 122. A new Section 32-4-26 NMSA 1978 is enacted to read:

"32-4-26. TERMINATION OF PARENTAL RIGHTS--ADOPTION DECREE.--

A. In proceedings to terminate parental rights, the court shall give primary consideration to the physical, mental and emotional welfare and needs of the child.

B. The court shall terminate parental rights with respect to a child when:

(1) there has been an abandonment of the child by his parents;

(2) the child has been a neglected or abused child as defined in the Abuse and Neglect Act and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions which render the parent unable to properly care for the child; provided, the court may find in some cases that efforts by the department or another agency would be unnecessary, when there is a clear showing that the efforts would be futile; or

(3) the child has been placed in the care of others, including care by other relatives, either by a court order or otherwise and the following conditions exist:

(a) the child has lived in the home of others for an extended period of time;

(b) the parent-child relationship has disintegrated;

(c) a psychological parent-child relationship has developed between the substitute family and the child;

(d) if the court deems the child of sufficient capacity to express a preference, the child no longer prefers to live with the natural parent; and

(e) the substitute family desires to adopt the child.

C. A finding by the court that all of the conditions set forth in Paragraph (3) of Subsection B of this section exist shall create a rebuttable presumption of abandonment.

D. The termination of parental rights involving a child subject to the federal Indian Child Welfare Act of 1978 shall comply with the requirements of that act.

E. When the court finds that parental rights should be terminated and requirements for the adoption of an abandoned, abused or neglected child have been satisfied, the court may proceed to grant adoption of the child. The adoption decree shall conform to the requirements of the Adoption Act and shall have the same force and effect as other adoption decrees entered pursuant to that act. The court clerk shall assign an adoption case number to the adoption decree."

Section 123

Section 123. A new Section 32-4-27 NMSA 1978 is enacted to read:

"32-4-27. TERMINATION PROCEDURE.--

A. A motion to terminate parental rights may be filed at any stage of the abuse or neglect proceeding. The proceeding may be initiated by any of the following:

(1) the department;

(2) a licensed child-placement agency; or

(3) any other person having a legitimate interest in the matter, including the child's guardian ad litem, a petitioner for adoption, a foster parent or a relative of the child.

B. The motion for termination of parental rights shall be signed, verified by the moving party and filed with the court. The motion shall set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the grounds for termination and the facts and circumstances supporting the grounds for termination;

(3) the names and addresses of the persons or authorized agency or agency officer to whom custody might be transferred;

(4) whether the child resides or has resided with a foster parent who desires to adopt this child;

(5) whether the motion is in contemplation of adoption;

(6) the relationship or legitimate interest of the moving party to the child; and

(7) whether the child is subject to the federal Indian Child Welfare Act of 1978 and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the moving party to notify the parents' tribe and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the tribes shall be attached as exhibits to the petition; and

(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

C. A parent who has not previously been a party to the proceeding shall be named in the motion and shall become a party to the proceeding.

D. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on the parents of the child, any parent who has not previously been made a party to the proceeding, foster parents with whom the child is residing, foster parents with whom the child has resided for six months within the previous twelve months, the custodian of the child, the department, any person appointed to represent any party, including the child's guardian ad litem, and any other person the court orders. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of process in a civil action in this state, except that foster parents and attorneys of record in this proceeding may be served by certified mail. The notice shall state specifically that the person served must file a written response to the motion within twenty days if the person intends to contest the termination. In any case involving a child subject to the federal Indian Child Welfare Act of 1978, notice shall also be served upon the tribes of the child's parents and upon any "Indian custodian" as that term is defined in 25 U.S.C. Section 1903(6).

E. If the identity or whereabouts of a person entitled to service are unknown, the moving party shall file a motion for an order granting service by publication supported by the affidavit of the moving party or his agent or attorney detailing the efforts made to locate the person entitled to service. Upon being satisfied that reasonable efforts to locate the person entitled to service have been made and that information as to the identity or whereabouts of the person is still insufficient to effect service in accordance with the Rules of Civil Procedure for the District Courts, the court shall order service by publication pursuant to the Rules of Civil Procedure for the District Courts.

F. After a motion for the termination of parental rights is filed, the parent shall be advised of the right to counsel, unless the parent is already represented by counsel. Counsel shall be appointed, upon request, for any parent who is unable to obtain counsel due to financial reasons or, if in the court's discretion, the interests of justice require appointment of counsel.

G. The court shall assure that a guardian ad litem represents the child in all proceedings for the termination of parental rights.

H. When a motion to terminate parental rights is filed, the moving party shall request a hearing on the motion. The hearing date shall be at least thirty days after service is effected upon the parties entitled to service under this section.

I. In any action for the termination of parental rights brought by a party other than the department and involving a child in the custody of the department, the department may:

(1) litigate a motion for the termination of parental rights that was initially filed by another party; or

(2) move that the motion for the termination of parental rights be found premature and denied.

J. The grounds for any attempted termination shall be proved by clear and convincing evidence. In any proceeding involving a child subject to the federal Indian Child Welfare Act of 1978, the grounds for any attempted termination shall be proved beyond a reasonable doubt and shall meet the requirements set forth in 25 U.S.C. Section 1912(f).

K. When the court terminates parental rights, it shall appoint a custodian for the child and fix responsibility for the child's support.

L. In any termination proceeding involving a child subject to the federal Indian Child Welfare Act of 1978, the court shall in any termination order make specific findings that the requirements of that act have been met.

M. A judgment of the court terminating parental rights divests the parent of all legal rights and privileges, and dispenses with both the necessity for the consent to or
receipt of notice of any subsequent adoption proceeding concerning the child. A judgment of the court terminating parental rights shall not affect the child's rights of inheritance from and through the child's biological parents."

Section 124

Section 124. A new Section 32-4-28 NMSA 1978 is enacted to read:

"32-4-28. ATTORNEYS' FEES.--The court may order the department to pay attorneys' fees for the child's guardian ad litem if:

A. the child is in the custody of the department;

B. the child's guardian ad litem:

(1) requests in writing that the department move for the termination of parental rights;

(2) gives the department written notice that if the department does not move for termination of parental rights, the guardian ad litem intends to move for the termination of parental rights and seek an award of attorneys' fees;

(3) successfully moves for the termination of parental rights; and

(4) applies to the court for an award of attorneys' fees; and

C. the department refuses to litigate the motion for the termination of parental rights or fails to act in a timely manner."

Section 125

Section 125. A new Section 32-4-29 NMSA 1978 is enacted to read:

"32-4-29. PERMANENT GUARDIANSHIP OF A CHILD.--

A. In proceedings for permanent guardianship, the court shall give primary consideration to the physical, mental and emotional welfare and needs of the child. Permanent guardianship vests in the guardian all rights and responsibilities of a parent, other than those rights and responsibilities of the natural or adoptive parent, if any, set forth in the decree of permanent guardianship.

B. Any adult, including a relative or foster parent, may be considered as a permanent guardian, provided that the department grants consent to the guardianship if the child is in the department's custody. An agency or institution may not be a permanent guardian. The court shall appoint a person nominated by the child, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the child.

C. The court may establish a permanent guardianship between a child and the guardian when the prospective guardianship is in the child's best interest and when:

(1) the child has been adjudicated as an abused or neglected child;

(2) the department has made reasonable efforts to reunite the parent and child and further efforts by the department would be unproductive;

(3) reunification of the parent and child is not in the child's best interests because the parent continues to be unwilling or unable to properly care for the child; and

(4) the likelihood of the child being adopted is remote or it is established that termination of parental rights is not in the child's best interest."

Section 126

Section 126. A new Section 32-4-30 NMSA 1978 is enacted to read:

"32-4-30. PERMANENT GUARDIANSHIP--PROCEDURE.--

A. A motion for permanent guardianship may be filed by any party.

B. Any application for permanent guardianship shall be signed and verified by the petitioner, filed with the court and set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the facts and circumstances supporting the ground for permanent guardianship;

(3) the name and address of the prospective guardian and a statement that the person agrees to accept the duties and responsibilities of guardianship;

(4) the basis for the court's jurisdiction;

(5) the relationship of the child to the petitioner and the prospective guardian; and

(6) whether the child is subject to the federal Indian Child Welfare Act of 1978 and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the petitioner to notify the parents' tribe and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the tribes shall be attached as exhibits to the petition; and

(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

C. If the petition is not filed by the prospective guardian, the petition shall be verified by the prospective guardian.

D. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on any parent who has not previously been made a party to the proceeding, the parents of the child, foster parents with whom the child is residing, foster parents with whom the child has resided for six months, the child's custodian, the department, any person appointed to represent any party, including the child's guardian ad litem, and any other person the court orders provided with notice. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of process in a civil action in this state. The notice shall state specifically that the person served must file a written response to the application within twenty days if the person intends to contest the guardianship.

E. When the child is an Indian child, subject to the federal Indian Child Welfare Act of 1978, notice shall also be served upon the Indian tribes of the child's parents and upon any "Indian custodian" as that term is defined in 25 U.S.C. Section 1903(6).

F. The grounds for permanent guardianship shall be proved by clear and convincing evidence. The grounds for permanent guardianship must be proved beyond a reasonable doubt and meet the requirements of 25 U.S.C. Section 1912(f) in any proceeding involving a child subject to the federal Indian Child Welfare Act of 1978.

G. A judgment of the court vesting permanent guardianship with an individual divests the biological or adoptive parent of legal custody or guardianship of the child, but is not a termination of the parent's rights. A child's inheritance rights from and through the child's biological or adoptive parents are not affected by this proceeding.

H. Upon a finding that grounds exist for a permanentguardianship, the court may incorporate into the final order provisions for visitation with the natural parents, siblings or other relatives of the child and any other provision necessary to rehabilitate the child or provide for the child's continuing safety and well being.

I. The court shall retain jurisdiction to enforce its judgment of permanent guardianship.

J. Any party to the abuse or neglect proceeding, the child or a parent of the child may make a motion for revocation of the order granting guardianship when there is a significant change of circumstances including:

(1) the child's parent is able and willing to properly care for the child; or

(2) the child's guardian is unable to properly care for the child.

K. The court shall appoint a guardian ad litem for the child in all proceedings for the revocation of permanent guardianship.

L. The court may revoke the order granting guardianship when a change of circumstances has been proven by clear and convincing evidence and it is in the child's best interests to revoke the order granting guardianship."

Section 127

Section 127. A new Section 32-4-31 NMSA 1978 is enacted to read:
"32-4-31. CONFIDENTIALITY--RECORDS--PENALTY.--

A. All records concerning a party to a neglect or abuse proceeding, including social records, diagnostic evaluation, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse, or medical reports, that are in the possession of the court or the department as the result of a neglect or abuse proceeding or that were produced or obtained during an investigation in anticipation of or incident to a neglect or abuse proceeding shall be confidential and closed to the public.

B. The records described in Subsection A of this section shall be open to inspection only by:

(1) court personnel;

(2) court appointed special advocates;

(3) the child's guardian ad litem;

(4) department personnel;

(5) any local substitute care review board or any agency contracted to implement local substitute care review boards;

(6) law enforcement officials, except when use immunity is granted pursuant to Section 32-4-11 NMSA 1978;

(7) district attorneys, except when use immunity is granted pursuant to Section 32-4-11 NMSA 1978;

(8) any state government social services agency in any state;

(9) those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;

(10) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent and the records concern the social, medical, psychological or educational needs of the child;

(11) school personnel involved with the child if the records concern the child's social or educational needs;

(12) health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardian, custodian or other family members;

(13) protection and advocacy representatives pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Act of 1991;

(14) children's safehouse organizations conducting investigatory interviews of children on behalf of a law enforcement agency or the department; and

(15) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

C. A parent, guardian or legal custodian whose child has been the subject of an investigation of abuse or neglect where no petition has been filed shall have the right to inspect any medical report, psychological evaluation, law enforcement reports or other investigative or diagnostic evaluation; provided that any identifying information related to the reporting party or any other party providing information shall be deleted. The parent, guardian or legal custodian shall also have the right to the results of the investigation and the right to petition the court for full access to all department records and information except those records and information the department finds would be likely to endanger the life or safety of any person providing information to the department.

D. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to the Abuse and Neglect Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

E. When a child's death is allegedly caused by abuse or neglect, the department may release information about the case after consultation with and the consent of the district attorney."

Section 128

Section 128. A new Section 32-5-1 NMSA 1978 is enacted to read:

"32-5-1. SHORT TITLE.--Chapter 32, Article 5 NMSA 1978 may be cited as the "Adoption Act"."

Section 129

Section 129. A new Section 32-5-2 NMSA 1978 is enacted to read:

"32-5-2. PURPOSE.--The purpose of the Adoption Act is to:

A. establish procedures to effect a legal relationship between a parent and adopted child that is identical to that of a parent and biological child;

B. provide for family relationships that will give the adopted child protection and economic security and that will enable the child to develop physically, mentally and emotionally to the maximum extent possible; and

C. ensure due process protections."

Section 130

Section 130. A new Section 32-5-3 NMSA 1978 is enacted to read:

"32-5-3. DEFINITIONS.--As used in the Adoption Act:

A. "adoptee" means any person who is the subject of an adoption petition;

B. "agency" means any person certified, licensed or otherwise specially empowered by law to place a child in a home in this or any other state for the purpose of adoption;

C. "acknowledged father" means a father who:

(1) acknowledges paternity of the adoptee pursuant to the putative father registry, as provided for in Section 32-5-20 NMSA 1978;

(2) is named, with his consent, as the adoptee's father on the adoptee's birth certificate;

(3) is obligated to support the adoptee under a written voluntary promise or pursuant to a court order;

(4) has openly held out the adoptee as his own child; or

(5) has established a custodial, personal or financial relationship with the child. The relationship may be established prior to the child's birth;

D. "alleged father" means an individual whom the biological mother has identified as the biological father, but the individual has not acknowledged paternity or registered with the putative father registry, as provided for in Section 32-5-20 NMSA 1978;

E. "consent" means a document:

(1) signed by a biological parent whereby the parent grants consent to the adoption of the parent's child by another; or

(2) whereby the department or an agency grants its consent to the adoption of a child in its custody;

F. "former parent" means a parent whose parental rights have been terminated or relinquished;

G. "full disclosure" means mandatory and continuous disclosure by the investigator, agency or department throughout the adoption proceeding of all known, nonidentifying information regarding the adoptee, including:

(1) health history;

(2) psychological history;

(3) mental history;

(4) hospital history;

(5) medication history;

(6) genetic history;

(7) physical descriptions;

(8) social history;

(9) placement; and

(10) education;

H. "independent adoption" means an adoption when the child is not in the custody of the department or an agency;

I. "investigator" means an individual certified by the department to conduct pre-placement studies and post-placement reports;

J. "office" means a place for the regular transaction of business or performance of particular services;

K. "parental rights" means all rights of a parent with reference to a child, including parental right to control, to withhold consent to an adoption or to receive notice of a hearing on a petition for adoption;

L. "placement" means the selection of a family for an adoptee or matching of a family with an adoptee and physical transfer of the adoptee to the family in all adoption proceedings, except in adoptions filed pursuant to Paragraphs (1) and (2) of Subsection C of Section 32-5-12 NMSA 1978, in which case placement occurs when the parents consent to the adoption, parental rights are terminated or when parental consent is implied;

M. "post-placement report" means a written evaluation of the adoptive family and the adoptee after the adoptee is placed for adoption;

N. "pre-placement study" means a written evaluation of the adoptive family, the adoptee's biological family and the adoptee;

O. "presumed father" means:

(1) the husband of the biological mother at the time the adoptee was born;

(2) an individual who was married to the mother and the adoptee was born during the term of the marriage or the adoptee was born within three hundred days after the marriage was terminated by death, annulment, declaration of invalidity or divorce; or

(3) before the adoptee's birth, an individual who attempted to marry the adoptee's biological mother by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid and if the attempted marriage:

(a) could be declared invalid only by a court, the adoptee was born during the attempted marriage or within three hundred days after its termination by death, annulment, declaration of invalidity or divorce; or

(b) is invalid without a court order, the adoptee was born within three hundred days after the termination of cohabitation;

P. "putative father" means the alleged father of the adoptee who has not acknowledged paternity of the adoptee pursuant to the putative father registry, as provided for in Section 32-5-20 NMSA 1978;

Q. "record" means any petition, affidavit, consent or relinquishment form, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, photograph, invoice, receipt, certificate, or other printed, written, video-taped or tape-recorded material pertaining to an adoption proceeding;

R. "relinquishment" means the document by which a parent relinquishes parental rights to the department or an agency to enable placement of the parent's child for adoption; and

S. "resident" means a person who, prior to filing an adoption petition, has lived in the state for at least six months immediately preceding filing of the petition for adoption or a person who has become domiciled in the state by establishing legal residence with the intention of maintaining the residency indefinitely."

Section 131

Section 131. A new Section 32-5-4 NMSA 1978 is enacted to read:

"32-5-4. APPLICATION OF THE FEDERAL INDIAN CHILD WELFARE ACT OF 1978.--The protections set forth in the federal Indian Child Welfare Act of 1978, including provisions concerning notice to the Indian child's tribe, transfer to tribal court and placement preferences, apply to all proceedings involving an Indian child under the Adoption Act."

Section 132

Section 132. A new Section 32-5-5 NMSA 1978 is enacted to read:

"32-5-5. INDIAN CHILD PLACEMENT PREFERENCES.--

A. In any adoptive placement of an Indian child under state law, preference shall be given, in the absence of good cause to the contrary, to a placement with:

(1) a member of the Indian child's extended family;

(2) other members of the child's Indian tribe; or

(3) other Indian families.

B. An Indian child accepted for pre-adoptive placement shall be placed in the least restrictive setting which most approximates a family in which the child's special needs, if any, may be met. The Indian child shall also be placed within reasonable proximity to the Indian child's home, taking into account special needs of the Indian child. In any foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with:

(1) a member of the Indian child's extended family;

(2) a foster home licensed, approved and specified by the Indian child's tribe;

(3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(4) an institution for children approved by the Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs.

C. If the placement preferences of this section are not followed or if the Indian child is placed in an institution, a plan shall be developed to ensure that the Indian child's cultural ties are protected and fostered."

Section 133

Section 133. A new Section 32-5-6 NMSA 1978 is enacted to read:

"32-5-6. AUTHORITY OF THE DEPARTMENT.--

A. The department may adopt and promulgate necessary regulations and forms for the administration of the Adoption Act, but the regulations shall not conflict with the provisions of the Adoption Act.

B. The department has the authority to provide or request additional information from an investigator or an attorney representing any person involved in any action filed pursuant to the provisions of the Adoption Act.

C. The department has the authority to intervene in any action filed pursuant to the provisions of the Adoption Act. The intervention shall be effected when legal counsel for the department files a motion for an entry of appearance and an appropriate response.

D. The department shall be served by mail by the attorney for the petitioner with copies of all pleadings filed in any action pursuant to the provisions of the

Adoption Act, except for copies of the petition for adoption, the request for placement and the decree of adoption."

Section 134

Section 134. A new Section 32-5-7 NMSA 1978 is enacted to read:

"32-5-7. CLERK OF THE COURT--DUTIES.--

A. The clerk of the court shall file pleadings captioned pursuant to the provisions of Section 32-5-9 NMSA 1978. The clerk of the court shall not file incorrectly captioned pleadings.

B. The clerk of the court shall mail a copy of the request for placement to the department within one working day of the request for placement being filed with the court. The attorney for the person requesting placement shall provide to the clerk of the court a copy of the request for placement and a stamped envelope addressed to the department as specified in department regulation.

C. The clerk of the court shall mail a copy of the petition for adoption within one working day of the petition for adoption being filed with the court. The attorney for the petitioner shall provide to the clerk of the court a copy of the petition for adoption and a stamped envelope addressed to the department as specified in department regulation.

D. The clerk of the court shall mail a copy of the decree of adoption to the department within one working day of the entry of the decree of adoption. The attorney for the petitioner shall provide to the clerk of the court a copy of the decree of adoption and a stamped envelope addressed to the department as specified in department regulation.

E. In any adoption involving an Indian child, the clerk of the court shall provide the secretary of the interior with a copy of any decree of adoption or adoptive placement order and other information as required by the federal Indian Child Welfare Act of 1978.

F. The clerk of the court shall forward an application for a birth certificate in an adoptee's new name:

(1) for a person born in the United States, to the appropriate vital statistics office of the place, if known, where the adoptee was born; or

(2) for all other persons, to the state registrar of vital statistics."

Section 135

Section 135. A new Section 32-5-8 NMSA 1978 is enacted to read:

"32-5-8. CONFIDENTIALITY OF RECORDS.--

A. Unless the petitioner agrees to be contacted or agrees to the release of the petitioner's identity to the parent and the parent agrees to be contacted or agrees to the release of the parent's identity to the petitioner, the attorneys, the court, the agency and the department shall maintain confidentiality regarding the names of the parties, unless the information is already otherwise known. After the petition is filed and prior to the entry of the decree, the records in adoption proceedings shall be open to inspection only by the attorney for the petitioner, the department or the agency, any attorney appointed as a guardian ad litem for the adoptee, any attorney retained by the adoptee or other persons upon order of the court for good cause shown.

B. All records, whether on file with the court, an agency, the department, an attorney or other provider of professional services in connection with an adoption, are confidential and may be disclosed only pursuant to the provisions of the Adoption Act.

C. All hearings in adoption proceedings shall be confidential and shall be held in closed court without admittance of any person other than parties and their counsel.

D. Prior to the entry of the decree of adoption, the parent consenting to the adoption or relinquishing parental rights to an agency or the department shall execute an affidavit stating whether or not the parent will permit contact or the disclosure of the parent's identity to the adoptee or the adoptee's prospective adoptive parents."

Section 136

Section 136. A new Section 32-5-9 NMSA 1978 is enacted to read:

"32-5-9. CAPTION.--The caption for adoption proceedings shall be styled "In the Matter of the Adoption Petition of (Petitioner's Name)"."

Section 137

Section 137. A new Section 32-5-10 NMSA 1978 is enacted to read:

"32-5-10. VENUE.--A petition for adoption may be filed in any county where:

A. a petitioner is a resident;

B. the adoptee is physically present at the time the petition is filed;

C. an office of the agency that placed the adoptee for adoption is located; or

D. the department office from which the child was placed is located."

Section 138

Section 138. A new Section 32-5-11 NMSA 1978 is enacted to read:

"32-5-11. WHO MAY BE ADOPTED--WHO MAY ADOPT.--

A. Any child may be adopted.

B. Residents who are one of the following may adopt:

(1) any individual who has been approved by the court as a suitable adoptive parent pursuant to the provisions of the Adoption Act; and

(2) a married individual without the individual's spouse joining in the adoption if:

(a) the nonjoining spouse is a parent of the adoptee;

(b) the individual and the nonjoining spouse are legally separated; or

(c) the failure of the nonjoining spouse to join in the adoption is excused for reasonable circumstances as determined by the court.

C. Nonresidents who meet the criteria of Subsection B of this section may adopt in New Mexico if the adoptee is a resident of New Mexico or was born in New Mexico but is less than six months of age and was placed by the department or an agency licensed by the state of New Mexico."

Section 139

Section 139. A new Section 32-5-12 NMSA 1978 is enacted to read:

"32-5-12. PLACEMENT FOR ADOPTION--RESTRICTIONS.--

A. No petition for adoption shall be granted by the court unless the adoptee was placed in the home of the petitioner for the purpose of adoption:

(1) by the department;

(2) by an appropriate public authority of another state;

(3) by an agency; or

(4) pursuant to a court order, as provided in Section 32-5-13 NMSA 1978.

B. The provisions of Subsection A of this section do ot apply to a child in the department's custody who is being adopted pursuant to the provisions of the Abuse and Neglect Act.

C. When an adoptee is not in the custody of the department or an agency, the adoption is an independent adoption and the provisions of Sections 32-5-12 and 32-5-13 NMSA 1978 shall apply, except when the following circumstances exist:

(1) a stepparent of the adoptee seeks to adopt the adoptee and prior to the filing of the adoption petition, the adoptee has lived with the stepparent for at least one year since the marriage of the stepparent to the custodial parent and the family has received counseling, as provided for in Section 32-5-22 NMSA 1978;

(2) a relative within the fifth degree of consanguinity to the adoptee or that relative's spouse seeks to adopt the adoptee, and prior to the filing of the adoption petition the adoptee has lived with the relative or the relative's spouse for at least one year; or

(3) a person designated to care for the adoptee in the will of the adoptee's deceased parent seeks to adopt the adoptee, and prior to the filing of the adoption petition the adoptee has lived with that person for at least one year.

D. All placements shall be made by the department, an agency or the parent of the adoptee."

Section 140

Section 140. A new Section 32-5-13 NMSA 1978 is enacted to read:

"32-5-13. INDEPENDENT ADOPTIONS--REQUEST FOR PLACEMENT--PLACEMENT ORDER--CERTIFICATION.--

A. When a placement order is required, the petitioner shall file a request with the court to allow the placement. The request shall be filed at least thirty days prior to an adoptive placement in an independent adoption proceeding. An order permitting the placement shall be obtained prior to actual placement.

B. A pre-placement study approving the petitioner as an appropriate adoptive parent shall be filed with the court prior to issuance of a placement order except as provided in Subsection C of Section 32-5-12 NMSA 1978.

C. In order for a person to be certified to conduct pre-placement studies, the person shall meet the standards promulgated by the department. If the child is an Indian child, the person shall meet the standards set forth in the federal Indian Child Welfare Act of 1978.

D. The pre-placement study shall be conducted by an agency or a person certified by the department to conduct the study. A person or agency that wants to be certified to perform pre-placement studies shall file documents verifying their qualifications with the department. The department shall publish a list of persons or agencies certified to conduct a pre-placement study. If necessary to defray additional costs associated with compiling the list, the department may assess and charge a reasonable administrative fee to the person or agency listed.

E. When a person or agency that wants to be certified to perform pre-placement studies files false documentation with the department, the person or agency shall be sentenced pursuant to the provisions of Section 32-5-42 NMSA 1978.

F. A request for placement shall be filed and verified by the petitioner and shall allege:

(1) the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage;

(2) the date and place of birth of the adoptee, if known, or the anticipated date and place of birth of the adoptee;

(3) a detailed statement of the circumstances and persons involved in the proposed placement;

(4) if the adoptee has been born, the address where the adoptee is residing at the time of the request for placement;

(5) if the adoptee has been born, the places where the adoptee has lived within the past three years and the names and addresses of the persons with whom the adoptee has lived. If the adoptee is in the custody of an agency or the department, the address shall be the address of the agency or the county office of the department from which the child was placed;

(6) the existence of any court orders that are known to the petitioner and which regulate custody, visitation or access to the adoptee, copies of which shall be attached to the request for placement as exhibits; if copies of any such court orders are unavailable at the time of filing the request for placement, the copies shall be filed prior to the issuance of the order of placement;

(7) that the petitioner desires to establish a parent and child relationship between the petitioner and the adoptee and that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

(8) the relationship, if any, of the petitioner to the adoptee;

(9) whether the adoptee is subject to the federal Indian Child Welfare Act of 1978, and, if so, the petition shall allege the actions taken to comply with the federal Indian Child Welfare Act of 1978 and all other allegations required pursuant to that act;

(10) whether the adoption is subject to the Interstate Compact on the Placement of Children and what specific actions have been taken to comply with the Interstate Compact on Placement of Children; and

(11) the name, address and telephone number of the agency or investigator who has agreed to do the pre-placement study.

G. The request for placement shall be served on all parties entitled to receive notice of the filing of a petition for adoption, as provided in Section 32-5-27 NMSA 1978.

H. A hearing and the court decision on the request for placement shall occur within thirty days of the filing of the request. For good cause shown, the court may shorten the time to twenty days in which to schedule the hearing and issue a court decision. In the event of exigent circumstances, including premature birth, the court may shorten the time to five days in which to schedule the hearing and issue a court decision.

I. As part of any court order authorizing placement under this section, the court shall find whether the pre-placement study complies with Section 32-5-14 NMSA 1978 and that the time requirements concerning placement set forth in this section have been met."

Section 141

Section 141. A new Section 32-5-14 NMSA 1978 is enacted to read:

"32-5-14. PRE-PLACEMENT STUDY.--

A. The pre-placement study shall be performed as prescribed by department regulation and shall include at a minimum the following:

(1) an individual interview with each petitioner;

(2) a joint interview with both petitioners; if a joint interview is not conducted, an explanation shall be provided in the pre-placement study;

(3) a home visit, which shall include an interview with the petitioner's children and any other permanent residents of the petitioner's home;

(4) an interview with the adoptee, if age appropriate;

(5) an individual interview with each of the adoptee's parents; if a parent is not interviewed, an explanation shall be provided in the pre-placement study;

(6) full disclosure to the petitioner;

(7) exploration of the petitioners' philosophy concerning discussion of adoption issues with the adoptee;

(8) the initiation of a criminal records check of each petitioner;

(9) a medical certificate dated not more than one year prior to any adoptive placement assessing the petitioner's health as it relates to the petitioner's ability to care for the adoptee;

(10) a minimum of three letters of reference from individuals named by the petitioner or memoranda of the dates and contents of personal contacts with the references;

(11) a statement of the capacity and readiness of the petitioner for parenthood and the petitioner's emotional and physical health and ability to shelter, feed, clothe and educate the adoptee;

(12) verification of the petitioner's employment, financial resources and marital status;

(13) a report of a medical examination performed on the adoptee within one year prior to the proposed adoptive placement;

(14) a statement documenting the adoptee's family background in as much detail as available, including verification of the child's date and place of birth, if born, as well as the circumstances of the relinquishment or consent;

(15) a statement of the results of any prior pre-placement study or initiation of a pre-placement study, if any, of the petitioners done by any person; and

(16) the investigator shall attach a copy of proof of certification by the department for the investigator to conduct pre-placement studies or if the preparer of the pre-placement study is out-of-state, the preparer shall attach a statement setting

forth qualifications that are equivalent to those required of an investigator pursuant to the provisions of Section 32-5-13 NMSA 1978 and department regulations.

B. The pre-placement study shall be completed at the cost of the petitioner."

Section 142

Section 142. A new Section 32-5-15 NMSA 1978 is enacted to read:

"32-5-15. TERMINATION OF PARENTAL RIGHTS.--

A. The physical, mental and emotional welfare and needs of the child shall be the primary consideration for the termination of parental rights. The court may terminate the rights of the child's parents as provided by this article.

B. The court shall terminate parental rights with respect to a child when:

(1) the child has been abandoned by the parents;

(2) the child has been a neglected or abused child and the court finds that the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future; or

(3) the child has been placed in the care of others, including care by other relatives, either by a court order or otherwise and the following conditions exist:

(a) the child has lived in the home of others for an extended period of time;

(b) the parent-child relationship has disintegrated;

(c) a psychological parent-child relationship has developed between the substitute family and the child;

(d) if the court deems the child of sufficient capacity to express a preference, the child no longer prefers to live with the natural parent; and

(e) the substitute family desires to adopt the child.

C. A finding by the court that all of the conditions set forth in Paragraph (3) of Subsection B of this section exist shall create a rebuttable presumption of abandonment.

D. The termination of parental rights involving an Indian child shall comply with the requirements of the federal Indian Child Welfare Act of 1978."

Section 143

Section 143. A new Section 32-5-16 NMSA 1978 is enacted to read:

"32-5-16. TERMINATION PROCEDURES.--

A. A proceeding to terminate parental rights may be initiated in connection with or prior to an adoption proceeding. Venue shall be in the court for the county in which the child is physically present or in the county from which the child was placed. The proceeding may be initiated by any of the following:

(1) the department;

(2) an agency; or

(3) any other person having a legitimate interest in the matter, including a petitioner for adoption, the child's guardian, the child's guardian ad litem in another action, an agency, a foster parent, a relative of the child or the child.

B. Any petition for termination of parental rights shall be signed and verified by the petitioner, be filed with the court and set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the grounds for termination and the facts and circumstances supporting the grounds for termination;

(3) the names and addresses of the person, authorized agency or agency officer to whom custody might be transferred;

(4) the basis for the court's jurisdiction;

(5) that the petition is in contemplation of adoption;

(6) the relationship or legitimate interest of the applicant to the child; and

(7) whether the child is an Indian child and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the moving party to notify the parents' tribe and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the Indian tribe shall be attached as exhibits to the petition; and

(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

C. Notice of the filing of the petition, accompanied by a copy of the petition, shall be served by the petitioner on the parents of the child, the child's guardian, the legal custodian of the child, the person with whom the child is residing, any person with whom the child has resided within the past six months and the department. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of process in a civil action in this state, with the exception that the department may be served by certified mail. The notice shall state specifically that the person served must file a written response to the petition within twenty days if the person intends to contest the termination. In any case involving an Indian child, notice shall also be served on the child's Indian tribe pursuant to the federal Indian Child Welfare Act of 1978.

D. If the identification or whereabouts of a parent is unknown, the petitioner shall file a motion for an order granting service by publication supported by the affidavit of the petitioner, the agency or the petitioner's attorney detailing the efforts made to locate the parent. Upon being satisfied that reasonable efforts to locate the parent have been made and that information as to the identity or whereabouts of the parent is still insufficient to effect service in accordance with SCRA, Rule 1-004, the court shall order service by publication.

E. The court shall, upon request, appoint counsel for any parent who is unable to obtain counsel for financial reasons, or, if in the court's discretion, appointment of counsel is required in the interest of justice. Payment for the appointed counsel shall be made by the petitioner.

F. The court shall appoint a guardian ad litem for the child in all contested proceedings for termination of parental rights.

G. Within thirty days after the filing of a petition to terminate parental rights, the petitioner shall request a hearing on the petition. The hearing date shall be at least thirty days after service is effected upon the parent of the child or completion of publication.

H. The grounds for any attempted termination shall be proved by clear and convincing evidence. In any proceeding involving an Indian child, the grounds for any attempted termination shall be proved beyond a reasonable doubt and meet the requirements set forth in the federal Indian Child Welfare Act of 1978.

I. If the court terminates parental rights, it shall appoint a custodian for the child. Upon entering an order terminating the parental rights of a parent, the court may commit the child to the custody of the department, the petitioner or an agency willing to accept custody for the purpose of placing the child for adoption. In any termination

proceeding involving an Indian child, the court shall in any termination order make specific findings that the requirements of the federal Indian Child Welfare Act of 1978 were met.

J. A judgment of the court terminating parental rights divests the parent of all legal rights. Termination of parental rights shall not affect the child's right of inheritance through the former parent."

Section 144

Section 144. A new Section 32-5-17 NMSA 1978 is enacted to read:

"32-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE REQUIRED.--
A. Consent to adoption or relinquishment of parental rights to the department or an agency licensed by the state of New Mexico shall be required of the following:

(1) the adoptee, if over the age of ten years, except when the court finds that the adoptee does not have the mental capacity to give consent;

(2) the adoptee's mother;

(3) the adoptee's adoptive father;

(4) the presumed father of the adoptee;

(5) the adoptee's acknowledged father;

(6) the department or the agency to whom the adoptee has been relinquished and which has placed the adoptee for adoption or the department or the agency which has custody of the adoptee; provided, however, that the court may grant the adoption without the consent of the department or the agency if the court finds the adoption is in the best interests of the adoptee and that the withholding of consent by the department or the agency is unreasonable; and

(7) the guardian of the adoptee's parent when, pursuant to provisions of the Probate Code, that guardian has express authority to consent to adoption.

B. In any adoption involving an Indian child, consent to adoption by the petitioner or relinquishment of parental rights shall be obtained from an "Indian custodian", as required pursuant to the provisions of the federal Indian Child Welfare Act of 1978.

C. A consent or relinquishment executed by a parent who is a minor shall not be subject to avoidance or revocation solely by reason of the parent's minority."

Section 145

Section 145. A new Section 32-5-18 NMSA 1978 is enacted to read:

"32-5-18. IMPLIED CONSENT OR RELINQUISHMENT.--

A. A consent to adoption or relinquishment of parental rights required pursuant to the provisions of the Adoption Act shall be implied by the court if the parent, without justifiable cause, has:

(1) left the adoptee without provision for the child's identification for a period of fourteen days; or

(2) left the adoptee with others, including the other parent or an agency, without provisions for support and without communication for a period of:

(a) three months if the adoptee was under the age of six years at the commencement of the three-month period; or

(b) six months if the adoptee was over the age of six years at the commencement of the six-month period.

B. A court shall not imply consent or relinquishment under this section unless the parent whose relinquishment or consent is to be implied has been served with notice setting forth the time and place of the hearing at which the consent or relinquishment may be implied. The implication of a consent or relinquishment under this section shall have the same effect as though the consent or relinquishment had been given voluntarily.

C. The court shall render its decision on the implied consent prior to proceeding with the adjudicatory hearing."

Section 146

Section 146. A new Section 32-5-19 NMSA 1978 is enacted to read:

"32-5-19. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE NOT REQUIRED.--The consent to adoption or relinquishment of parental rights required pursuant to the provisions of the Adoption Act shall not be required from:

A. a parent whose rights with reference to the adoptee have been terminated pursuant to law;

B. a parent who has relinquished the child to an agency for an adoption;

C. a biological father of an adoptee conceived as a result of rape or incest;

D. any person who has failed to respond when given notice pursuant to the provisions of Section 32-5-27 NMSA 1978; or

E. any putative father who has failed to register with the putative father registry within 90 days of the child's birth."

Section 147

Section 147. A new Section 32-5-20 NMSA 1978 is enacted to read:

"32-5-20. PUTATIVE FATHER REGISTRY--NOTICE--PENALTY.--

A. The purpose of the putative father registry is to protect the parental rights of fathers who affirmatively assume responsibility for children they may have fathered and to expedite adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the putative father registry or otherwise acknowledging their children. The registry does not relieve the obligation of mothers to identify known fathers.

B. A putative father registry shall be established by the department of health to record the names and addresses of:

(1) any person adjudicated by a court of this state to be the father of a child;

(2) any person who has filed with the registry before or after birth of a child out-of-wedlock, a notice of intent to claim paternity of the child;

(3) any person who has filed with the registry an instrument acknowledging paternity; or

(4) any person adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child, when a certified copy of the court order has been filed with the registry.

C. A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall include in the notice the following:

(1) his name;

(2) his current address;

(3) the mother's name and any other identifying information requested by the department of health; and

(4) the child's name, if known, and any other identifying information requested by the department of health.

D. If the person filing the notice of intent to claim paternity of a child or acknowledgment changes his address, the person shall notify the department of health of his new address in the manner rescribed by the department of health.

E. A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed. Upon receipt by the registry of the notice of revocation, the revoked notice of intent to claim paternity shall be deemed a nullity nunc pro tunc.

F. No registration fee shall be charged for registering the intent to claim paternity of a child or acknowledgment of paternity. The department of health may charge a reasonable fee as prescribed by regulation for processing searches of the putative father registry.

G. An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party in any proceeding in which that fact may be relevant.

H. The department of health shall, upon request, provide the names and addresses of persons listed with the registry to any court, the department, an agency, the petitioner's attorney or the mother of the child. The information shall not be divulged to any other person, except upon order of the court for good cause shown. If the registry has not received a notice of intent to claim paternity or an acknowledgment of paternity, the department of health shall provide a written statement to that effect to the person making the inquiry. The person making inquiry shall provide a self-addressed, stamped envelope to the department of health for the department's response to the inquiry.

I. The department of health may promulgate any regulations or forms necessary to implement the provisions of this section.

J. Any person who intentionally and unlawfully releases information from the putative father registry to the public or makes any other unlawful use of the information in violation of the provisions of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to the
provisions of Section 31-19-1 NMSA 1978."

Section 148

Section 148. A new Section 32-5-21 NMSA 1978 is enacted to read:

"32-5-21. FORM OF CONSENT OR RELINQUISHMENT.--

A. Except when consent or relinquishment is implied, a consent or relinquishment by a parent shall be in writing, signed by the parent consenting or relinquishing and shall state the following:

(1) the date, place and time of execution;

(2) the date and place of birth of the adoptee and any names by which the adoptee has been known;

(3) if a consent to adoption is being executed, the identity of the petitioner, if known, or when the adoption is an independent adoption and the identity of the petitioner is unknown, how the petitioner was selected by the consenting parent;

(4) if a relinquishment of parental rights is being executed, the name and address of the agency or the department;

(5) that the person executing the consent or relinquishment has been counseled, as provided in Section 32-5-22 NMSA 1978, by a certified counselor of the person's choice and with this knowledge the person is voluntarily and unequivocally consenting to the adoption of the named adoptee;

(6) that the consenting party has been advised of the legal consequences of the relinquishment or consent either by independent legal counsel or a judge;

(7) that the consent to or relinquishment for adoption cannot be withdrawn;

(8) that the person executing the consent or relinquishment has received or been offered a copy of the consent or relinquishment;

(9) that a counseling narrative has been prepared pursuant to department regulations and is attached to the consent or relinquishment;

(10) that the person who performed the counseling meets the requirements set forth in the Adoption Act; and

(11) that the person executing the consent or relinquishment waives further notice of the adoption proceedings.

B. The consent of an adoptee, if over the age of ten years, shall be in writing, signed by the adoptee consenting to the adoption and shall state the following:

(1) the date, place and time of execution;

(2) the date and place of birth of the adoptee and any names by which the adoptee has been known;

(3) the name of the petitioner;

(4) that the adoptee has been counseled regarding the consent pursuant to department regulation;

(5) that the adoptee has been advised of the legal consequences of the consent;

(6) that the adoptee is voluntarily and unequivocally consenting to the adoption;

(7) that the consent or relinquishment cannot be withdrawn;

(8) that a counseling narrative has been prepared pursuant to department regulation and is attached to the consent; and

(9) that the person who performed the counseling meets the requirements set forth in the Adoption Act.

C. In cases when the consent or relinquishment is in English and English is not the first language of the consenting or relinquishing person, the person taking the consent or relinquishment shall certify in writing that the document has been read and explained to the person whose consent or relinquishment is being taken in that person's first language, by whom the document was so read and explained and that the meaning and implications of the document are fully understood by the person giving the consent or relinquishment.

D. Unconditional consents or relinquishments are preferred and therefore, conditional consents or relinquishments must be for good cause and approved by the court. However, if the condition is for a specific petitioner or the condition requires the other parent to consent before the decree of adoption is entered, the condition shall be deemed for good cause. In any event, any and all conditions permitted under this subsection shall be met within one hundred eighty days of the execution of the conditional consent or relinquishment or the conclusion of any litigation concerning the petition for adoption. The court may grant an extension of this time for good cause.

E. Agency or department consents required pursuant to the provisions of Section 32-5-17 NMSA 1978 shall state the following:

(1) the date, place and time of execution;

(2) the date and place of birth of the adoptee and any names by which the adoptee has been known;

(3) the name of the petitioner; and

(4) the consent of the agency or department.

F. A consent or relinquishment taken by an individual appointed to take consents or relinquishments by an agency shall be notarized, except that a consent or relinquishment signed in the presence of a judge need not be notarized. A hearing before the court for the purpose of taking a consent or relinquishment shall be heard by the court within seven days of request for setting.

G. No consent to adoption or relinquishment of parental rights shall be valid if executed within forty-eight hours after the adoptee's birth. Consent to adoption or relinquishment of parental rights involving an Indian child shall comply with the more stringent requirements of the federal Indian Child Welfare Act of 1978.

H. The requirements of a consent to adoption or relinquishment of parental rights involving an Indian child and the rights of a parent of an Indian child to withdraw the consent or relinquishment shall be governed by the relevant provisions of the federal Indian Child Welfare Act of 1978.

I. A consent to or relinquishment for adoption shall not be withdrawn prior to the entry of a decree of
adoption unless the court finds, after notice and opportunity to be heard is afforded to the petitioner, to the person seeking the withdrawal and to the agency placing a child for adoption, that the consent or relinquishment was obtained by fraud. In no event shall a consent or relinquishment be withdrawn after the entry of a decree of adoption."

Section 149

Section 149. A new Section 32-5-22 NMSA 1978 is enacted to read:

"32-5-22. PERSONS REQUIRED TO RECEIVE COUNSELING--CONTENT AND FORM OF COUNSELING.--

A. Counseling required pursuant to the provisions of this section shall occur prior to:

(1) consent to the adoption; or

(2) the relinquishment of parental rights. For good cause, the court may waive any or all counseling requirements.

B. Counseling shall be required for the following persons:

(1) the adoptee, if the adoptee is older than ten years of age;

(2) the adoptee's parent who is consenting to the adoption or relinquishing parental rights; and

(3) in a stepparent adoption, when the adoptee has lived with the stepparent for more than one year but less than two years following the marriage of the stepparent to the custodial parent:

(a) the custodial parent who is not relinquishing parental rights, but who is consenting to adoption of the adoptee by the stepparent; and

(b) the petitioning stepparent.

C. The content of the counseling shall be as follows:

(1) an adoptee who is ten years of age or older shall be counseled regarding:

(a) the adoptee's understanding of the adoption process, the consequences of the adoption and alternatives to the adoption;

(b) the adoptee's feelings and wishes regarding the adoption;

(c) the adoptee's readiness for the adoption; and

(d) any other issues relevant to the adoption, given the specific circumstances of the adoption;

(2) the adoptee's parent who is consenting to the adoption or relinquishing his parental rights shall be counseled regarding alternatives to and the consequences of adoption; and

(3) in a stepparent adoption, the custodial parent consenting to the adoption of the custodial parent's child by the stepparent and the petitioning stepparent shall be counseled regarding alternatives to adoption, the consequences of the adoption, child custody and child support.

D. The form of the counseling shall be as follows:

(1) adults required to receive counseling shall be counseled individually without the presence of any other person for a minimum of one counseling session; and

(2) for adoptees ten years of age or older and minor biological parents, there shall be a minimum of two separate counseling sessions with at least one

of the sessions to be conducted without the presence of the adoptee's parent or guardian, the minor biological parent's parent or guardian or the petitioner.

E. All counseling sessions shall be conducted in the primary language of the person receiving the counseling.

F. A counseling narrative shall be prepared as prescribed by department regulation and shall be attached to the consent or relinquishment form, for filing with the court.

G. Counseling may be provided by any of the following prsons or agencies; provided, that the person or agency has been certified by the department as qualified to
perform the counseling:

(1) a licensed psychologist;

(2) a licensed psychiatrist;

(3) a social worker licensed at the masters or independent level; or

(4) any agency.

H. A person required to receive counseling who is residing outside of New Mexico, may receive counseling from a person who possesses qualifications equivalent to a person certified to perform counseling by the state of New Mexico. A person providing counseling in another state or country shall attach a statement specifying that person's qualification to perform counseling to the counseling narrative. A person providing counseling in New Mexico shall attach a copy of that person's certification to the counseling narrative."

Section 150

Section 150. A new Section 32-5-23 NMSA 1978 is enacted to read:

"32-5-23. PERSONS WHO MAY TAKE CONSENTS OR RELINQUISHMENTS.--

A. A consent to adoption or relinquishment of parental rights shall be signed before and approved by:

(1) a judge who has jurisdiction over adoption proceedings, within or without this state, and who is in the jurisdiction in which the child is present or in which the parent resides at the time it is signed; or

(2) an individual appointed by the department to take consents or relinquishments or by an agency licensed by the state of New Mexico, but only when the consenting or relinquishing parent is represented by independent legal counsel.

B. No parent may relinquish parental rights to the department or an agency without the department's or the agency's consent.

C. The consent or relinquishment shall be filed with the court in which the petition for adoption has been filed before adjudication of the petition."

Section 151. A new Section 32-5-24 NMSA 1978 is enacted to read:

"32-5-24. RELINQUISHMENTS TO THE DEPARTMENT.--

A. When a parent elects to relinquish parental rights to the department, a petition to accept the relinquishment shall be filed, unless an abuse or neglect proceeding is pending. If an abuse or neglect proceeding is pending, the relinquishment shall be heard in the context of that proceeding.

B. In all hearings regarding relinquishment of parental rights to the department, the child shall be represented by a guardian ad litem.

C. If a proposed relinquishment of parental rights is not in contemplation of adoption, the court shall not allow the relinquishment of parental rights unless it finds that good cause exists, that the department has made reasonable efforts to preserve the family and that relinquishment of parental rights is in the child's best interest. Whenever a parent relinquishes his parental rights pursuant to this subsection, the parent shall remain financially responsible for the child. The court may order the parent to pay the reasonable costs of support and maintenance of the child. The court may use the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment."

Section 152

Section 152. A new Section 32-5-25 NMSA 1978 is enacted to read:

"32-5-25. PETITION--TIME OF FILING.--

A. A petition for adoption shall be filed within sixty days of the child's placement into the proposed adoptive home, if the child is under the age of one year. If the child is over the age of one year at the time of placement, the petition shall be filed within one hundred twenty days of the placement. For good cause shown, the court may extend those time limits up to an additional one hundred eighty days if a request for extension is filed prior to the expiration of the initial time limits. No further extensions of time shall be granted after the one hundred eighty day extension period, unless an addendum to the pre-placement study is filed in addition to an affidavit establishing good cause for the delay in filing the adoption petition.

B. If a petition is not filed in a timely manner, any person having knowledge of the proceeding shall notify the department, which may proceed as if the child were a neglected child."

Section 153

Section 153. A new Section 32-5-26 NMSA 1978 is enacted to read:

"32-5-26. PETITION--CONTENT.--A petition for adoption shall be filed and verified by the petitioner and shall allege:

A. the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage; the date and place of any prior marriage, separation or divorce; and the name of any present or prior spouse;

B. the date and place of birth of the adoptee, if known;

C. the places where the adoptee has lived within the past three years and the names and addresses of the persons with whom the adoptee has lived, unless the adoptee is in the custody of an agency or the department, in which case the petitioner shall state the name and address of the agency or the department's county office from which the child was placed;

D. the birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name; provided that, in the case of an agency adoption, if the petitioner and the biological parents have not agreed to the release of the adoptee's identity to the other person, the birth name and any other names by which the adoptee has been known shall be filed with the court as separate documents at the time the petition is filed;

E. where the adoptee is residing at the time of the filing of the petition and, if the adoptee is not living with the petitioner, when the adoptee will commence living with the petitioner;

F. that the petitioner desires to establish a parent and child relationship with the adoptee and that the petitioner is a fit and proper person able to care and provide for the adoptee's welfare;

G. the existence of any court orders, including placement orders, which are known to the petitioner and which regulate custody, visitation or access to the adoptee, copies of which shall accompany and be attached to the petition as exhibits;

H. the relationship, if any, of the petitioner to the adoptee;

I. the name and address of the placing agency, if any;

J. the names and addresses of all persons from whom consents or relinquishments are required, attaching copies of those obtained and alleging the facts which excuse or imply the consents or relinquishments of the others; provided that if the petitioner has not agreed to the release of his identity to the parent or if the parent has not agreed to the release of his identity to the petitioner, the names and addresses of all persons from whom consents or relinquishments are required shall be filed with the court as separate documents at the time the petition for adoption is filed;

K. whether the adoption will be an open adoption, pursuant to the provisions of Section 32-5-35 NMSA 1978;

L. when consent of the child's father is alleged to be unnecessary, the results of a search of the putative father registry;

M. whether the adoptee is an Indian child and, if so, the petition shall allege:

(1) the tribal affiliation of the adoptee's parents;

(2) what specific actions have been taken and by whom to notify the parents' tribe and the results of the contact, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the Indian tribe shall be attached as exhibits to the petition; and

(3) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribe;

N. whether the adoption is subject to the Interstate Compact on the Placement of Children and a copy of the interstate compact form indicating approval shall be attached as an exhibit to the petition;

O. whether the adoptee is foreign born; if so, copies of the child's passport and United States visa, and of all documents demonstrating that the adoptee is legally free for adoption; and

P. the name, address and telephone number of the agency or individual who has agreed to conduct the post-placement report in accordance with Section 32-5-31 NMSA 1978, if different than the agency or individual who prepared the pre-placement study in accordance with Section 32-5-13 NMSA 1978."

Section 154

Section 154. A new Section 32-5-27 NMSA 1978 is enacted to read:

"32-5-27. NOTICE OF PETITION--FORM OF SERVICE--WAIVER.--

A. The petition for adoption shall be served by the petitioner on the following unless it has been previously waived in writing:

(1) the department, by providing a copy to the court clerk for service pursuant to Section 32-5-7 NMSA 1978;

(2) any person, agency or institution whose consent or relinquishment is required by Section 32-5-17 NMSA 1978, unless the notice has been previously waived;

(3) any acknowledged father of the adoptee;

(4) the legally appointed custodian or guardian of the adoptee;

(5) the spouse of any petitioner who has not joined in the petition;

(6) the spouse of the adoptee;

(7) the surviving parent of a deceased parent of the adoptee;

(8) any person known to the petitioner having custody of or visitation with the adoptee under a court order;

(9) any person in whose home the child has resided for at least two months within the preceding six months;

(10) the agency or individual authorized to investigate the adoption under Section 32-5-13 NMSA 1978; and

(11) any other person designated by the court.

B. Notice shall not be served on the following:

(1) alleged or putative fathers; and

(2) any person whose parental rights have been relinquished or terminated.

C. The petitioner shall provide the clerk of the court with a copy of the petition for adoption, to be mailed to the department pursuant to the provisions of Section 32-5-7 NMSA 1978.

D. In any adoption in which the adoptee is an Indian child, in addition to the notice required pursuant to Subsection A of this section, notice of pendency of the adoption proceeding shall be served by the petitioner on the appropriate Indian tribe

and on any "Indian custodian" pursuant to the provisions of the federal Indian Child Welfare Act of 1978.

E. The notice shall state that the person served shall respond to the petition within twenty days if the person intends to contest the adoption and shall state that the failure to so respond shall be treated as a default and the person's consent to the adoption shall not be required. Provided, however, that this provision shall not apply to an agency, the department or an investigator preparing the post-placement report pursuant to Section 32-5-31 NMSA 1978. If an agency, the department or an investigator preparing the post-placement report wants t contest the adoption, they shall notify the court within twenty days after completion of the post-placement report.

F. Service shall be made pursuant to the Rules of Civil Procedure for the District Court. If the whereabouts of a parent, whose consent is required is unknown, the investigator, department or agency charged with investigating the adoption under Section 32-5-13 NMSA 1978 shall investigate the whereabouts of the parent and shall file by affidavit the results of the investigation with the court. Upon a finding by the court that information as to the whereabouts of a parent has been sufficiently investigated and is still insufficient to effect service in accordance with the Rules of Civil Procedure for the District Courts, the court shall issue an order providing for service by publication.

G. As to any other person for whom notice is required under Subsection A of this section, service by certified mail, return receipt requested, shall be sufficient. If the service cannot be completed after two attempts, the court shall issue an order providing for service by publication.

H. The notice required by this section may be waived in writing by the person entitled to notice.

I. Proof of service of the notice on all persons for whom notice is required by this section shall be filed with the court before any hearing adjudicating the rights of the persons."

Section 155

Section 155. A new Section 32-5-28 NMSA 1978 is enacted to read:

"32-5-28. RESPONSE TO PETITION.--

A. Any person responding to a notice of a petition for adoption shall file a verified response to the petition within the time limits specified in Section 32-5-25 NMSA 1978.

B. The verified response shall follow the Rules of Civil Procedure for the District Courts and shall allege:

(1) the existence of any court orders known to the respondent that regulate custody, visitation or access to the adoptee but have not been filed with the court at the time the response is filed and copies of which shall be attached to the response;

(2) the relationship, if any, of the respondent to the adoptee;

(3) whether the adoptee is an Indian child, and, if so, the response shall set forth all allegations
required under the federal Indian Child Welfare Act of 1978;

(4) whether the adoption is subject to the Interstate Compact on the Placement of Children; and

(5) whether the adoption is an open adoption."

Section 156

Section 156. A new Section 32-5-29 NMSA 1978 is enacted to read:

"32-5-29. CUSTODY PENDING DECREE.--Once the adoptee has been placed with the petitioner pursuant to the provisions of the Adoption Act, the petitioner shall have physical custody and control of the adoptee and shall be responsible for the care, maintenance and support of the adoptee, including all necessary medical, dental, psychological or surgical treatment, pending the further order of the court. Should the child be returned to the parents, this section shall not prohibit petitioners from seeking reimbursement for the child's expenses from the parents."

Section 157

Section 157. A new Section 32-5-30 NMSA 1978 is enacted to read:

"32-5-30. REMOVAL OF ADOPTEE FROM THE COUNTY.--During the pendency of an adoption proceeding, the adoptee shall not be removed from the county in which the adoption is pending for a period longer than fifteen days without the permission of the court in which the adoption is pending."

Section 158

Section 158. A new Section 32-5-31 NMSA 1978 is enacted to read:

"32-5-31. POST-PLACEMENT REPORT.--

A. An agency or an individual with the credentials set out in Subsection C of Section 32-5-13 NMSA 1978 shall file with the court its post-placement report of the prospective adoptive home and the adoptee. The post-placement report shall be

completed as prescribed by department regulations and shall include a description of the following:

(1) the expressed desires of the parents as to the kind of adoptive family sought;

(2) the interaction between the adoptee and petitioner;

(3) the adjustment of the adoptee since placement;

(4) the integration and acceptance of the adoptee in the petitioner's family;

(5) the petitioner's ability to meet the physical and emotional needs of the adoptee;

(6) whether the adoptive home is a suitable home for the proposed adoption;

(7) whether the adoption is in the best interest of the adoptee;

(8) the type and frequency of post-placement services given to the petitioner;

(9) any orders, judgments or decrees affecting the adoptee or any children of the petitioner;

(10) any property owned by the adoptee;

(11) full disclosure;

(12) the costs, expenses and professional fees connected with the adoption;

(13) any other circumstances which are relevant to the adoption of the adoptee by the petitioner; and

(14) when the adoptee is placed by an agency, an itemized agency statement of all payments made to any person or entity in connection with the adoption, including the date paid, the amount paid, the payee and the purpose of the payment.

B. The post-placement report shall contain an evaluation of the proposed adoption with a recommendation as to the granting of the petition for adoption and such other information as the court requires.

C. Unless directed by the court, a post-placement report is not required in cases in which the child is being adopted by a stepparent, a relative or a person named in the child's deceased parent's will pursuant to Section 32-5-12 NMSA 1978.

D. The investigation for the post-placement report shall be conducted by the department, an agency or an investigator. The department, agency or investigator conducting the post-placement report may be the same as the agency or individual conducting the pre-placement study and they shall be maintained on the same list as that compiled for pre-placement studies under Subsection D of Section 32-5-13 NMSA 1978.

E. The department, agency or investigator shall observe the adoptee and interview the petitioner in the petitioner's home as specified in department regulations as soon as possible after the receipt of notice of the action, but in any event within thirty days after receipt of the notice.

F. The department, agency or investigator shall complete and file the written report with the court within sixty days from receipt of notice of the proceeding and shall deliver a copy of the report to the petitioner's attorney or to the petitioner, if not represented by counsel, and to the department. Upon a showing of good cause and after notice to the petitioner, the court may grant extensions of time to the department, agency or investigator to file the post-placement report so long as the report is filed at least thirty days before the hearing for the decree of adoption."

Section 159

Section 159. A new Section 32-5-32 NMSA 1978 is enacted to read:

"32-5-32. STEPPARENT ADOPTIONS.--

A. Any person may adopt his spouse's child in accordance with the provisions of the Adoption Act.

B. When the adoptee has lived with his stepparent for at least one year following the stepparent's marriage to the custodial parent:

(1) a placement and pre-placement study or post-placement report shall not be required, but a criminal records check shall be conducted, pursuant to the provisions of Section 32-5-14 NMSA 1978;

(2) when the adoptee has lived with the stepparent for less than two years following the stepparent's marriage to the custodial parent, counseling shall be required for the adoptee, the stepparent and the custodial parent, as provided in Section 32-5-22 NMSA 1978;
(3) a report of fees and charges shall not be prepared, unless ordered by the court

pursuant to Section
32-5-34 NMSA 1978;

(4) the court may waive the ninety-day period between the filing of the petition for adoption and issuance of the decree of adoption; and

(5) when adopted, the adoptee shall take the name designated in the adoption petition, so long as the petitioner's spouse and the adoptee, if older than ten years of age, consent to the name.

C. When an adoptee has not lived with the stepparent for more than one year following the stepparent's marriage to the custodial parent, the adoption shall proceed as an independent adoption."

Section 160

Section 160. A new Section 32-5-33 NMSA 1978 is enacted to read:

"32-5-33. APPOINTMENT OF GUARDIAN AD LITEM FOR THE ADOPTEE OR OTHER PARTY.--Upon the motion of any party, or upon the court's own motion, the court may appoint a guardian ad litem for the adoptee or for any incompetent or child who is a party to the proceeding. In any contested proceeding, the court shall appoint a guardian ad litem for the adoptee."

Section 161

Section 161. A new Section 32-5-34 NMSA 1978 is enacted to read:

"32-5-34. FEES AND CHARGES--DAMAGES.--

A. Prior to the final hearing on the petition, the petitioner shall file a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The accounting report shall be signed under penalty of perjury. The accounting report shall be itemized in detail and shall show the services relating to the adoption or to the placement of the child for adoption that were received by the parents of the child, by the child, or by or on behalf of the petitioner. The report shall also include the dates of each payment, the names and addresses of each attorney, physician, hospital, licensed adoption agency or other person or organization who received any funds or any other thing of value from the petitioner in connection with the adoption or the placement of the child with him, or who participated in any way in the handling of the funds, either
directly or indirectly.

B. A prospective adoptive parent, or another person acting on behalf of a prospective adoptive parent, shall make payments for allowed expenses only to third

party vendors, as reasonably practical. These payments shall consist of reasonable and actual fees or charges for:

(1) the services of an agency in connection with an adoption;

(2) medical, hospital, nursing, pharmaceutical, traveling or other similar expenses incurred by a mother or the adoptee in connection with the birth or any illness of an adoptee;

(3) reasonable counseling services relating to the adoption;

(4) living expenses of a mother and her dependent children for a reasonable time before the birth of her child and for no more than six weeks after the birth;

(5) expenses incurred for the purposes of full disclosure;

(6 legal services, court costs and traveling or other administrative expenses connected with an adoption, including any legal service performed for a parent who consents to the adoption of a child or relinquishes the child to an agency;

(7) preparation of a pre-placement study and of a post-placement report during the pendency of the adoption proceeding; or

(8) any other service or expense the court finds is reasonably necessary.

C. Any person who makes payments that are not permitted pursuant to the provisions of this section, shall be in violation of this article and subject to the penalties set forth in Section 32-5-42 NMSA 1978.

D. Any person who threatens or coerces a parent to complete the relinquishment of parental rights or to complete the consent to an adoption, by demanding repayment of expenses or by any other threat or coercion, shall be liable to the parent for compensatory and punitive damages.

E. The accounting required in Subsection A of this section is not applicable to stepparent adoptions or to adoptions under the provisions of the Abuse and Neglect Act, unless ordered by the court.

F. Nothing in this section shall be construed to permit payment to a woman for conceiving and carrying a child."

Section 162

Section 162. A new Section 32-5-35 NMSA 1978 is enacted to read:

"32-5-35. OPEN ADOPTIONS.--

A. The parents of the adoptee and the petitioner may agree to contact between the parents and the petitioner or contact between the adoptee and one or more of the parents or contact between the adoptee and relatives of the parents. An agreement shall, absent a finding to the contrary, be presumed to be in the best interests of the child and shall be included in the decree of adoption. The contact may include exchange of identifying or nonidentifying information or visitation between the parents or the parents' relatives and the petitioner, or visitation between the parents or the parents' relatives and the adoptee.

B. The court may appoint a guardian ad litem for the adoptee. The court shall appoint a guardian ad litem for the adoptee when visitation between the biological family and the adoptee is contemplated. In all adoptions other than those in which the child is placed by the department, the court may assess the parties for the cost of services rendered by the guardian ad litem.

C. In determining whether the agreement is in the adoptee's best interests, the court shall consider the adoptee's wishes, but the wishes of the adoptee shall not control the court's findings as to the best interests of the adoptee.

D. Every agreement entered into pursuant to this section shall contain a clause stating that the parties agree to the continuing jurisdiction of the court and to the agreement and understand and intend that any disagreement or litigation regarding the terms of the agreement, after the entry of the decree of adoption, shall not affect the validity of the adoption or the custody of the adoptee.

E. The court shall retain jurisdiction after the decree of adoption is entered for the purpose of hearing motions brought to enforce or modify an agreement entered into pursuant to the provisions of this section. The court shall not grant a request to modify the agreement unless the moving party establishes that there has been a change of circumstances and the agreement is no longer in the adoptee's best interests."

Section 163

Section 163. A new Section 32-5-36 NMSA 1978 is enacted to read:

"32-5-36. ADJUDICATION--DISPOSITION--DECREE OF ADOPTION.--

A. The court shall conduct hearings on the petition for adoption so as to determine the rights of the parties in a manner that protects confidentiality. The petitioner and the adoptee shall attend the hearing unless the court for good cause waives a party's appearance. Good cause may include burdensome travel requirements.

B. The petitioner shall file all documents required pursuant to the Adoption Act and serve the department with copies of the same simultaneously with the request for hearing on the petition for adoption.

C. If any person who claims to be the biological father of the adoptee has appeared before the court and filed a written petition or response seeking custody and assuming financial responsibility of the adoptee, the court shall hear evidence as to the merits of the petition. If the court determines by a preponderance of the evidence that the person is not the biological father of the adoptee or that the child was conceived through an act of rape or incest, the petition shall be dismissed and the person shall no longer be a party to the adoption. If the court determines that the person is the biological father of the adoptee, the court shall further determine whether the person qualifies as a presumed or acknowledged father whose consent is necessary for adoption, pursuant to Section 32-5-17 NMSA 1978. If the court determines that the person is the biological father, but does not qualify as a presumed or acknowledged father, the court shall adjudicate the person's rights pursuant to the provisions of the Adoption Act.

D. If the mother or father of the adoptee has appeared before the court and filed a written petition that alleges the invalidity of the mother's or father's own consent or relinquishment for adoption previously filed in the adoption proceeding, the court shall hear evidence as to the merits of the petition. If the court determines that the allegations have not been proved by a preponderance of the evidence, the petition shall be dismissed. If the court determines that the allegations of the petition are true, the consent or relinquishment for adoption shall be held invalid, and the court shall determine, in the best interests of the adoptee, the person who shall have custody of the child.

E. The petitioner shall present and prove each allegation set forth in the petition for adoption by clear and convincing evidence.

F. The court shall grant a decree of adoption if it finds that the petitioner has proved by clear and convincing evidence that:

(1) the court has jurisdiction to enter a decree of adoption affecting the adoptee;

(2) the adoptee has been placed with the petitioner for a period of ninety days if the adoptee is under the age of one year at the time of placement or for a period of one hundred eighty days if the adoptee is one year of age or older at the time of placement, unless, for good cause shown, the requirement is waived by the court;

(3) all necessary consents, relinquishments, terminations or waivers have been obtained;

(4) the post-placement report required by Section 32-5-31 NMSA 1978 has been filed with the court;

(5) service of the petition for adoption has been made or dispensed with as to all persons entitled to notice under Section 32-5-27 NMSA 1978;

(6) at least ninety days have passed since the filing of the petition for adoption, except the court may shorten or waive this period of time in cases in which the child is being adopted by a stepparent, a relative or a person named in the child's deceased parent's will pursuant to Section 32-5-12 NMSA 1978;

(7) the petitioner is a suitable adoptive parent and the best interests of the adoptee are served by the adoption;

(8) if visitation between the biological family and the adoptee is contemplated, that the visitation is in the child's best interests;

(9) if the adoptee is foreign born, the child is legally free for adoption;

(10) the results of the criminal records check required pursuant to Section 32-5-14 NMSA 1978 have been received and considered;

(11) if the adoptee is an Indian child, the requirements set forth in the federal Indian Child Welfare Act of 1978 have been met;

(12) when the child is an Indian child, the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes have been followed, or if not followed, good cause for noncompliance has been clearly stated and supported, as required by the federal Indian Child Welfare Act of 1978 and provision has been made to insure that the Indian child's cultural ties to the Indian child's tribe are protected and fostered; and

(13) if the adoption involves the interstate placement of the adoptee, the requirements of the Interstate Compact on the Placement of Children have been met.

G. In addition to the findings required by Subsection E of this section, the court in any decree of adoption shall make findings with respect to each allegation of the petition.

H. If the court determines that any of the requirements for a decree of adoption under Subsections E and F of this section has not been met or that the adoption is not in the best interests of the adoptee, the court shall deny the petition and determine, in the best interests of the adoptee, the person who shall have custody of the child.

I. The decree of adoption shall include the new name of the adoptee and shall not include any other name by which the adoptee has been known or the names of

the former parents. The decree of adoption shall order that from the date of the decree, the adoptee shall be the child of the petitioner and accorded the status set forth in Section 32-5-37 NMSA 1978.

J. A decree of adoption shall be entered within six months of the filing of the petition if the adoptee is under the age of one year at the time of placement, or twelve months if the adoptee is one year of age or older at the time of placement, except that the time may be extended by the court upon request of any of the parties or upon the court's own motion for good cause shown.

K. A decree of adoption may not be attacked upon the expiration of one year from the entry of the decree; provided, however, that in any adoption involving an Indian child, the Indian child's parent or Indian custodian may petition the court pursuant to the provisions of the federal Indian Child Welfare Act of 1978 to invalidate the adoption.

L. In any adoption involving an Indian child, the clerk of the court shall provide the secretary of the interior with a copy of any decree of adoption or adoptive placement order and other information as required by the federal Indian Child Welfare Act of 1978."

Section 164

Section 164. A new Section 32-5-37 NMSA 1978 is enacted to read:

"32-5-37. STATUS OF ADOPTEE AND PETITIONER UPON ENTRY OF DECREE OF ADOPTION.--

A. Once adopted, an adoptee shall take a name designated by the petitioner, except in stepparent adoptions. In stepparent adoptions, the adoptee shall take the new name designated by the petitioner in the petition so long as the petitioner's spouse and the child, if over the age of ten years, consent to the new name.

B. After adoption, the adoptee and the petitioner shall sustain the legal relation of parent and child as if the adoptee were the biological child of the petitioner and the petitioner were the biological parent of the child. The adoptee shall have all rights and be subject to all of the duties of that relation, including the right of inheritance from and through the petitioner and the petitioner shall have all rights and be subject to all duties of that relation, including right of inheritance from and through the adoptee."

Section 165

Section 165. A new Section 32-5-38 NMSA 1978 is enacted to read:

"32-5-38. BIRTH CERTIFICATES.--

A. Within thirty days after an adoption decree becomes final, the petitioner shall prepare an application for a birth certificate in the new name of the adoptee showing the petitioner as the adoptee's parent and shall provide the application to the clerk of the court. The clerk of the court shall forward the application:

(1) for a person born in the United States, to the approprate vital statistics office of the place, if known, where the adoptee was born; or

(2) for all other persons, to the state registrar of vital statistics. In the case of the adoption of a person born outside the United States, if requested by the petitioner, the court shall make findings, based on evidence from the petitioner and other reliable state or federal sources, on the date and place of birth of the adoptee. These findings shall be certified by the court and included with the application for a birth certificate.

B. The state registrar of vital statistics shall prepare a birth record in the new name of the adoptee in accordance with the vital statistics laws, but subject to the requirements of the Adoption Act as to the confidentiality of adoption records."

Section 166

Section 166. A new Section 32-5-39 NMSA 1978 is enacted to read:

"32-5-39. RECOGNITION OF FOREIGN DECREES.--Every judgment terminating the parent-child relationship or establishing the relationship of parent and child by adoption issued pursuant to due process of law by the tribunals of any other jurisdiction within or without the United States shall be recognized in this state, so that the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the judgment were issued by the courts of this state."

Section 167

Section 167. A new Section 32-5-40 NMSA 1978 is enacted to read:

"32-5-40. POST-DECREE OF ADOPTION ACCESS TO RECORDS.--

A. After the decree of adoption has been entered, all court files containing records of judicial proceedings conducted pursuant to the provisions of the Adoption Act and records submitted to the court in the proceedings shall be kept in separate locked files withheld from public inspection. Upon application to the clerk of the court, the records shall be open to inspection by a former parent if the adoptee is eighteen years of age or older, by an adoptee if the adoptee is eighteen years of age or older at the time application is made for inspection, by the adoptive parent if the adoptee is under eighteen years of age at the time application is made for inspection, by the attorney of any party, by any agency that has exercised guardianship over or legal custody of a

child who was the adoptee in the particular proceeding or by the department; provided, that the identity of the former parents and of the adoptee shall be kept confidential unless the former parents and the adoptee have consented to the release of identity. In the absence of consent to release identity, the inspection shall be limited to the following nonidentifying information:

(1) the health and medical histories of the adoptee's biological parents;

(2) the health and medical history of the adoptee;

(3) the adoptee's general family background, including ancestral information, without name references or geographical designations;

(4) physical descriptions; and

(5) the length of time the adoptee was in the care and custody of persons other than the petitioner.

B. After the entry of the decree of adoption, at any time, a former parent may file with the court, with the placing agency or with the department:

(1) a consent or refusal or an amended consent or refusal to be contacted;

(2) a release of the former parent's identity to the adoptee if the adoptee is eighteen years of age or older or to the adoptive parent if the adoptee is under eighteen years of age; or

(3) information regarding the former parent's location or changes in background information.

C. The consent or refusal referred to in Subsection B of this section shall be honored by the court, the placing agency or the department, unless for good cause the court orders to the contrary.

D. At any time, an adoptee who is eighteen years of age or older may file with the court:

(1) information regarding the adoptee's location; or

(2) a consent or refusal regarding opening of the adoptee's adoption file to the adoptee's former parents.

E. If mutual authorizations for release of identifying information by the parties are not available, an adoptee who is eighteen years of age or older, the

biological parents if the adoptee is eighteen years of age or older or the adoptive parents if the adoptee is under the age of eighteen years, may file a motion with the court to obtain the release of identifying information for good cause shown. When hearing the motion, the court shall give primary consideration to the best interests of the adoptee, but shall also give due consideration to the interests of the members of the adoptee's former and adoptive families. In determining whether good cause exists for the release of identifying information, the court shall consider:

(1) the reason the information is sought;

(2) any procedure available for satisfying the petitioner's request without disclosing the name or identity of another individual, including appointment of a confidential intermediary to contact the individual and request specific information;

(3) whether the individual about whom identifying information is sought is alive;

(4) the preference, to the extent known, of the adoptee, the adoptive parents, the former parents and other members of the adoptee's former and adoptive families, and the likely effect of disclosure on those individuals;

(5) the age, maturity and expressed needs of the adoptee;

(6) the report or recommendation of any individual appointed by the court to assess the request for identifying information; and

(7) any other factor relevant to an assessment of whether the benefit to the adoptee of releasing
the information sought will be greater than the benefit to any other individual of not releasing the information."

Section 168

Section 168. A new Section 32-5-41 NMSA 1978 is enacted to read:

"32-5-41. APPOINTMENT OF CONFIDENTIAL INTERMEDIARY.--

A. The court may appoint a confidential intermediary to ascertain whether an individual is willing to be contacted, is willing to release his name or identity or is willing to meet or otherwise communicate about any condition that may affect the moving party's physical or mental health, upon petition to the court by:

(1) an adoptee who is eighteen years of age or older;

(2) an adoptive parent of an adoptee who is less than 18 years of age; or

(3) an adoptee's former parent, when the adoptee is eighteen years of age or older.

B. The confidential intermediary shall make a reasonable effort to determine if the individual whose identity is sought by the petitioner has filed a signed document authorizing or refusing to authorize the release of the individual's name or identity.

C. When the confidential intermediary finds a signed authorization for a party to be contacted or for the release of identifying information, the intermediary shall release that information to the petitioner. Upon the petitioner's written request, the intermediary may assist the petitioner in locating the individual who authorized the release of identifying information, in ascertaining whether the individual is willing to meet or communicate with the petitioner and in facilitating a meeting or other communication.

D. When the confidential intermediary finds a signed refusal to authorize the release of identifying information, the intermediary shall report this to the petitioner and the court and shall not attempt to locate or contact the individual who has refused to authorize contact or the release of identifying information. The petitioner may then withdraw the petition or request the release of identifying information for good cause shown, pursuant to the
provisions of Section 32-5-40 NMSA 1978.

E. When the confidential intermediary does not find any documents concerning the release of identifying information or if the intermediary finds a document indicating that an individual whose identity is sought by the petitioner is undecided about whether to release identifying information, the intermediary shall make a reasonable search for and discreetly contact the individual to ascertain whether the individual is willing to release information to the petitioner or willing to meet or communicate with the petitioner, whom the intermediary may describe to the individual only in general, nonidentifying terms. When the individual consents in writing to the release of information, the intermediary shall release the information to the petitioner, and upon the mutual written request and consent of the petitioner and the individual, the intermediary shall facilitate a meeting or other communication between the petitioner and the individual. If the individual refuses to authorize the release of information sought by the petitioner, the intermediary shall report this to the petitioner and the court and the petitioner may withdraw the motion or file a motion with the court for an order to release identifying information for good cause shown, pursuant to Section 32-5-40 NMSA 1978.

F. When an individual sought by the confidential intermediary is deceased, the intermediary shall report this to the petitioner and the court and, upon the petitioner's request, the court shall determine on the basis of the factors listed in Section 32-5-40 NMSA 1978 whether good cause exists to release identifying information about the individual to the petitioner.

G. When an individual sought by the confidential intermediary cannot be located within a year, the intermediary shall report this to the petitioner and the court. The court may authorize an additional search for a specified period of time or determine on the basis of the factors listed in Section 32-5-40 NMSA 1978 whether good cause exists to release identifying information about the individual to the petitioner.

H. A confidential intermediary may charge the petitioner for actual expenses incurred in providing a service requested under this section. Upon motion by the intermediary, the court may authorize a reasonable fee in addition to the expenses.

I. A confidential intermediary shall complete training provided by the department or any other entity approved by the court and shall file an oath of confidentiality in every court in which the intermediary expects to serve.

J. The confidential intermediary oath shall state:

"I,_____, signing under penalty of perjury, affirm that I have completed the requisite training for a confidential intermediary in this state.

I will not disclose to the petitioner, directly or indirectly, any identifying information in sealed records except under the conditions specified in this section.

I will conduct a reasonable search for an individual being sought and make a discreet and confidential inquiry as to whether the individual consents to the release of identifying or medical information to the petitioner, or to meeting or communicating with the petitioner. I will report to the petitioner or the court the results of my search and inquiry, along with any signed request or consent I receive from the individual.

If the individual and the petitioner request and consent in writing to meet or communicate with each other, I will act in accordance with the instructions of the petitioner or the court to facilitate any meeting or communication between them.

I will not charge or accept any fee for my services except for reimbursement from the petitioner for actual expenses incurred in performing my services or as authorized by the court.

I recognize that unauthorized release of information is a violation of the Adoption Act and subjects me to penalties pursuant to the provisions of Section 32-5-42 NMSA 1978 and may subject me to being found in contempt of court with penalties, dismissal by the court and ciil liability."."

Section 169

Section 169. A new Section 32-5-42 NMSA 1978 is enacted to read:

"32-5-42. PENALTIES.--

A. Any person other than an agency who, in the regular course of business, selects an adoptive family for a prospective adoptee or arranges for the selection is guilty of a misdemeanor and subject to imprisonment in the county jail for a definite term of less than one year or to the payment of a fine of not more than one thousand dollars ($1,000), or to both, the penalties to be in the discretion of the judge, for each occurrence; provided, that the exchange of information between persons regarding the existence of a potential adoptee or potential adoptive family shall not be a violation of this section.

B. Any person who violates any provision of the Adoption Act is guilty of a misdemeanor and subject to imprisonment in the county jail for a definite term of less than one year or to the payment of a fine of not more than one thousand dollars ($1,000), or both, the penalties to be in the discretion of the judge, for each occurrence."

Section 170

Section 170. A new Section 32-5-43 NMSA 1978 is enacted to read:

"32-5-43. PURPOSE OF SUBSIDIZED ADOPTIONS.--It is the purpose of Sections 32-5-43 through 32-5-45 NMSA 1978 to encourage and promote the placement of children who are difficult to place in permanent homes through a subsidized program within the social services division of the department."

Section 171

Section 171. A new Section 32-5-44 NMSA 1978 is enacted to read:

"32-5-44. ELIGIBILITY FOR SUBSIDIZED ADOPTIONS.--

A. The social services division of the department may make payments to adoptive parents or to medical vendors on behalf of a child placed for adoption by the division or by a child placement agency licensed by the division when the division determines that:

(1) the child is difficult to place; and

(2) the adoptive family is capable of providing the permanent family relationship needed by the child in all respects, except that the needs of the child are beyond the economic resources and ability of the family.

B. As used in Sections 32-5-43 through 32-5-45 NMSA 1978, a "difficult to place child" means a child who is physically or mentally handicapped or emotionally disturbed
or who is in special circumstances by virtue of age, sibling relationship or racial background."

Section 172

Section 172. A new Section 32-5-45 NMSA 1978 is enacted to read:

"32-5-45. ADMINISTRATION OF SUBSIDIZED ADOPTIONS.--

A. The social services division of the department shall promulgate all necessary regulations for the administration of the program of subsidized adoptions or placement with permanent guardians.

B. Subsidy payments may include payments to vendors for medical and surgical expenses and payments to the adoptive parents or permanent guardians for maintenance and other costs incidental to the adoption, care, training and education of the child. The payments in any category of assistance shall not exceed the cost of providing the assistance in foster care and shall not be made after the child reaches eighteen years of age.

C. A written agreement between the adoptive family or permanent guardians and the social services division shall precede the decree of adoption or permanent guardianship. The agreement shall incorporate the terms and conditions of the subsidy plan based on the individual needs of the child within the permanent family. In cases of subsidies that continue for more than one year, there shall be an annual redetermination of the need for a subsidy. The social services division shall develop an appeal procedure whereby a permanent family may contest a division determination to deny, reduce or terminate a subsidy."

Section 173

Section 173. A new Section 32-6-1 NMSA 1978 is enacted to read:

"32-6-1. SHORT TITLE.--Chapter 32, Article 6 NMSA 1978 may be cited as the "Children's Mental Health and Developmental Disabilities Act"."

Section 174

Section 174. A new Section 32-6-2 NMSA 1978 is enacted to read:

"32-6-2. DEFINITIONS.--As used in the Children's Mental Health and Developmental Disabilities Act:

A. "aversive stimuli" means anything which, because it is believed to be unreasonably unpleasant,
uncomfortable or distasteful to the child client, is administered or done to the child client for the purpose of reducing the frequency of a behavior, but does not include verbal therapies, physical restrictions to prevent imminent harm to self or others or psychotropic medications that are not used for purposes of punishment;

B. "child client" means any child who:

(1) is requesting or receiving mental health services;

(2) is requesting or receiving developmental disabilities services;

(3) is present in a mental health or developmental disabilities facility for the purpose of receiving services; or

(4) has been placed in a mental health or developmental disabilities facility by his parent or guardian or by any court order;

C. "consistent with the least drastic means principle" means that the habilitation or treatment and the conditions of habilitation or treatment for the child client, separately and in combination:

(1) are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives for the child client;

(2) involve no restrictions on physical movement and no requirement for residential care, except as reasonably necessary for the administration of treatment or for the protection of the child client or others from physical injury; and

(3) are conducted at the suitable available facility closest to the child client's place of residence;

D. "convulsive treatment" means any form of mental health treatment that depends upon creation of a convulsion by any means, including electroconvulsive treatment and insulin coma treatment;

E. "developmental disability" means a severe chronic disability that:

(1) is attributable to a mental or physical impairment or a combination of mental or physical impairments;

(2) is manifested before a person reaches twenty-two years of age;

(3) is expected to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activities:

(a) self care;

(b) receptive and expressive language;

(c) learning;

(d) mobility;

(e) self-direction;

(f) capacity for independent living; or

(g) economic self-sufficiency; and

(5) reflects a person's need for a combination and sequence of special, interdisciplinary or generic treatment or other supports and services that are of lifelong or extended duration and that are individually planned or coordinated;

F. "evaluation facility" means a community mental health or developmental disability program, a medical facility having psychiatric or developmental disability services available including the Las Vegas medical center, the Los Lunas hospital and training school or, if none of the foregoing is reasonably available or appropriate, the office of a licensed physician or a licensed psychologist, any of which shall be capable of performing a mental status examination adequate to determine the need for involuntary treatment;

G. "experimental treatment" means any mental health or developmental disabilities treatment that presents significant risk of physical harm, but does not include accepted treatment used in the competent practice of medicine and psychology and supported by scientifically acceptable studies;

H. "grave passive neglect" means failure to provide for basic personal or medical needs or for one's own safety to such an extent that it is more likely than not that serious bodily harm will result in the near future;

I. "habilitation" means the process by which professional persons and their staff assist the developmentally disabled child client in acquiring and maintaining those skills and behaviors that enable the child client to cope more effectively with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency. "Habilitation" includes programs of formal, structured education and treatment;

J. "likelihood of serious harm to oneself" means that it is more likely than not that in the near future the child will attempt to commit suicide or will cause serious bodily harm to himself by violent or other self-destructive means, including grave passive neglect;

K. "likelihood of serious harm to others" means that it is more likely than not that in the near future the child will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing,

attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the child;

L. "mental disorder" means a substantial disorder of the child's emotional processes, thought or cognition that grossly impairs judgment, behavior or capacity to recognize reality, but does not mean developmental disability;

M. "mental health or developmental disabilities professional" means a physician or other professional who by training or experience is qualified to work with individuals with mental disorders or developmental disabilities;

N. "physician" or "licensed psychologist", when used for the purpose of hospital admittance or discharge, means a physician or licensed psychologist who has been granted admitting privileges at a hospital licensed by the department of health, if such privileges are required;

O. "psychosurgery" means those operations currently referred to as lobotomy, psychiatric surgery and behavioral surgery, and all other forms of brain surgery if the surgery is performed for the following purposes:

(1) modification or control of thoughts, feelings, actions or behavior rather than the treatment of a known and diagnosed physical disease of the brain;

(2) treatment of abnormal brain function or normal brain tissue in order to control thoughts, feelings, actions or behavior; or

(3) treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions or behavior.

Psychosurgery does not include prefrontal sonic treatment in which there is no destruction of brain tissue;

P. "residential treatment or habilitation program" means diagnosis, evaluation, care, treatment or habilitation rendered inside or on the premises of a mental health or developmenal disabilities facility, hospital, clinic, institution, supervisory residence or nursing home when the individual resides on the premises;

Q. "residential treatment program for mental disorders" means a facility or program that provides diagnosis, evaluation, care or treatment for a child who has a mental disorder; and

R. "treatment" means any effort to accomplish a significant change in the mental or emotional condition or behavior of the child client."

Section 175

Section 175. A new Section 32-6-3 NMSA 1978 is enacted to read:

"32-6-3. BASIC RIGHTS.--

A. A child subject to the provisions of the Children's Mental Health and Developmental Disabilities Act is entitled to the same basic rights as an adult, except as otherwise provided in that act.

B. A person afforded rights under the Children's Mental Health and Developmental Disabilities Act shall be advised of those rights at that person's first appearance before the court on a petition under that act."

Section 176

Section 176. A new Section 32-6-4 NMSA 1978 is enacted to read:

"32-6-4. LEGAL REPRESENTATION OF CHILD CLIENTS.--

A. A child client shall be represented by an attorney at all proceedings under the Children's Mental Health and Developmental Disabilities Act and shall be entitled to obtain advice of an attorney at any time regarding the child client's status under that act.

B. When a child client has not retained an attorney and is unable to do so, the court shall appoint an attorney to represent the child. When appointing an attorney, the court shall give preference to nonprofit organizations offering representation to mentally ill and developmentally disabled persons. When the parent, guardian or custodian of a child client is not indigent, the parent, guardian or custodian shall be liable for the cost of the child's legal representation."

Section 177

Section 177. A new Section 32-6-5 NMSA 1978 is enacted to read:

"32-6-5. COMPETENCE.--The fact that a child has been accepted at or admitted to a hospital or institutional facility, or has received mental health or developmental disability treatment services, shall not constitute a sufficient basis for a finding of incompetence or the denial of any right or benefit of whatever nature that the child would have otherwise."

Section 178

Section 178. A new Section 32-6-6 NMSA 1978 is enacted to read:

"32-6-6. PERSONAL RIGHTS OF RESIDENTIAL CHILD CLIENTS.--A child client who receives residential treatment or habilitation services shall have the following rights:

A. subject to restrictions imposed in the best interests of the child for good cause, each resident child client has the right to receive visitors of the child's own choosing daily. Hours during which visitors may be received shall be limited only in the interest of effective treatment and the reasonable efficiency of the supervised residential facility and shall be sufficiently flexible to accommodate the individual needs of the resident child client and his visitors. Notwithstanding the above, each resident child client has the right to receive visits from his attorney, physician, psychologist, clergyman or social worker in private at any reasonable time, irrespective of visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours;

B. writing material and postage stamps shall be reasonably available for the resident child client's use in writing letters and other communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The resident child client has the right to send and receive sealed and uncensored mail. The resident child client has the right to reasonable private access to telephones and, in cases of personal emergencies when other means of communication are not satisfactory, the child shall be afforded reasonable use of long distance calls; provided, that for other than mail or telephone calls to a court or an attorney, mailing or telephone privileges may be restricted by a physician, licensed psychologist or licensed independent social worker, for good cause shown. A resident child client who is indigent shall be furnished writing, postage and telephone facilities without charge;

C. each resident child client has the right to follow or abstain from the practice of religion. The supervised residential facility shall provide appropriate assistance in this connection, including reasonable accommodations for religious worship and transportation to nearby religious services. Child clients who do not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs;

D. each resident child client has the right to a humane psychological and physical environment. The child shall be provided a comfortable bed and adequate changes of linen and reasonable storage space for his personal possessions. Except when curtailed for reasons of safety or therapy as documented in the child's record by the child's physician, the child shall be afforded reasonable privacy in his sleeping and personal hygiene practices;

E. each resident child client shall have reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment;

F. each resident child client has the right to a nourishing, well-balanced, varied and appetizing diet;

G. each resident child client has the right to prompt and adequate medical attention for any physical ailments and shall receive a complete physical examination upon admission and at least once every twelve months thereafter; provided, however, that child clients who have received a complete physical examination within two days prior to the current admission or documentation of having had a complete physical examination within the last six months, shall not receive a complete physical examination unless the physician deems it necessary;

H. each resident child client has the right to a clean, safe, comfortable environment in a structure that complies with generally applicable fire safety requirements;

I. each resident child client has the right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a licensed physician or by a verbal order, noted promptly in the patient's medical record and signed by the physician within twenty-four hours. Medication shall be administered only by a licensed physician, registered nurse or licensed practical nurse or by a medical or nursing student under the direct supervision of a licensed physician or registered nurse. The attending physician shall be responsible for all medication given or administered to a resident child client. Notation of each individual's medication shall be kept in the child's medical records and shall include a notation by the physician of the behavioral or symptomatic baseline data upon which the medication order was made. The attending physician shall review on a regular basis the drug regimen of each resident child client under the physician's care. All prescriptions for psychotropic medications shall be written with a termination date that shall not exceed thirty days. Medication shall not be used as a punishment, for the convenience of staff, as a substitute for programs or in quantities that interfere with the child client's treatment or habilitation program;

J. each resident child client has the right to be free from behavior modification programs involving aversive stimuli or substantial deprivations; and

K. each resident child client has the right to be free from the use of physical, chemical or mechanical restraint used for the convenience of a caregiver or as a substitute for a planned program for behavior support. However, nothing in this subsection shall prohibit the use of:

(1) protective apparatus needed to protect an individual from imminent harm, consistent with the least drastic needs principle;

(2) a medical restraint prescribed by a physician or dentist as a health-related protective measure during the conduct of a specific medical, surgical or dental procedure; or

(3) appropriate mechanical supports used to achieve proper body position and balance."

Section 179

Section 179. A new Section 32-6-7 NMSA 1978 is enacted to read:

"32-6-7. RIGHT TO EDUCATION.--A child who is a client in a residential facility shall be provided education and training as necessary to encourage and stimulate developmental progress and achievement. The child shall be educated in regular classes with nonhandicapped children whenever appropriate. In no event shall a child be allowed to remain in a residential facility for more than ten days without receiving educational services."

Section 180. A new Section 32-6-8 NMSA 1978 is enacted to read:

"32-6-8. RIGHT TO TREATMENT.--Each resident child client receiving mental health services shall have the right to prompt treatment pursuant to an individualized treatment plan and consistent with the least drastic means principle."

Section 181

Section 181. A new Section 32-6-9 NMSA 1978 is enacted to read:

"32-6-9. RIGHT TO HABILITATION.--Each resident child client receiving developmental disabilities services shall have the right to prompt habilitation services pursuant to an individualized habilitation plan and consistent with the least drastic means principle."

Section 182

Section 182. A new Section 32-6-10 NMSA 1978 is enacted to read:

"32-6-10. INDIVIDUALIZED TREATMENT OR HABILITATION PLANS.--

A. An individualized treatment or habilitation plan shall be prepared within fourteen days of a child client's admission to residential treatment or services.

B. Each child client and the child's parent, guardian or custodian shall, to the maximum extent possible, be involved in the preparation of the child's own individualized treatment or habilitation plan.

C. Each individualized treatment or habilitation plan shall include:

(1) a statement of the nature of the specific problem and the specific needs of the child client;

(2) a statement of the least restrictive conditions necessary to achieve the purposes of treatment or habilitation;

(3) a description of intermediate and long-range goals, with the projected timetable for their attainment;

(4) a statement and rationale for the plan of treatment or habilitation for achieving these intermediate and long-range goals;

(5) specification of staff responsibility and a description of the proposed staff involvement with the child client in order to attain these goals;

(6) criteria for release to less restrictive settings for treatment or habilitation, criteria for discharge and a projected date for discharge; and

(7) if the child client is an Indian child, an evaluation of the child's cultural needs and access to cultural practices and traditional treatment.

D. A treatment or habilitation plan for resident child clients shall include:

(1) mental status examination;

(2) intellectual function assessment;

(3) psychological assessment that may include the use of psychological testing;

(4) educational assessment;

(5) vocational assessment;

(6) social assessment;

(7) medication assessment; and

(8) physical assessment.

E. The individualized treatment or habilitation plan shall be available upon request to the child client, the child client's parent if the parent has custody of the child client, the child client's attorney, any mental health or developmental disabilities professional designated by the child client and the child client's guardian or treatment guardian if one has been appointed. The child client's progress in attaining the goals and objectives set forth in his individualized treatment or habilitation plan shall be monitored and noted in his records and revisions in the plan may be made as circumstances require; provided that the persons authorized by this subsection to have access to the individualized plan shall be informed of major changes and shall have the

opportunity to participate in the decision. Nothing in this subsection shall require disclosure of information to a child client or to the child's parent when the attending physician, licensed psychologist or licensed independent social worker believes that disclosure of that particular information would be damaging to the child client and so records in the child client's medical record."

Section 183

Section 183. A new Section 32-6-11 NMSA 1978 is enacted to read:

"32-6-11. EMERGENCY MENTAL HEALTH EVALUATION AND CARE.--

A. A peace officer may detain and transport a child for emergency mental health evaluation and care in the absence of a legally valid order from the court only if:

(1) the peace officer has reasonable grounds to believe the child has just attempted suicide;

(2) the peace officer, based upon personal observation and investigation, has reasonable grounds to believe that the child, as a result of a mental disorder, presents a likelihood of serious harm to himself or others and that immediate detention is necessary to prevent such
harm. The peace officer shall convey his beliefs to the admitting physician or the physician's designee immediately upon the officer's arrival at the evaluation facility;

(3) the peace officer has certification from a licensed physician, licensed psychologist or licensed independent social worker that the child, as a result of a mental disorder, presents a likelihood of serious harm to himself or others and that immediate intervention is necessary to prevent the harm; or

(4) the peace officer has an involuntary placement order issued by a tribal court that orders the child to be admitted to an evaluation facility.

B. A peace officer shall immediately transport any child detained under this section to an evaluation facility. In the case of an extreme emergency, the child may be held temporarily in an emergency placement in:

(1) a foster home licensed to provide specialized or therapeutic care;

(2) a facility operated by a licensed child welfare services agency that meets standards promulgated by the department for the care of children who present the likelihood of serious harm; or

(3) residential care on an emergency basis. The child shall be removed from an emergency placement as soon as possible and in every case within twenty-four hours.

C. Unless the child is an alleged or adjudicated delinquent child, the child shall not be held in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged or adjudicated to be delinquent children.

D. The director of an evaluation facility shall accomplish an emergency evaluation upon the request of a peace officer, a detention facility administrator or the administrator's designee or upon the certification of a licensed physician, licensed psychologist or licensed independent social worker. A court order is not required under this section. If an application is made to a court, the court's power to act in furtherance of an emergency admission shall be limited to ordering that:

(1) the child client be seen by a physician, licensed psychologist or licensed independent social worker prior to transport to an evaluation facility; and

(2) a peace officer transport the child to an evaluation facility.

E. The admitting physician or licensed psychologist shall evaluate whether reasonable grounds exist to detain the proposed child client for evaluation and treatment, and, if reasonable grounds are found, the proposed child client shall be detained. If the admitting physician or licensed psychologist determines that reasonable grounds do not exist to detain the child client for evaluation and treatment, the child client shall not be detained but shall be released to the custody of the child's parent, guardian or custodian.

F. Upon arrival at an evaluation facility, the proposed child client shall be informed orally and in writing by the evaluation facility of the purpose and possible consequences of the proceedings, the allegations in the petition, the child's right to a hearing within seven days, the child's right to counsel and the child's right to communicate with an attorney and an independent mental health professional of the child's own choosing, and shall have the right to receive necessary and appropriate treatment.

G. A peace officer who transports any child client to an evaluation facility pursuant to the provisions of this section shall not require a court order to be reimbursed by the referring county.

H. If a child is taken into custody and is not released to the child's parent, guardian or custodian, the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian and to the court together with a statement of the reason for taking the child into custody."

Section 184

Section 184. A new Section 32-6-12 NMSA 1978 is enacted to read:

"32-6-12. VOLUNTARY RESIDENTIAL TREATMENT.--

A. A child shall not receive treatment for mental disorders on a voluntary residential basis, except as provided in this section.

B. Any child twelve years of age or older may voluntarily admit himself to a residential treatment program for mental disorder for a period not to exceed sixty days, subject to the requirements of this section.

C. To have a child voluntarily admitted for residential treatment in a residential program for a mental disorder, the child and the child's parent or guardian shall knowingly and voluntarily execute, prior to admission, a child's voluntary consent to admission document. The document shall include a clear statement of the child's right to voluntarily consent or refuse to consent to his admission, his right to request an immediate discharge from the residential treatment program at any time and his rights should he request a discharge and his physician, licensed psychologist or the director of the residential treatment facility determines the child needs continued treatment. Each statement shall be clearly explained, and each statement shall be initialed by the child and his parent or guardian.

D. The child's parent, guardian, or custodian shall obtain an independent attorney for the child and shall notify the residential treatment facility of that attorney's name within seventy-two hours of the child's voluntary admission. Prior to admission, the residential treatment facility shall inform the child's parent, guardian or custodian of the duty to obtain an independent attorney for the child within seventy-two hours. If the child's parent, guardian or custodian is indigent, the parent, guardian or custodian may petition the court to appoint an attorney for the child.

E. The child's executed voluntary consent to admission document shall be filed in the patient's hospital record within twenty-four hours of the time of admission.

F. Upon the filing of the child's voluntary consent to admission document in the patient's hospital record, the director of the residential treatment program or the director's designee shall, on the next business day of the court following the child's admission, notify the district court or the special commissioner of the admission, giving the child's name, date of birth and the date and place of admission. The court or special commissioner shall, upon receipt of notice of a child's voluntary admission to a residential treatment program, establish a sequestered court file.

G. If, within seventy-two hours of the child's voluntary admission, the child has not met with an independent attorney and the child's parent, guardian or custodian has not notified the residential treatment facility of the name of the child's independent

attorney, the residential treatment facility shall, during the next business day, petition the court to appoint an attorney. When the court receives the petition, the court shall appoint an attorney. The court may order the parent to reimburse the state pursuant to the provisions of the Children's Code.

H. If, within seventy-two hours of the child's voluntary admission, the child has met with an independent attorney or the child's parent, guardian or custodian has notified the residential treatment facility of the name of the child's independent attorney, the residential treatment facility shall, during the next business day of the court, notify the court or the special commissioner of the name of the child's independent attorney.

I. Within seven days of the admission, an attorney, representing the child pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act, shall meet with the child. At the meeting with the child, the attorney shall explain to the child the following:

(1) the child's right to an attorney;

(2) the child's right to terminate his voluntary admission and the procedures to effect termination;

(3) the effect of terminating the child's voluntary admission and options of the physician and other interested parties to then petition for an involuntary admission; and

(4) the child's rights under the provisions of the Children's Mental Health and Developmental Disabilities Act, including the right to:

(a) legal representation;

(b) a presumption of competence;

(c) receive daily visitors of the child's choice;

(d) receive and send uncensored mail;

(e) have access to telephones;

(f) follow or abstain from the practice of religion;

(g) a humane and safe environment;

(h) physical exercise and outdoor exercise;

(i) a nourishing, well-balanced, varied and appetizing diet;

(j) medical treatment;

(k) educational services;

(l) freedom from unnecessary or excessive medication;

(m) individualized treatment and habilitation; and

(n) participation in the development of the individualized treatment plan and access to that plan on request.

J. If the attorney determines that the child understands his rights and that the child voluntarily and knowingly desires to remain as a patient in a residential treatment program, the attorney shall so certify on a form designated by the district court. The form, when completed by the attorney, shall be filed in the child's patient record at the residential treatment program facility, and a copy shall be forwarded to the court or special commissioner. The attorney's statement shall not identify the child by name.

K. Upon reaching the age of majority, the child, who was a voluntary admittee to a residential treatment program, may petition the district court for the records of the court regarding all mtters pertinent to his voluntary admission to a residential treatment program. The court, upon receipt of the petition and upon a determination that the petitioner was in fact the child who was a voluntary admittee to a residential treatment program, shall give all court records regarding the admission to the petitioner, including all copies in the court's possession.

L. No child, who is a person seeking voluntary admission to a residential treatment program, shall be represented or counseled by an attorney who, in the previous two years, has advised or represented the child's parents, guardians or the residential treatment facility or who would otherwise have a serious conflict of interest.

M. Any child voluntarily admitted to a residential treatment program has the right to an immediate discharge from the residential treatment program upon his request, except as provided in this section. If a child informs the director, physician or any other member of the residential treatment program staff that he desires to be discharged from the voluntary program, the director, physician or other member shall provide for the child's immediate discharge. Upon the request, the residential treatment program shall notify the child's parent, guardian or other suitable party to take custody of the child and remit the child to the parent's, guardian's or custodian's care. The residential treatment program shall also notify the child's attorney. If the child's family refuses to take physical custody of the child, the hospital shall refer the case to the department for an abuse and neglect or family in need of court-ordered services investigation. The department may take the child into custody pursuant to the provisions of the Abuse and Neglect Act or the Family in Need of Services Act. If the child's family

refuses to take physical custody of the child, the court may order an alternative living arrangement for the child and grant custody of the child to another person. In such cases, the court shall retain jurisdiction until such time as the child is placed in his family's home or attains the age of eighteen or arrangement of permanent custody is made. A child requesting immediate discharge shall be discharged, except in those situations when the director of the residential treatment program, a physician or a licensed psychologist determines that the child requires continued treatment and that the child meets the criteria for involuntary residential treatment as otherwise provided under the Children's Mental Health and Developmental Disabilities Act. In that event, the director, physician or licensed psychologist, after making the determination, shall, on the first business day following the child's request for release from the voluntary program, request that the children's court attorney initiate involuntary placement proceedings. The children's court attorney may petition for such a placement. The child has a right to a hearing on his continued treatment within seven days of his request for release.

N. A child who is a voluntary admittee to a residential treatment program shall have his voluntary admission reviewed at the end of a sixty-day period from the child's initial date of admission to the program. The review shall be accomplished by having the child's physician or licensed psychologist reviewing the child's treatment and determining whether it would be in the best interests of the child to continue the voluntary admission. If the child's physician or licensed psychologist concludes that continuation of treatment is in the child's best interests, the child's physician, licensed psychologist or licensed independent social worker shall so state in a form to be filed in the child's patient record. The residential treatment program shall notify the attorney for the child at least seven days prior to the date that the sixty-day period is to run or if necessary, request an attorney pursuant to the provisions of the Children's Mental Health and Developmental Disabilities Act. The attorney shall then personally meet with the child and ensure that the child understands his rights, as set forth in Subsection I of this section, that the child understands the method for voluntary termination of his admission and that the child knowingly and voluntarily consents to his continued treatment. If the attorney determines that the child understands these rights and that the child voluntarily and knowingly desires to remain as a patient in the residential treatment program and that the physician, licensed psychologist or licensed independent social worker has recommended the continued stay in the program, the attorney shall so certify on a form designated by the district court. The disposition of these forms shall be as set forth in this section, with one copy going in the child's patient record and the other being sent to the district court in a manner that preserves the child's anonymity. This procedure shall take place every sixty days from the last admission or attorney's certification, whichever comes first.

O. If the attorney determines that the child does not voluntarily desire to remain in the program or if the physician, licensed psychologist or licensed independent social worker of the child has not recommended continued stay by the child in the residential treatment program, the child shall be released, or the involuntary

commitment procedures of Subsection M of this section and the provisions of the Children's Mental Health and Developmental Disabilities Act shall be followed.

P. Nothing in this section shall limit the right of a child to petition the court for a writ of habeas corpus."

Section 185

Section 185. A new Section 32-6-13 NMSA 1978 is enacted to read:
"32-6-13. INVOLUNTARY RESIDENTIAL TREATMENT.--

A. No child may receive treatment for mental disorders or habilitation for developmental disabilities on an involuntary residential basis except as provided in this section.

B. Any person who believes that a child, as a result of a mental disorder or developmental disability, is in need of residential mental health or developmental disabilities services may request that a children's court attorney file a petition with the court for the child's involuntary placement. The petition shall include a detailed description of the symptoms or behaviors of the child that support the allegations in the petition; a list of prospective witnesses for involuntary placement; and a summary of matters to which they will testify. The petition should also contain a discussion of the alternatives to residential care that have been considered and the reasons for rejecting the alternatives. A copy of the petition shall be served upon the child and a copy of the petition shall be served upon a parent, legal guardian or custodian. If the child has a guardian ad litem, a copy of the petition shall be served on the child's guardian ad litem.

C. The court shall, upon receiving the petition, appoint counsel for the child, unless the child has retained an attorney, or an attorney has been appointed pursuant to the provisions of Section 32-6-12 NMSA 1978. The attorney shall represent the child at all stages of the proceedings. In no case shall the child's attorney be a person who, in the previous two years, has advised or represented either the person seeking the involuntary placement of the child or the residential treatment facility, or who would otherwise have a significant conflict of interest.

D. If, after interviewing the child client, the child's attorney determines that the child understands his rights and desires to waive the child's presence at the hearing on the issue of involuntary placement, the attorney shall submit a verified written statement to the court explaining the attorney's understanding of the child's intent. If the court is satisfied that the child has voluntarily and knowingly waived his right to be present at the hearing, the child may be involuntarily placed for residential treatment or habilitation at a hearing at which the child is not present. By waiving the right to be present at the involuntary placement hearing, the child waives no other rights.

E. An involuntary placement hearing shall be held within ten days of the appointment of counsel, or within seven days of the emergency admission of the child to

a residential facility under this section, or within seven days from a child's declaration that he desires to terminate his voluntary admission to a residential treatment program for mental disorder.

F. At the involuntary placement hearing, the child shall:

(1) at all times be represented by counsel;

(2) have the right to present evidence, including the testimony of a mental health and developmental disabilities professional of his own choosing;

(3) have the right to cross-examine witnesses;

(4) have the right to a complete record of the proceedings; and

(5) have the right to an expeditious appeal of an adverse ruling.

G. The parents, guardian or custodian of a child involved in an involuntary placement hearing shall have automatic standing as witnesses and shall be allowed to testify by telephone or through a written affidavit if circumstances make personal testimony too burdensome.

H. The court shall include in its findings either a statement of the child's parents', guardian's or custodian's opinion about whether the child should be involuntarily placed in a residential treatment program or a statement detailing the efforts made to ascertain the parent's or guardian's opinion or a statement of why it was not in the child's best interests to have the parent or guardian involved.

I. The court shall make an order involuntarily placing the child in residential care only if it is shown by clear and convincing evidence:

(1) that as a result of mental disorder or developmental disability the child needs and is likely to benefit from the treatment or habilitation services proposed; and

(2) that the proposed involuntary placement is consistent with the treatment needs of the child and with the least drastic means principle.

J. If the court determines that the child does not meet the criteria for involuntary placement set forth in Subsection I of this section, it may order the child to undergo nonresidential treatment as may be appropriate and necessary, or it may order no treatment. If the court determines that the child should not be involuntarily placed in residential care and if the child's family refuses to take the child back into the home, the court shall refer the case to the department for an abuse and neglect investigation. The department may take the child into custody pursuant to the provisions of the Abuse and Neglect Act or the Family in Need of Services Act. If the court determines that the child

should not be involuntarily placed in residential care and if the child's family refuses to take the child back into the home, the court may order an alternative living arrangement for the child and grant custody of the child to another person. In such cases, the court shall retain jurisdiction until such time as the child is placed back in the child's family's home, attains the age of eighteen or arrangement for permanent custody is made.

K. Every child receiving involuntary residential treatment for a mental disorder or developmental disability under this section shall have a right to periodic review of his involuntary placement at the end of every involuntary placement period. The involuntary placement period shall not exceed sixty days, and any involuntary placement period commencing thereafter shall not exceed six months. At the expiration of an involuntary placement period, the child may continue in residential care only after a new involuntary placement hearing, and entry of a new order of involuntary placement for one involuntary placement period.

L. Nothing in this section shall limit the right of a child to petition the court for a writ of habeas corpus.

M. If the person seeking the involuntary placement of a child to residential treatment or habilitation believes that the child is likely to cause serious bodily harm to himself or to others during the period that would be required to hold an involuntary placement hearing as provided in this section, the child may be admitted to residential care on an emergency basis. If the child is admitted on an emergency basis, appointment of counsel and other procedures shall then take place as provided elsewhere in this section.

N. Nothing set forth in the Children's Mental Health and Developmental Disabilities Act prohibits a child, who has been involuntarily placed and thereafter discharged and released, from subsequently voluntarily consenting to admission under the provisions of that act."

Section 186

Section 186. Section 32-6-14 NMSA 1978 is enacted to read:

"32-6-14. TREATMENT AND HABILITATION OF CHILDREN--LIABILITY.--

A. Any child shall have the right, with or without parental consent, to consent to and receive individual psychotherapy, group psychotherapy, guidance, counseling or other forms of verbal therapy that do not include any aversive stimuli or substantial deprivations.

B. No psychosurgery or convulsive treatment shall be performed on a child, except by order of a court upon a finding that the treatment is necessary to prevent serious harm to the child. Consent of a child or his parent to the treatment

without a courtorder shall be invalid and shall not be a defense against any legal action that might be brought against the provider of the treatment.

C. No psychotropic medications or behavior modification program shall be administered to any child client without proper consent. If the child client is capable of understanding the proposed nature of treatment and its consequences and is capable of informed consent, his consent shall be obtained before the treatment is performed.

D. Psychotropic medications and behavior modification programs may be administered to children under the age of fourteen only with the consent of the child's parent, guardian or treatment guardian. If the treatment is proposed for a child under the age of fourteen and in the custody of the state, the children's court attorney shall petition the court for the appointment of a treatment guardian. A treatment guardian may serve until the child reaches the age of fourteen.

E. Psychotropic medications and behavior modification programs may be administered to children fourteen years of age and older with the consent of the child, unless the child's parent or guardian objects. If the consent of the child is not obtained, or the child's parent or guardian objects, or if the mental health or developmental disabilities professional or physician who is proposing this or any other course of treatment or any other interested person believes that the child is incapable of informed consent, and the treatment provider or another interested person believes that the administration of the drug or program is necessary to protect the child from serious harm, any interested party may request that the children's court attorney petition the court for appointment of a treatment guardian to make a substitute decision for the child client. The petition shall be served on the child client and the child's attorney. A hearing on the petition shall be held within three court days. At the hearing, the child client shall be represented by counsel and shall have the right to be present, to present witnesses and to cross-examine opposing witnesses. If, after the hearing, the court finds that the child client is not capable of making treatment decisions, the court may order the appointment of a treatment guardian. When reasonable and appropriate, the court may appoint the child's CASA, surrogate parent or other appropriate person as the child's treatment guardian. The treatment guardian shall make a decision on behalf of the child client whether to accept treatment, depending on whether the treatment appears to be in the child client's best interest and is the least drastic means for accomplishing the treatment objective. In making this decision, the treatment guardian shall consult with the child client and consider the child's expressed opinions, if any, even if those opinions do not constitute valid consent or rejection of treatment. The treatment guardian shall give consideration to any previous decisions made by the child client in similar circumstances when the child client was able to make treatment decisions. If a child client, who is not a resident of a medical facility and for whom a treatment guardian has been appointed, refuses to comply with the decision of the treatment guardian, the treatment guardian may apply to the court for an enforcement order. The enforcement order may authorize any peace officer to take the child client into custody and to transport the child to an evaluation facility and may authorize the facility to forcibly administer treatment. The treatment guardian shall consult with the physician or other

professional who is proposing treatment, the child client's attorney and interested friends or relatives of the client as the treatment guardian deems appropriate in making this decision. A child client, physician or other professional wishing to appeal the decision of the treatment guardian may do so by filing an appeal with the court within three calendar days of receiving notice of the treatment guardian's decision. In such a decision, the child client shall be represented by
counsel. The court may overrule the treatment guardian's decision if it finds that decision to be against the best interests of the child client.

F. When the court appoints a treatment guardian, it shall specify the length of time during which the treatment guardian may exercise treatment guardian powers, up to a maximum period of one year. If, at the end of the guardianship period, the treatment guardian believes that the child client is still incapable of making treatment decisions, the treatment guardian shall petition the court for reappointment or for appointment of a new treatment guardian. The guardianship shall be extended or a new guardian shall be appointed only if the court finds the child client is, at the time of the hearing, incapable of understanding and expressing an opinion regarding treatment decisions. The child client shall be represented by counsel and shall have the right to be present and present evidence at all such hearings.

G. If during the period of a treatment guardian's power, the treatment guardian, the child client, the treatment provider, a member of the child client's family or the child client's attorney believes that the child client has regained competence to make treatment decisions, that person may petition the court for a termination of the treatment guardianship. If the court finds the child client is capable of making treatment decisions, it shall terminate the power of the treatment guardian and restore to the child client the power to make treatment decisions.

H. A treatment guardian shall only have those powers enumerated in the Children's Mental Health and Developmental Disabilities Act.

I. If a licensed physician believes that the administration of psychotropic medication is necessary to protect the child from serious harm that would occur while the provisions of this section are being satisfied, the licensed physician may administer the medication on an emergency basis. When medication is administered to a child on an emergency basis, the treating physician shall prepare and place in the child's medical records a report explaining the nature of the emergency and the reason that no treatment less drastic than administration of psychotropic medication without proper consent would have protected the child from serious harm.

J. Liability of persons providing mental health and developmental disability services to children shall be as follows:

(1) no mental health or developmental disability professional or treatment facility is required to detain, treat or provide services to a child when the child does not require detention, treatment or services;

(2) no mental health or developmental disability professional or facility may be held liable solely on the basis of misrepresentations made to them by a child seeking treatment or habilitation services or by a child's parent; provided that the professional or the facility's staff acted in good faith;

(3) nothing in the Children's Mental Health and Developmental Disabilities Act shall be construed to relieve any professional or facility from liability for negligence in the diagnosis and treatment or services provided to any child; and

(4) nothing in the Children's Mental Health and Developmental Disabilities Act shall be construed to relieve any professional or facility from duties placed on them by reporting laws relating to the detection of child abuse.

K. A parent shall be responsible for the cost of mental health services provided to the parent's child. This section does not affect the right of any child to receive free mental health or developmental disability services under any publicly supported program or the right of any parent to reimbursement from, or payment on the child's behalf by, any publicly supported program or private insurer; provided that the state shall pay no more than four hundred dollars ($400) per day for the cost of such services. The state may adjust this rate. However, any adjustment should be based on a cost analysis conducted by the department and reviewed by the legislative finance committee."

Section 187

Section 187. A new Section 32-6-15 NMSA 1978 is enacted to read:

"32-6-15. DISCLOSURE OF INFORMATION.--

A. Except as otherwise provided in the Children's Mental Health and Developmental Disabilities Act, no person shall, without the authorization of the child client, disclose or transmit any confidential information from which a person well acquainted with the child client might recognize the child client as the described person, or any code, number or other means that could be used to match the child client with confidential information regarding him.

B. Authorization from the child client shall not be required for the disclosure or transmission of confidential information in the following circumstances:

(1) when the request is from a mental health or developmental disability professional or from an employee or trainee working with mentally disordered or developmentally disabled persons, to the extent their practice, employment or training on behalf of the child client requires that they have access to the information;

(2) when the disclosure is necessary to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by the child client on himself or another;

(3) when the disclosure of the information to the parent or the legal guardian is essential for the treatment of the child;

(4) when the disclosure of the information is to the primary caregiver of the client and the disclosure is only of information necessary for the continuity of the child client's treatment in the judgment of the treating physician, licensed psychologist or licensed independent social worker who discloses the information;

(5) when the disclosure is to an insurer contractually obligated to pay part or all of the expenses relating to the treatment of the child client at the residential facility. The information disclosed shall be limited to data identifying the child client, facility and treating or supervising physician and the dates and duration of the residential treatment. It shall not be a defense to an insurer's obligation to pay that the information relating to the residential treatment of the child client, apart from information disclosed pursuant to this section, has not been disclosed to the insurer; or

(6) when the disclosure is to a protection and advocacy representative pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Act of 1991.

C. No authorization given for the transmission or disclosure of confidential information shall be effective unless it:

(1) is in writing and signed; and

(2) contains a statement of the child client's right to examine and copy the information to be disclosed, the name or title of the proposed recipient of the information and a description of the use that may be made of the information.

D. The child client has a right of access to confidential information about himself and has the right to make copies of any information and to submit clarifying or correcting statements and other documentation of reasonable length for inclusion with the confidential information. The statements and other documentation shall be kept with the relevant confidential information, shall accompany it in the event of disclosure and shall be governed by the provisions of this section to the extent the statements or other documentation contain confidential information. Nothing in this subsection shall prohibit the denial of access to the records when a physician or other mental health or developmental disabilities professional believes and notes in the child client's medical records that the disclosure would not be in the best interests of the child client. In any case, the child client has the right to petition the court for an order granting access.

E. When there exists evidence that the child client whose consent to disclosure of confidential information is sought is incapable of giving or withholding valid consent and the child client does not have a guardian or treatment guardian appointed by a court, the person seeking the authorization shall petition the court for the appointment of a treatment guardian to make a substitute decision for the child client, except that if the child client is less than fourteen years of age, the child client's parent or guardian is authorized to consent to disclosure on behalf of the child client.

F. Information concerning a child client disclosed under this section shall not be released to any other person, agency or governmental entity or placed in files or computerized data banks accessible to any persons not otherwise authorized to obtain information under this section.

G. Nothing in the Children's Mental Health and Developmental Disabilities Act shall limit the confidentiality rights afforded by federal statute or regulation.

H. Nothing in this section shall prohibit a clerk of a district court from providing, to any person authorized under Sections 47-4-1 through 47-4-8 NMSA 1978 to conduct abstracter's business or any person authorized pursuant to Chpter 59A NMSA 1978 to conduct business as a title insurer or title insurance agent within New Mexico, information concerning the appointment of a guardian or conservator pursuant to Sections 45-5-201 through 45-5-432 NMSA 1978; provided that the information shall be limited to:

(1) docket entries;

(2) date of the proceeding, appointment and termination;

(3) duration and type of the guardianship or conservatorship;

(4) limitations, if any, on the powers of the guardian or conservator; and

(5) the name and other information necessary to identify the ward; provided, however, the disclosure shall not include any diagnostic treatment or other medical information."

Section 188

Section 188. A new Section 32-6-16 NMSA 1978 is enacted to read:

"32-6-16. SPECIAL COMMISSIONER.--The court may conduct the proceedings required by the Children's Mental Health and Developmental Disabilities Act, or may, by general or special order, appoint a special commissioner to do so. The special commissioner shall be a licensed attorney. Upon conclusion of the hearing, the special commissioner shall file his findings and recommendations with the court promptly."

Section 189

Section 189. A new Section 32-6-17 NMSA 1978 is enacted to read:

"32-6-17. CONVALESCENT STATUS--REHOSPITALIZATION.--

A. The head of a residential facility may release an improved involuntary child client on convalescent status when the head of the facility believes that the release is in the best interests of the child client. Release on convalescent status shall include provisions for continuing responsibility to and of the hospital. Prior to the expiration of the child client's involuntary placement period, the director of the residential facility shall re-examine the facts relating to the involuntary placement of the child client on convalescent status and, if the director determines that in view of the condition of the child client, involuntary placement is no longer appropriate, the director shall discharge the child client.

B. Prior to the discharge, the director of the residential facility from which the child client is given convalescent status may at any time re-admit the child client. If there is reason to believe that the child client requires rehospitalization, the director of the residential facility may issue an order for the immediate return of the child client. The order, if not voluntarily complied with, shall, upon order by a judge of the district court of the county in which the child client is resident or present, authorize any peace officer to take the child client into custody and transport the child to the residential facility."

Section 190

Section 190. A new Section 32-6-18 NMSA 1978 is enacted to read:

"32-6-18. TRANSPORTATION.--Whenever a proposed child client is to be committed to a residential mental health or developmental disability facility, or to be returned to the facility during placement, the court ordering the placement or authorizing the return of the child client may direct the sheriff, the state police or other appropriate persons to furnish suitable transportation in order to effect the placement or return, contacting the department for directions as to the destination of the child client."

Section 191

Section 191. A new Section 32-6-19 NMSA 1978 is enacted to read:

"32-6-19. VIOLATION OF CHILD CLIENT'S RIGHTS.--Any child client who believes that his rights, as established by the Children's Mental Health and Developmental Disabilities Act or by the constitution of the United States or of New Mexico, have been violated shall have a right to petition the court for redress. The child client shall be represented by counsel. The court shall grant relief as is appropriate, subject to the provisions of the Tort Claims Act."

Section 192

Section 192. A new Section 32-6-20 NMSA 1978 is enacted to read:

"32-6-20. COST OF CARE.--Child clients who are indigent may receive care and treatment at state-operated facilities without charge. The governing authorities of the facilities may require payment for the cost of care and treatment from all others pursuant to established fee schedules based on ability to pay."

Section 193

Section 193. A new Section 32-6-21 NMSA 1978 is enacted to read:

"32-6-21. RECOGNITION OF TRIBAL COURT INVOLUNTARY PLACEMENT ORDERS.--

A. Notwithstanding the provisions of any other law to the contrary, an involuntary placement order for a child issued by a tribal court shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. The involuntary placement order shall be filed with the clerk of the district court. The supreme court may adopt rules regarding district court recognition and enforcement of involuntary placement orders issued by tribal courts.

B. A child placed in an evaluation facility pursuant to the provisions of Subsection A of this section shall be subject to the continuing jurisdiction of the tribal court; provided that any decisions regarding discharge or release of the child from the evaluation facility shall be made by the administrator of that facility. Prior to discharging or releasing a child, the administrator of the evaluation facility shall notify the tribal court of the administrator's intention to discharge or release the child.

C. When an Indian child is placed in an evaluation facility pursuant to the provisions of Subsection A of this section, any out-patient treatment of the Indian child shall be provided for pursuant to the provisions of an intergovernmental agreement entered into by the Indian child's tribe and the department of health.

D. When an Indian child requires emergency mental health treatment, that treatment shall be provided pursuant to the provisions of Section 32-6-11 NMSA 1978."

Section 194

Section 194. A new Section 32-7-1 NMSA 1978 is enacted to read:

"32-7-1. SHORT TITLE.--Chapter 32, Article 7 NMSA 1978 may be cited as the "Juvenile Parole Board Act"."

Section 195

Section 195. A new Section 32-7-2 NMSA 1978 is enacted to read:

"32-7-2. JUVENILE PAROLE BOARD--TERMS--DIRECTOR.--

A. The "juvenile parole board" is created, consisting of three members appointed by the governor. The juvenile parole board is administratively attached to the department. The terms of members of the board shall be six years.

B. A director will be appointed by the governor as the administrative officer of the juvenile parole board. The director shall employ other staff as is necessary to carry out the duties of the board. Employees shall be employed in classified positions and shall be subject to the provisions of the Personnel Act."

Section 196

Section 196. A new Section 32-7-3 NMSA 1978 is enacted to read:

"32-7-3. REMOVAL--VACANCIES.--Members of the juvenile parole board may be removed by the governor as provided in Article 5, Section 5 of the constitution of New Mexico. Vacancies shall be filled by the governor for the remainder of the unexpired term."

Section 197

Section 197. A new Section 32-7-4 NMSA 1978 is enacted to read:

"32-7-4. QUALIFICATIONS OF BOARD.--Members of the board shall be persons qualified by education or professional training in such fields as criminology, education, psychology, psychiatry, law, social work or sociology. No member of the board shall be an official or employee of any federal, state or local governmental entity."

Section 198

Section 198. A new Section 32-7-5 NMSA 1978 is enacted to read:

"32-7-5. CHAIRPERSON.--The governor shall designate one member of the board to serve as chairperson."

Section 199

Section 199. A new Section 32-7-6 NMSA 1978 is enacted to read:

"32-7-6. POWERS AND DUTIES OF THE BOARD.--

A. The juvenile parole board shall have the powers and duties to:

(1) grant, deny or revoke parole for children;

(2) conduct or cause to be conducted investigations, examinations, interviews, hearings and other proceedings as may be necessary for the effectual discharge of the duties of the board;

(3) summon witnesses, books, papers, reports, documents or tangible things and administer oaths as may be necessary for the effectual discharge of the duties of the board;

(4) maintain records of its acts, decisions and orders and notify each agency affected by its decisions;

(5) adopt an official seal of which the courts shall take judicial notice;

(6) adopt a written policy specifying the criteria to be considered by the board in determining whether to grant, deny or revoke parole or to discharge a child from parole;

(7) adopt rules and regulations as may be necessary for the effectual discharge of the duties of the board; and

(8) contract or otherwise provide for services, supplies, equipment, office space and other provisions as are necessary to effectively discharge the duties of the board.

B. At least thirty days before ordering any parole, the juvenile parole board shall notify the children's court judge of the judicial district from which legal custody of the child was transferred. The judge may express his views on the child's prospective parole, either in writing or personally, to the board, but the final parole decision shall be that of the board. A copy of the final parole decision shall be filed with the court of original jurisdiction. In the event venue has been transferred pursuant to Section 32-1-8 NMSA 1978, a copy of the board's decision shall also be filed with the children's court to which venue has been transferred.

C. Before ordering the parole of any child, the juvenile parole board shall personally interview the child. The board shall furnish to each child paroled a written statement of the conditions of parole, which conditions shall be acknowledged by the child and his parent, custodian or guardian.

D. The juvenile parole board shall provide the child and his parent, custodian or guardian with a written statement of the reason for denying parole within forty-eight hours after the hearing."

Section 200

Section 200. A new Section 32-7-7 NMSA 1978 is enacted to read:

"32-7-7. COMPENSATION.--The members of the juvenile parole board shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Section 201

Section 201. A new Section 32-7-8 NMSA 1978 is enacted to read:

"32-7-8. PAROLE ELIGIBILITY.--

A. A child is eligible to appear before the juvenile parole board forty days after the enry of a judgment transferring legal custody to an agency for the care and rehabilitation of delinquent children, unless recommended for an earlier appearance by the agency responsible for such care and rehabilitation.

B. In the event parole is denied, the child shall be eligible for review sixty days thereafter.

C. The juvenile parole board may review the case of any child upon its own motion at any time after parole is denied.

D. The provisions of the Juvenile Parole Board Act apply to all children who, on the effective date of that act, are on parole or eligible to be placed on parole with the same effect as if that act had been in effect at the time they were placed on parole or became eligible to be placed on parole."

Section 202

Section 202. A new Section 32-7-9 NMSA 1978 is enacted to read:

"32-7-9. ACCESS.--The juvenile parole board shall have access at all reasonable times to any child over whom the board has jurisdiction under the Juvenile Parole Board Act and any records pertaining to the child. The agency to which legal custody was transferred shall also provide the board with facilities for communicating with and interviewing children."

Section 203

Section 203. A new Section 32-8-1 NMSA 1978 is enacted to read:

"32-8-1. SHORT TITLE.--Chapter 32, Article 8 NMSA 1978 may be cited as the "Citizen Substitute Care Review Act"."

Section 204

Section 204. A new Section 32-8-2 NMSA 1978 is enacted to read:

"32-8-2. PURPOSE OF ACT.--The purpose of the Citizen Substitute Care Review Act is to provide a permanent system for independent and objective monitoring of children placed in the custody of the department."

Section 205

Section 205. A new Section 32-8-3 NMSA 1978 is enacted to read:

"32-8-3. IMPLEMENTATION OF ACT.--The department of finance and administration shall maintain and fund a contract with a nonprofit organization having a demonstrated knowledge of the problem of children in substitute care and the issues in permanency planning to operate a statewide system of local substitute care review boards."

Section 206

Section 206. A new Section 32-8-4 NMSA 1978 is enacted to read:

"32-8-4. STATE ADVISORY COMMITTEE--MEMBERS--COMPENSATION--RESPONSIBILITIES.--

A. A state advisory committee shall be composed of three persons with expertise in the area of substitute care, appointed by the secretary of finance and administration, and also one representative of each local substitute care review board. Each local board shall select its representative to the state advisory committee in accordance with procedures established by that committee. No person employed by the department or a district court may serve on the state advisory committee.

B. Terms of office of local substitute care review board members of the state advisory committee shall be coterminous with their terms as members of the local boards. Terms of office of members who are appointed by the secretary of finance and administration shall be for three years; provided, however, that appointment of the first state advisory committee members shall be to staggered terms so that one member shall serve for a term of three years, one member shall serve for a term of two years and one member shall serve for a term of one year. The term of each member shall expire on June 30 of the appropriate year. In the event that a vacancy occurs among the members of the state advisory committee appointed by the secretary of finance and administration, the secretary shall appoint another person to serve the unexpired portion of the term.

C. The state advisory committee shall select a chairperson, a vice chairperson, an executive committee and other officers as it deems necessary.

D. The state advisory committee shall meet no less than twice annually and more frequently upon the call of the chairperson or as the executive committee may determine. The state advisory committee is authorized to adopt reasonable rules relating to the functions and procedures of the local substitute care review boards and the state advisory committee in accordance with the duties of the boards as provided in the Citizen Substitute Care Review Act. These rules shall include guidelines for the determination of the appropriate type of review and the information needed for all cases to be monitored by the local substitute care review boards. The state advisory committee shall review and coordinate the activities of the local substitute care review boards and make recommendations to the department, the courts and the legislature, on or before January 1 of each year, regarding statutes, policies and procedures relating to substitute care.

E. State advisory committee members shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Section 207

Section 207. A new Section 32-8-5 NMSA 1978 is enacted to read:

"32-8-5. LOCAL BOARDS--APPOINTMENTS--EXCLUSION--TERMS--TRAINING--COMPENSATION--MEETINGS.--

A. The contractor, selected by the department of finance and administration pursuant to the provisions of Section 32-8-3 NMSA 1978, shall establish and maintain local substitute care review boards to review, as provided in the Citizen Substitute Care Review Act, the disposition of children in the custody of the department prior to judicial review. Each board shall, to the maximum extent feasible, represent the various socioeconomic, racial and ethnic groups of the community that they serve.

B. Criteria for membership and tenure on local substitute care review boards shall be determined by the state advisory committee, after consultation with the department of finance and administration and the contractor. No person employed by the department of finance and administration, the department or a district court may serve on a local substitute care review board.

C. Each local substitute care review board shall elect a chairperson, a vice chairperson and other officers as it deems necessary.

D. Local substitute care review board members may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Section 208

Section 208. A new Section 32-8-6 NMSA 1978 is enacted to read:

"32-8-6. CITIZEN REVIEW BOARD REVIEWS OF DISPOSITIONAL JUDGMENTS.--

A. Prior to any judicial review by the court pursuant to Section 32-4-23 NMSA 1978, the local substitute care review board shall review any dispositional order or the continuation of the order and the department's progress report on the child and submit a report to the court. The parties in the children's court proceedings shall be given prior notice of the review board meeting and be afforded the opportunity to participate fully in the meeting.

B. The report of the local substitute care review board submitted to the court pursuant to this section shall become a part of the child's permanent court record."

Section 209

Section 209. A new Section 32-8-7 NMSA 1978 is enacted to read:

"32-8-7. TEMPORARY PROVISIONS--TRANSFER--FUNDS--CONTRACTS.--

A. On the effective date of the Children's Code, all records, personnel, money, property, equipment and supplies of the department relating to the Citizen Substitute Care Review Act shall be transferred to the department of finance and administration.

B. On the effective date of the Children's Code, all appropriations, contract funds and funds for contract administration and staff, the cost of advisory committee per diem and travel, training and all other costs relating to the Citizen Substitute Care Review Act shall be transferred from the department to the department of finance and administration.

C. On the effective date of the Children's Code all existing rules and regulations, contracts and agreements in effect with the department for providing a statewide system of local substitute care review boards shall be binding and effective on the department of finance and administration."

Section 210

Section 210. TEMPORARY PROVISION--RECOMPILATION.--Sections 32-2A-1 through 32-2A-7 NMSA 1978 (being Laws 1978, Chapter 108, Sections 1 through 7, as amended) are recompiled as Sections 32-9-1 through 32-9-7 NMSA 1978.

Section 211

Section 211. TEMPORARY PROVISION--RECOMPILATION.--Sections 32-3-1 through 32-3-8 NMSA 1978 (being Laws 1973, Chapter 238, Sections 1 through 8, as amended) are recompiled as Sections 32-10-1 through 32-10-8 NMSA 1978.

Section 212

Section 212. TEMPORARY PROVISION--RECOMPILATION.--Sections 32-4-1 through 32-4-7 NMSA 1978 (being Laws 1977, Chapter 151, Sections 1 through 7, as amended) are recompiled as Sections 32-11-1 through 32-11-7 NMSA 1978.

Section 213

Section 213. TEMPORARY PROVISION--RECOMPILATION.--Sections 32-5-1 and 32-5-2 NMSA 1978 (being Laws 1979, Chapter 227, Sections 1 and 2, as amended) are recompiled as Sections 32-12-1 and 32-12-2 NMSA 1978.

Section 214

Section 214. TEMPORARY PROVISION--RECOMPILATION.--Sections 32-6-1 through 32-6-3 NMSA 1978 (being Laws 1979, Chapter 300, Sections 1 through 3, as amended) are recompiled as Sections 32-13-1 through 32-13-3 NMSA 1978.

Section 215

Section 215. TEMPORARY PROVISION--RECOMPILATION.--Sections 32-8-1 through 32-8-4 NMSA 1978 (being Laws 1987, Chapter 25, Sections 1 through 4) are recompiled as Sections 32-14-1 through 32-14-4 NMSA 1978.

Section 216

Section 216. TEMPORARY PROVISION--RECOMPILATION.--Sections 32-9-1 through 32-9-4 NMSA 1978 (being Laws 1985, Chapter 103, Sections 1 through 4, as amended) are recompiled as Sections 32-15-1 through 32-15-4 NMSA 1978.

Section 217

Section 217. TEMPORARY PROVISION--RECOMPILATION.--Sections 32-10-1 through 32-10-4 NMSA 1978 (being Laws 1989, Chapter 290, Sections 1 through 4, as amended) are recompiled as Sections 32-16-1 through 32-16-4 NMSA 1978.

Section 218

Section 218. A new Section 32-17-1 NMSA 1978 is enacted to read:

"32-17-1. SHORT TITLE.--Chapter 32, Article 17 NMSA 1978 may be cited as the "Family Preservation Act"."

Section 219

Section 219. A new Section 32-17-2 NMSA 1978 is enacted to read:

"32-17-2. DEFINITIONS.--As used in the Family Preservation Act, "family preservation services" means short term, intensive services provided to a family whose child may reasonably be expected to face out-of-home placement that are designed to teach a family new skills to help the family remain intact and able to care for the child at home."

Section 220

Section 220. A new Section 32-17-3 NMSA 1978 is enacted to read:

"32-17-3. ELIGIBILITY.--Family preservation services may be provided, considering available resources, to a family whose child is at-risk for placement as:

A. an abused child;

B. a neglected child;

C. a child of a family in need of services;

D. an emotionally disturbed child; or

E. a delinquent child."

Section 221

Section 221. A new Section 32-17-4 NMSA 1978 is enacted to read:
"32-17-4. SERVICE DELIVERY.--

A. The department shall coordinate and implement the provision of family preservation services. The state department of public education shall assist the department by identifying children in public schools who are at risk for the purpose of making family preservation services available to the families of those children. The department shall ensure the statewide quality of family preservation services by:

(1) providing standards and policies for family preservation services that are family-centered and that identify family strengths;

(2) monitoring the provision of family preservation services to ensure that the services satisfy standards established by the department;

(3) providing training for persons who provide family preservation services; and

(4) establishing a standardized in-take process for the purpose of rapidly assessing the needs of a child and family referred for family preservation services.

B. A person who works in a family preservation services program shall:

(1) provide family preservation services in the family's home or any other natural setting;

(2) provide direct crisis intervention and therapeutic services, to be available twenty-four hours per day, seven days a week, as needed for each family;

(3) assist with the solution of practical problems that contribute to family stress, so as to affect improved parental performance and enhanced functioning of the family unit; and

(4) arrange for additional assistance, to the extent of available resources, for the family, including housing, child care, education and training, emergency cash grants, state and federally funded public assistance or any other basic support or social service appropriate for the family."

Section 222

Section 222. A new Section 32-17-5 NMSA 1978 is enacted to read:

"32-17-5. QUALIFICATIONS.--A person who provides family preservation services shall have appropriate training, experience, supervision and continuing education to carry out his duties."

Section 223

Section 223. A new Section 32-17-6 NMSA 1978 is enacted to read:

"32-17-6. EVALUATION.--The secretary of the department shall conduct an annual evaluation of family preservation services and the data collected during the

evaluation shall be compiled in a manner that promotes comparison with data collected from similar programs in other states."

Section 224

Section 224. A new Section 32-18-1 NMSA 1978 is enacted to read:

"32-18-1. CULTURAL RECOGNITION.--

A. A person who serves as a judge, prosecutor, guardian ad litem, treatment guardian, court appointed attorney, court appointed special advocate, foster parent, mental health commissioner or mental health treatment service provider for a child subject to an abuse or neglect petition, a family in need of services petition or a mental health placement shall receive periodic training, to the extent of available resources, to develop his knowledge about children, the physical and psychological formation of children and the impact of ethnicity on a child's needs. Institutions that serve children and their families shall, considering available resources provide similar training to institutional staff.

B. The training shall include study of:

(1) cross-cultural dynamics and sensitivity;

(2) child development;

(3) family composition and dynamics;

(4) parenting skills and practices;

(5) culturally appropriate treatment plans; and

(6) alternative health practices."

Section 225. A new Section 32-18-2 NMSA 1978 is enacted to read:

"32-18-2. COORDINATION OF TRAINING.--The department shall coordinate the training required pursuant to the provisions of Section 32-18-1 NMSA 1978."

Section 226

Section 226. A new Section 32-18-3 NMSA 1978 is enacted to read:

"32-18-3. DELINQUENCY PROCEEDING--TRAINING REQUIRED FOR PERSON WHO REPRESENTS A CHILD.--A person who represents a child during a delinquency proceeding shall participate in the training required pursuant to the provisions of Section 32-18-1 NMSA 1978."

Section 227

Section 227. A new Section 32-18-4 NMSA 1978 is enacted to read:

"32-18-4. CULTURAL AWARENESS.--

A. An Indian child placed in foster care, pre-adoptive placement, adoptive placement or a secure facility shall be allowed to maintain his cultural ties and shall be permitted to participate in activities that strengthen cultural awareness.

B. An Indian child placed in a secure facility shall be permitted to participate in activities that strengthen cultural awareness. A representative of the child's culture shall be allowed access to the secure facility to provide activities that strengthen cultural awareness; provided that the activities are restricted to the premises of the secure facility."

Section 228

Section 228. A new Section 32-19-1 NMSA 1978 is enacted to read:

"32-19-1. QUALITY ASSURANCE OFFICE.--

A. By August 1, 1993, the department shall establish a quality assurance office under the office of the secretary.

B. The purpose of the quality assurance office shall be to assist department efforts to efficiently achieve the purposes of the Children's Code.

C. In order to measure the quality of services provided, to facilitate satisfactory outcomes for children and families that receive services and to provide a continuing opportunity to change and improve service delivery, the quality assurance office shall:

(1) establish an accessible system for receiving and resolving complaints and grievances;

(2) perform periodic investigations and evaluations to assure compliance with the Children's Code and other applicable state and federal laws and regulations;

(3) monitor indicators of the department's performance and determine whether the department is:

(a) providing children and families with individualized, needs-based service plans;

(b) providing services in a timely manner; and

(c) in compliance with applicable state and federal laws and regulations;

(4) identify deficiencies and recommend corrective action to the secretary of the department; and

(5) have access to any records maintained by the department, including confidential information.

D. The quality assurance office shall annually produce public reports assessing the performance of the department. The report shall not disclose the identity of any individual mentioned in the report, including children or families that receive or are eligible for services or any department employee."

Section 229

Section 229. A new Section 32-20-1 NMSA 1978 is enacted to read:

"32-20-1. UNIFORM CASE NUMBERING SYSTEM.--

A. As used in this section, "uniform case numbering system" means a system of referring to cases of alleged child abuse or neglect, including child sexual abuse, to allow only one numerical designation to be assigned to each case of child abuse or neglect. The uniform case numbering system shall provide for uniform reference to each case by all state agencies and organizations supported by state funds.

B. In any investigation, intervention or disposition of a case involving child abuse or neglect, including child sexual abuse, a uniform case number shall be assigned to the investigation and shall be maintained and referred to by all persons or agencies having occasion to become involved in any way in the investigation, intervention or disposition of the case.

C. A uniform case numbering system shall be devised, proposed and, after opportunity for public input, adopted by:

(1) the department;

(2) the secretary of public safety or his designee;

(3) the secretary of the department or his designee;

(4) the secretary of health or his designee; (5) the superintendent of public instruction or his designee;

(6) the chief justice of the supreme court or his designee; and

(7) a representative of the elected or appointed district attorneys.

D. The data collected in connection with the uniform case numbering system shall be limited to the names of the alleged offender and alleged victim, the date of the alleged occurrence and a unique case number which encodes the county of the alleged offense, the type of alleged offense and the case disposition, if known. The names of the alleged offender and alleged victim shall be purged as soon as the uniform case number is disseminated to all agencies involved in investigation and rehabilitative service provision in that case, or within six months of the date the uniform case number is assigned, whichever is first."

Section 230

Section 230. A new section of Chapter 33, Article 1 is enacted to read:

"VULNERABLE YOUTHFUL OFFENDERS PROGRAM--PREVENTION OF VICTIMIZATION.--
A. The corrections department may develop and implement a special program for certain male and female offenders that have been identified by the department as being vulnerable youthful offenders who, if not provided with a special program, would be vulnerable to victimization by inmates and subject to unusual or extraordinary mental or physical harassment, intimidation, harm or injury.

B. The program, if created, shall provide, considering the availability of resources, the program needs of the vulnerable youthful offender."

Section 231

Section 231. Section 43-1-3 NMSA 1978 (being Laws 1977, Chapter 279, Section 2, as amended) is amended to read:

"43-1-3. DEFINITIONS.--As used in the Mental Health and Developmental Disabilities Code:

A. "aversive stimuli" means anything which, because it is believed to be unreasonably unpleasant, uncomfortable or distasteful to the client, is administered or done to the client for the purpose of reducing the frequency of a behavior, but does not include verbal therapies, physical restrictions to prevent imminent harm to self or others or psychotropic medications which are not used for purposes of punishment;

B. "client" means any patient who is requesting or receiving mental health services or any person requesting or receiving developmental disabilities services or who is present in a mental health or developmental disabilities facility for the purpose of

receiving such services or who has been placed in a mental health or developmental disabilities facility by his parent or guardian or by any court order;

C. "code" means the Mental Health and Developmental Disabilities Code;

D. "consistent with the least drastic means principle" means that the habilitation or treatment and the conditions of habilitation or treatment for the client, separately and in combination:

(1) are no more harsh, hazardous or intrusive than necessary to achieve acceptable treatment objectives for the client;

(2) involve no restrictions on physical movement and no requirement for residential care except as reasonably necessary for the administration of treatment or for the protection of the client or others from physical injury; and

(3) are conducted at the suitable available facility closest to the client's place of residence;

E. "convulsive treatment" means any form of mental health treatment which depends upon creation of a convulsion by any means, including but not limited to electroconvulsive treatment and insulin coma treatment;

F. "court" means a district court of New Mexico;

G. "department" means the behavioral health services division of the department of health;

H. "developmental disability" means a disability of a person which is attributable to mental retardation, cerebral palsy, autism or neurological dysfunction which requires treatment or habilitation similar to that provided to persons with mental retardation;

I. "evaluation facility" means a community mental health or developmental disability program, a medical facility having psychiatric or developmental disability services available, including the Las Vegas medical center, the Los Lunas hospital and training school or, if none of the foregoing is reasonably available or appropriate, the office of a licensed physician or a certified psychologist, any of which shall be capable of performing a mental status examination adequate to determine the need for involuntary treatment;

J. "experimental treatment" means any mental health or developmental disabilities treatment which presents significant risk of physical harm, but does not include accepted treatment used in competent practice of medicine and psychology and supported by scientifically acceptable studies;

K. "grave passive neglect" means failure to provide for basic personal or medical needs or for one's own safety to such an extent that it is more likely than not that serious bodily harm will result in the near future;

L. "habilitation" means the process by which professional persons and their staff assist the
developmentally disabled client in acquiring and maintaining those skills and behaviors which enable him to cope more effectively with the demands of his own person and of his environment and to raise the level of his physical, mental and social efficiency. "Habilitation" includes but is not limited to programs of formal, structured education and treatment;

M. "likelihood of serious harm to oneself" means that it is more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to himself by violent or other self-destructive means, including but not limited to grave passive neglect;

N. "likelihood of serious harm to others" means that it is more likely than not that in the near future the person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the person;

O. "mental disorder" means the substantial disorder of the person's emotional processes, thought or cognition which grossly impairs judgment, behavior or capacity to recognize reality, but does not mean developmental disability;

P. "mental health or developmental disabilities professional" means a physician or other professional who by training or experience is qualified to work with individuals with mental disorders or developmental disabilities;

Q. "physician" or "certified psychologist", when used for the purpose of hospital admittance or discharge, means a physician or certified psychologist who has been granted admitting privileges at a hospital licensed by the department of health, if such privileges are required;

R. "psychosurgery" means those operations currently referred to as lobotomy, psychiatric surgery and behavioral surgery, and all other forms of brain surgery if the surgery is performed for the purpose of the following:

(1) modification or control of thoughts, feelings, actions or behavior rather than the treatment of a known and diagnosed physical disease of the brain;

(2) treatment of abnormal brain function or
normal brain tissue in order to control thoughts, feelings, actions or behavior; or

(3) treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions or behavior.

"Psychosurgery" does not include prefrontal sonic treatment in which there is no destruction of brain tissue;

S. "residential treatment or habilitation program" means diagnosis, evaluation, care, treatment or habilitation rendered inside or on the premises of a mental health or developmental disabilities facility, hospital, clinic, institution or supervisory residence or nursing home when the individual resides on the premises;

T. "treatment" means any effort to accomplish a significant change in the mental or emotional condition or behavior of the client; and

U. "division" means the behavioral health services division of the department of health."

Section 232

Section 232. Section 43-1-9 NMSA 1978 (being Laws 1977, Chapter 279, Section 8, as amended) is amended to read:

"43-1-9. INDIVIDUALIZED TREATMENT OR HABILITATION PLANS.--

A. An individualized treatment or habilitation plan shall be prepared within fourteen days of a client's admission to residential treatment or services.

B. Each client shall, to the maximum extent possible, be involved in the preparation of his own individualized treatment or habilitation plan.

C. Each individualized treatment or habilitation plan shall include:

(1) a statement of the nature of the specific problem and the specific needs of the client;

(2) a statement of the least restrictive conditions necessary to achieve the purposes of treatment or habilitation;

(3) a description of intermediate and long-range goals, with the projected timetable for their attainment;

(4) a statement and rationale for the plan of treatment or habilitation for achieving these intermediate and long-range goals;

(5) specification of staff responsibility and a description of the proposed staff involvement with the client in order to attain these goals; and

(6) criteria for release to less restrictive settings for treatment or habilitation, criteria for discharge and a projected date for discharge.

D. A treatment or habilitation plan for resident clients shall include:

(1) mental status examination;

(2) intellectual function assessment;

(3) psychological assessment, which may include the use of psychological testing;

(4) educational assessment;

(5) vocational assessment;

(6) social assessment;

(7) medication assessment; and

(8) physical assessment.

E. The individualized treatment or habilitation plan shall be available upon request to the following persons: the client; the client's attorney; any mental health or developmental disabilities professional designated by the client; and the client's guardian or treatment guardian if one has been appointed. The client's progress in attaining the goals and objectives set forth in his individualized treatment or habilitation plan shall be monitored and noted in his records, and revisions in the plan may be made as circumstances require; provided that the persons authorized by this subsection to have access to the individualized plan shall be informed of major changes and shall have the opportunity to participate in such decision. Nothing in this subsection shall require disclosure of information to a client or to his parent when the attending physician or certified psychologist believes that disclosure of that particular information would be damaging to the client and so records in the client's medical record."

Section 233

Section 233. Section 43-1-19 NMSA 1978 (being Laws 1977, Chapter 279, Section 18, as amended) is amended to read:

"43-1-19. DISCLOSURE OF INFORMATION.--

A. Except as otherwise provided in the code, no person shall, without the authorization of the client, disclose or transmit any confidential information from which a person well acquainted with the client might recognize the client as the described person, or any code, number or other means which can be used to match the client with confidential information regarding him.

B. Authorization from the client shall not be required for the disclosure or transmission of confidential information in the following circumstances:

(1) when the request is from a mental health or developmental disability professional or from an employee or trainee working with mentally disordered or developmentally disabled persons, to the extent their practice, employment or training on behalf of the client requires that they have access to such information;

(2) when such disclosure is necessary to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by the client on himself or another;

(3) when the disclosure of such information is to the primary caregiver of the client and the disclosure is only of information necessary for the continuity of the client's treatment in the judgment of the treating physician or certified psychologist who discloses the information; or

(4) when such disclosure is to an insurer contractually obligated to pay part or all of the expenses relating to the treatment of the client at the residential facility. The information disclosed shall be limited to data identifying the client, facility and treating or supervising physician and the dates and duration of the residential treatment. It shall not be a defense to an insurer's obligation to pay that the information relating to the residential treatment of the client, apart from information disclosed pursuant to this section, has not been disclosed to th insurer.

C. No authorization given for the transmission or disclosure of confidential information shall be effective unless it:

(1) is in writing and signed; and

(2) contains a statement of the client's right to examine and copy the information to be disclosed, the name or title of the proposed recipient of the information and a description of the use which may be made of the information.

D. The client has a right of access to confidential information about himself and has the right to make copies of any information and to submit clarifying or correcting statements and other documentation of reasonable length for inclusion with the confidential information. The statements and other documentation shall be kept with the relevant confidential information, shall accompany it in the event of disclosure and shall be governed by the provisions of this section to the extent they contain confidential

information. Nothing in this subsection shall prohibit the denial of access to such records when a physician or other mental health or developmental disabilities professional believes and notes in the client's medical records that such disclosure would not be in the best interests of the client. In any such case, the client has the right to petition the court for an order granting such access.

E. Where there exists evidence that the client whose consent to disclosure of confidential information is sought is incapable of giving or withholding valid consent and the client does not have a guardian or treatment guardian appointed by a court, the person seeking such authorization shall petition the court for the appointment of a treatment guardian to make a substitute decision for the client, except that if the client is less than fourteen years of age, the client's parent or guardian is authorized to consent to disclosure on behalf of the client.

F. Information concerning a client disclosed under this section shall not be released to any other person, agency or governmental entity or placed in files or computerized data banks accessible to any persons not otherwise authorized to obtain information under this section.

G. Nothing in the code shall limit the confidentiality rights afforded by federal statute or regulation.

H. Nothing in this section shall prohibit a clerk of a district court from providing, to any person authorized under Sections 47-4-1 through 47-4-8 NMSA 1978 to conduct abstracter's business or any person authorized pursuant to Chapter 59A NMSA 1978 to conduct business as a title insurer or title insurance agent within New Mexico, information concerning the appointment of a guardian or conservator pursuant to Sections 45-5-201 through 45-5-432 NMSA 1978; provided that such information shall be limited to:

(1) docket entries;

(2) date of the proceeding, appointment and termination;

(3) duration and type of the guardianship or conservatorship;

(4) limitations, if any, on the powers of the guardian or conservator; and

(5) the name and other information necessary to identify the ward; provided, however, such disclosure shall not include any diagnostic treatment or other medical information."

Section 234

Section 234. REPEAL.--

A. Sections 32-1-1 through 32-1-59 NMSA 1978 (being Laws 1972, Chapter 97, Sections 1 through 14, Laws 1973, Chapter 360, Sections 2 and 3, Laws 1972, Chapter 97, Sections 15 through 23, Laws 1981, Chapter 36, Section 20, Laws 1972, Chapter 97, Sections 24 through 26, Laws 1981, Chapter 36, Sections 38 and 39, Laws 1972, Chapter 97, Section 27, Laws 1975, Chapter 320, Section 4, Laws 1972, Chapter 97, Sections 28 and 29, Laws 1981, Chapter 36, Section 37, Laws 1972, Chapter 97, Sections 30 through 35, Laws 1981, Chapter 36, Section 40, Laws 1982, Chapter 16, Section 1, Laws 1972, Chapter 97, Sections 36 through 40, Laws 1981, Chapter 36, Section 31, Laws 1972, Chapter 97, Section 42, Laws 1989, Chapter 60, Section 1, Laws 1972, Chapter 97, Sections 43 and 44, Laws 1977, Chapter 192, Section 1, Laws 1972, Chapter 97, Section 45, Laws 1981, Chapter 36, Sections 41 through 45, Laws 1985, Chapter 194, Sections 36 and 37, Laws 1987, Chapter 20, Section 2, Laws 1987, Chapter 105, Section 1 and Laws 1987, Chapter 106, Sections 1 and 2, as amended) are repealed.

B. Sections 32-2-1 through 32-2-9 NMSA 1978 (being Laws 1977, Chapter 278, Sections 1 through 9, as amended) are repealed.

C. Sections 32-2B-1 through 32-2B-5 NMSA 1978 (being Laws 1978, Chapter 141, Sections 1 through 5, as amended) are repealed.

D. Sections 32-7-1 through 32-7-6 NMSA 1978 (being Laws 1985, Chapter 101, Sections 1 through 6, as amended) are repealed.

E. Sections 40-7-29 through 40-7-65 NMSA 1978 (being Laws 1985, Chapter 194, Sections 1 through 33, Laws 1975, Chapter 349, Section 8 and Laws 1975, Chapter 154, Sections 1 through 3, as amended) are repealed.

F. Sections 43-1-16 through 43-1-18 NMSA 1978 (being Laws 1979, Chapter 213, Sections 2 and 3 and Laws 1977, Chapter 279, Sections 16 and 17, as amended) are repealed.

Section 235

Section 235. SEVERABILITY.--If any part or application of the Children's Code is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 236

Section 236. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 473

CHAPTER 78

RELATING TO CRIMINAL LAW; CREATING ENHANCED PENALTIES FOR SHOOTING AT A DWELLING OR OCCUPIED BUILDING OR AT OR FROM A MOTOR VEHICLE; ESTABLISHING SEIZURE AND FORFEITURE PROCEDURES FOR MOTOR VEHICLES USED FOR SHOOTING AT OR FROM A MOTOR VEHICLE; AUTHORIZING THE DEPOSIT OF MONEY FROM THE SALE OF FORFEITED MOTOR VEHICLES IN THE CRIME VICTIMS REPARATION FUND; PROVIDING FOR THE REVOCATION OF A DRIVER'S LICENSE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 30-3-8 NMSA 1978 (being Laws 1987, Chapter 213, Section 1) is amended to read:

"30-3-8. SHOOTING AT DWELLING OR OCCUPIED BUILDING--SHOOTING AT OR FROM A MOTOR VEHICLE.--

A. Shooting at a dwelling or occupied building consists of willfully discharging a firearm at a dwelling or occupied building. Whoever commits shooting at a dwelling or occupied building that does not result in great bodily harm to another person is guilty of a fourth degree felony. Whoever commits shooting at a dwelling or occupied building that results in injury to another person is guilty of a third degree felony. Whoever commits shooting at a dwelling or occupied building that results in great bodily harm to another person is guilty of a second degree felony.

B. Shooting at or from a motor vehicle consists of willfully discharging a firearm at or from a motor vehicle with reckless disregard for the person of another. Whoever commits shooting at or from a motor vehicle that does not result in great bodily harm to another person is guilty of a fourth degree felony. Whoever commits shooting at or from a motor vehicle that results in injury to another person is guilty of a third degree felony. Whoever commits shooting at or from a motor vehicle that results in great bodily harm to another person is guilty of a second degree felony.

C. This section shall not apply to a law enforcement officer discharging a firearm in the lawful performance of his duties."

Section 2

Section 2. A new Section 30-3-8.1 NMSA 1978 is enacted to read:
"30-3-8.1. SEIZURE AND FORFEITURE OF MOTOR VEHICLE--PROCEDURE--EXCEPTION.--

A. A motor vehicle shall be subject to seizure and forfeiture when the vehicle is used or intended for use in the commission of the offense of shooting at or from a motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978.

B. A motor vehicle subject to seizure and forfeiture may be seized by a law enforcement officer:

(1) upon an order issued by the district court having jurisdiction;

(2) without an order if the seizure is incident to an arrest; or

(3) without an order if the seizure is incident to a search under a valid search warrant.

C. In the event of seizure pursuant to Subsection B of this section, proceedings under the Rules of Civil Procedure for the District Courts and Subsection D of this section shall be instituted promptly.

D. A motor vehicle seized under this section shall not be subject to replevin, but is deemed to be in the custody of the seizing law enforcement agency subject only to the orders and decrees of the district court. When a motor vehicle is seized pursuant to the provisions of this section, a law enforcement officer may remove the property to a place designated by the district court or by the head of the officer's agency for disposition in accordance with the law.

E. When a vehicle is forfeited pursuant to this section, the seizing law enforcement agency shall sell the motor vehicle at a public auction, and the proceeds, after all costs for impoundment, forfeiture and sale are repaid, shall be forwarded to the state treasurer for credit to the crime victims reparation fund pursuant to Section 31-22-21 NMSA 1978 within thirty days. If the sale of the motor vehicle does not cover the cost of impounding, forfeiting and selling the motor vehicle, the law enforcement agency may deduct the uncovered portion of the cost from the proceeds of the next sale.

F. No motor vehicle shall be subject to forfeiture when the owner of the motor vehicle establishes that the offense of shooting at or from a motor vehicle pursuant to
Subsection B of Section 30-3-8 NMSA 1978 was committed without his knowledge or consent. A forfeiture of a motor vehicle encumbered by a recorded bona fide security interest shall be subject to the interest of the secured party if the secured party did not have knowledge of or did not consent to the offense of shooting at or from a motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978."

Section 3

Section 3. A new Section 30-3-8.2 NMSA 1978 is enacted to read:

"30-3-8.2 COURT RECORD OF CONVICTION--REVOCATION OF DRIVER'S LICENSE.--Upon a conviction for the offense of shooting at or from a motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978, or of a conviction for a conspiracy or attempt to commit that offense, the district court shall send a record of the conviction to the motor vehicle division of the taxation and revenue department. The division shall immediately revoke the driver's licenses or driving privileges of all persons convicted of the offense of shooting at or from a motor vehicle, or convicted of conspiring or attempting to commit that offense, pursuant to the provisions of Subsection E of Section 66-5-29 NMSA 1978."

Section 4

Section 4. Section 66-5-29 NMSA 1978 (being Laws 1978, Chapter 35, Section 251, as amended) is amended to read:

"66-5-29. MANDATORY REVOCATION OF LICENSE BY DIVISION.--

A. The division shall immediately revoke the license of any driver upon receiving a record of the driver's adjudication as a delinquent for or conviction of any of the following offenses, whether the offense is under any state law or local ordinance, when the conviction or adjudication has become final:

(1) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) any offense rendering a person a "first offender" as defined in the Motor Vehicle Code, if that person does not attend a driver rehabilitation program pursuant to Subsection H of Section 66-8-102 NMSA 1978;

(3) any offense rendering a person a "subsequent offender" as defined in the Motor Vehicle Code;

(4) any felony in the commission of which a motor vehice is used;

(5) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(6) perjury or the making of a false affidavit or statement under oath to the division under the Motor Vehicle Code or under any other law relating to the ownership or operation of motor vehicles; or

(7) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of twelve months.

B. Any person whose license has been revoked under this section, except as provided in Subsection C, D or E of this section, shall not be entitled to apply for or receive any new license until the expiration of one year from the date of the last application on which the revoked license was surrendered to and received by the division, if no appeal is filed, or one year from the date that the revocation is final and he has exhausted his rights to an appeal.

C. Any person who upon adjudication as a delinquent or conviction is subject to license revocation under this section for an offense pursuant to which he was also subject to license revocation pursuant to Section 66-8-111 NMSA 1978 shall have his license revoked for that offense for a combined period of time equal to one year.

D. Upon receipt of an order from a court pursuant to Subsection J of Section 32-1-34 NMSA 1978 or Subsection G of Section 32-1-36 NMSA 1978, the division shall revoke the driver's license or driving privileges for a period of time in accordance with these provisions.

E. Upon receipt from a district court of a record of conviction for the offense of shooting at or from a motor vehicle pursuant to Subsection B of Section 30-3-8 NMSA 1978, or of a conviction for a conspiracy or an attempt to commit that offense, the division shall revoke the driver's licenses or driving privileges of the convicted person. Any person whose license or privilege has been revoked pursuant to the provisions of this subsection shall not be entitled to apply for or receive any new license or privilege until the
expiration of one year from the date of the last application on which the revoked license was surrendered to and received by the division, if no appeal is filed, or one year from the date that the revocation is final and he has exhausted his rights to an appeal."

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 56 & 4

CHAPTER 79

RELATING TO PUBLIC DEFENDERS; CREATING THE PUBLIC DEFENDER AUTOMATION FUND; IMPOSING FEES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 31-15-12 NMSA 1978 (being Laws 1973, Chapter 156, Section 12) is amended to read:

"31-15-12. EXPLANATION OF RIGHTS--WAIVER OF COUNSEL--APPLICATION FEE--INDIGENCY DETERMINATION.--

A. If any person charged with any crime or a delinquent act that carries a possible sentence of imprisonment appears in any court without counsel, the judge shall inform him of his right:

(1) to confer with the district public defender; and

(2) if he is financially unable to obtain counsel, to be represented by the district public defender at all stages of the proceedings against him.

B. Following notification of any person under Subsection A of this section, the judge shall notify the district public defender and continue the proceedings until the person has applied with the district public defender.

C. A person shall pay a non-refundable application fee of ten dollars ($10.00) at the time the person applies with the public defender for representation. The fee shall be deposited in the public defender automation fund. The public defender shall determine if the person is indigent and unable to pay the fee, subject to review by the court. When the person remains in custody and is unable to pay the fee, the court may waive payment of the fee.

D. Peace officers shall notify the district public defender of any person not represented by counsel who is being forcibly detained and who is charged with, or under suspicion of, the commission of any crime that carries a possible sentence of imprisonment, unless the person has previously appeared in court upon that charge.

E. Any person entitled to representation by the district public defender may intelligently waive his right to representation. The waiver may be for all or any part of the proceedings. The waiver shall be in writing and countersigned by a district public defender."

Section 2

Section 2. PUBLIC DEFENDER AUTOMATION FUND CREATED--ADMINISTRATION--DISTRIBUTION.--

A. The "public defender automation fund" is created in the state treasury. The fund shall be administered by the public defender department. The public defender department shall report on the status of the fund to the legislative finance committee during each legislative interim.

B. All balances in the public defender automation fund are appropriated to the public defender department for the purchase and maintenance of automation systems for the public defender department.

C. Payments from the public defender automation fund shall be made upon vouchers issued and signed by the chief public defender upon warrants drawn by the secretary of finance and administration. Any purchase or lease purchase agreement entered into pursuant to this section shall be entered into in accordance with the Procurement Code.

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 222

CHAPTER 80

RELATING TO MOTOR VEHICLES; PROVIDING FOR SPECIAL REGISTRATION PLATES FEATURING ARTWORK OF THE CHILDREN OF NEW MEXICO; ENACTING A NEW SECTION OF THE MOTOR VEHICLE CODE.

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

Section 1

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

"SPECIAL CHILDREN'S ARTWORK REGISTRATION PLATE--PROCEDURES--FEE.--

A. The division shall establish and issue special registration plates featuring artwork of the children of New Mexico in accordance with the provisions of this section and shall adopt procedures for application for and issuance of the special children's artwork registration plates.

B. The children's trust fund board of trustees shall determine the color and design of the special children's artwork registration plate and shall request that the division provide for its issuance.

C. For a fee of forty dollars ($40.00), which shall be in addition to the regular motor vehicle registration fees, any owner of a motor vehicle may apply for the issuance of a special children's artwork registration plate. The owner of a motor vehicle shall apply and pay a fee each year that he wishes to retain and renew his special children's artwork registration plate.

D. The revenue from the special children's artwork registration plates shall be distributed as follows:

(1) fifteen dollars ($15.00) of the fee collected for each registration plate shall be retained by the division in the eighty-second and eighty-third fiscal years and is appropriated to the division for the manufacture and issuance of the registration plates. Thereafter, that amount of each fee shall be paid to the state treasurer for credit to the motor vehicle suspense fund for distribution in accordance with Section 66-6-23 NMSA 1978; and

(2) twenty-five dollars ($25.00) of the fee collected for each registration plate shall be distributed to the children's trust fund, for use in accordance with the
provisions of Section 24-19-2 NMSA 1978."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 437

CHAPTER 81

RELATING TO CORRECTIONS; PROVIDING THE CORRECTIONS DEPARTMENT WITH AUTHORITY TO ENTER INTO CONTRACTS WITH PUBLIC OR PRIVATE DETENTION FACILITIES FOR THE PURPOSE OF HOUSING INMATES; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 31-20-2 NMSA 1978 (being Laws 1963, Chapter 303, Section 29-13, as amended) is amended to read:

"31-20-2. PLACE OF IMPRISONMENT--COMMITMENTS.--

A. Persons sentenced to imprisonment for a term of one year or more shall be imprisoned in a corrections facility designated by the corrections department, unless a new trial is granted or a portion of the sentence is suspended so as to provide for imprisonment for not more than eighteen months; then the imprisonment may be in such place of incarceration, other than a corrections facility under the jurisdiction of the corrections department, as the sentencing judge, in his discretion, may prescribe; provided that a sentence of imprisonment for one year or more but not more than eighteen months shall be subject to the provisions of
Subsections D and E of this section and shall not be imposed unless the requirements set forth in Subsection D of this section are satisfied.

B. All commitments, judgments and orders of the courts of this state for the imprisonment or release of persons in the penitentiary shall run to the corrections department, but nothing contained in this section shall invalidate or impair the validity of any commitment, judgment or order of any court in this state directed to the secretary of corrections, the warden of the penitentiary of New Mexico or to the penitentiary of New Mexico, and all such commitments, judgments and orders shall be treated and construed as running to the corrections department.

C. There is created within the corrections department an "intake and classification center". The intake and classification center shall have the following duties:

(1) process all inmates sentenced or committed for purposes of diagnosis to the corrections department;

(2) classify inmates for housing assignments;

(3) develop an individualized plan for participation by each inmate in programs, work assignments and special needs;

(4) monitor each inmate's progress during incarceration and reclassify or modify classification assignments as may be necessary, taking into consideration the overall needs of the inmate population, institutional and facility requirements and the individual inmate's needs;

(5) with the approval of the secretary of corrections, may transfer inmates of the penitentiary to an institution under the control of another state if that state has entered into a corrections control agreement with New Mexico; and

(6) with the approval of the secretary of corrections, may transfer inmates to any facility, including the forensic hospital under the jurisdiction of the department of health.

D. A sentence of one year or more but not more than eighteen months and providing for imprisonment in a place of incarceration other than a corrections facility under the jurisdiction of the corrections department pursuant to Subsection A of this section, which shall be known as the local sentencing option, shall not be imposed unless:

(1) the place of incarceration is located within the county in which the crime was committed; and

(2) the governing authority in charge of the place of incarceration has entered into a joint powers agreement with the corrections department setting forth:

(a) the amount of money the corrections department shall pay for offenders sentenced to a term of one year or more but not more than eighteen months and the number of offenders which may be sentenced to such terms; and

(b) any other provisions deemed appropriate and agreed to by the local governing body and the corrections department.

E. If a judge imposes a sentence of one year or more but not more than eighteen months and provides for imprisonment in a place of incarceration other than a corrections facility under the jurisdiction of the corrections department:

(1) the local governing body or its agent shall have the ability to petition that judge when the capacity of the place of incarceration is filled or when any problem develops concerning that offender requesting the judge to issue an order committing the offender to the corrections department for completion of the remainder of his sentence. A hearing on a petition pursuant to this paragraph shall be held within three days of the filing of the petition. Notwithstanding any other provision of law, the judge shall retain jurisdiction over the offender for the purpose of implementing the local sentencing option; and

(2) the local governing body or its agent shall keep the district judges for the judicial district in which the place of incarceration is located informed as to the capacity for the sentencing of offenders in accordance with the local sentencing option. No judge shall sentence an offender in accordance with the local sentencing option if that sentence will result in exceeding the number of offenders set forth in the joint powers agreement.

F. The corrections department shall file an annual report with the legislature which shall contain the number of joint powers agreements in operation pursuant to this section, copies of those agreements, the number of offenders currently incarcerated pursuant to those agreements and any other relevant information relating to the implementation of this section.

G. The corrections department may enter into contracts with public or private detention facilities for the purpose of housing inmates lawfully committed to the corrections department. Any facility with which the department contracts shall meet or exceed corrections department standards prior to the housing of any inmates within the facility and shall meet certification requirements for prisons within eighteen months of entering into such contracts. The contractor shall adhere to all appropriate corrections department policies and procedures and shall agree to have staff trained at the corrections department trained at the corrections department training academy."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.
SB614.

CHAPTER 82

RELATING TO INSURANCE; AMENDING SECTION 59A-16-20 NMSA 1978 TO CLARIFY UNFAIR CLAIMS PRACTICES RELATING TO CATASTROPHIC LOSS.

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

Section 1

Section 1. Section 59A-16-20 NMSA 1978 (being Laws 1984, Chapter 127, Section 286) is amended to read:

"59A-16-20. UNFAIR CLAIMS PRACTICES DEFINED AND PROHIBITED.--Any and all of the following practices with respect to claims, by an insurer or other person, knowingly committed or performed with such frequency as to indicate a general business practice, are defined as unfair and deceptive practices and are prohibited:

A. misrepresenting to insureds pertinent facts or policy provisions relating to coverages at issue;

B. failing to acknowledge and act reasonably promptly upon communications with respect to claims from insureds arising under policies;

C. failing to adopt and implement reasonable standards for the prompt investigation and processing of insureds' claims arising under policies;

D. failing to affirm or deny coverage of claims of insureds within a reasonable time after proof of loss requirements under the policy have been completed and submitted by the insured;

E. not attempting in good faith to effectuate prompt, fair and equitable settlements of an insured's claims in which liability has become reasonably clear;

F. failing to settle all catastrophic claims within a ninety-day period after the assignment of a catastrophic claim number when a catastrophic loss has been declared;

G. compelling insureds to institute litigation to recover amounts due under policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds when such insureds have made claims for amounts reasonably similar to amounts ultimately recovered;

H. attempting to settle a claim by an insured for less than the amount to which a reasonable person would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

I. attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured, his representative, agent or broker;

J. failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made;

K. making known to insureds or claimants a practice of insurer of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

L. delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

M. failing to settle an insured's claims promptly where liability has become apparent under one portion of the policy coverage in order to influence settlement under other portions of the policy coverage; or

N. failing to promptly provide insured a reasonable explanation of the basis relied on in the policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement." SB 620

CHAPTER 83

RELATING TO TERMINATION OF AGENCY LIFE; EXTENDING THE LIFE OF THE NEW MEXICO ATHLETIC COMMISSION AND THE PROFESSIONAL ATHLETIC COMPETITION ACT, THE NEW MEXICO STATE BOARD OF PUBLIC ACCOUNTANCY AND THE PUBLIC ACCOUNTANCY ACT, THE LABOR AND INDUSTRIAL COMMISSION AND THE DIRECTOR OF THE LABOR AND INDUSTRIAL DIVISION OF THE DEPARTMENT OF LABOR, THE STATE RACING COMMISSION, THE BOARD OF EXAMINERS FOR ARCHITECTS AND THE NEW MEXICO REAL ESTATE COMMISSION; PROVIDING FOR DELAYED REPEAL OF THE INTERIOR DESIGN BOARD, THE INTERIOR DESIGNERS ACT AND THE REAL ESTATE APPRAISERS BOARD; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 50-1-9 NMSA 1978 (being Laws 1987, Chapter 333, Section 2) is amended to read:

"50-1-9. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The labor and industrial commission and the office of the director of the labor and industrial division of the department of labor are terminated on July 1, 1999 pursuant to the Sunset Act. The commission and the director shall continue to operate according to the provisions of Chapter 50, Article 1 NMSA 1978 until July 1, 2000. Effective July 1, 2000, Chapter 50, Article 1 NMSA 1978 is repealed."

Section 2

Section 2. Section 60-1-26 NMSA 1978 (being Laws 1987, Chapter 333, Section 3) is amended to read:

"60-1-26. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The state racing commission is terminated on July 1, 1999 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 60, Article 1 NMSA 1978 until July 1, 1999. Effective July 1, 2000, Chapter 60, Article 1 NMSA 1978 is repealed."

Section 3

Section 3. Section 60-2A-30 NMSA 1978 (being Laws 1980, Chapter 90, Section 30, as amended) is amended to read:

"60-2A-30. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico athletic commission is terminated on July 1, 1999 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 60, Article 2A NMSA 1978 until July 1, 2000. Effective July 1, 2000, Chapter 60, Article 2A NMSA 1978 is repealed."

Section 4

Section 4. Section 61-15-13 NMSA 1978 (being Laws 1979, Chapter 362, Section 10, as amended by Laws 1987, Chapter 282, Section 14 and also by Laws 1987, Chapter 333, Section 8) is amended to read:

"61-15-13. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of examiners for architects is terminated on July 1, 1999 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 15 NMSA 1978 until July 1, 2000. Effective July 1, 2000, Chapter 61, Article 15 NMSA 1978 is repealed."

Section 5

Section 5. A new section of the Interior Designers Act, Section 61-24C-17 NMSA 1978 is enacted to read:

"61-24C-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board is terminated on July 1, 1999 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Interior Designers Act until July 1, 2000. Effective July 1, 2000, the Interior Designers Act is repealed."

Section 6

Section 6. Section 61-28A-28 NMSA 1978 (being Laws 1992, Chapter 10, Section 29) is repealed and a new Section
61-28A-28 NMSA 1978 is enacted to read:

"61-28A-28. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board is terminated on July 1, 1999 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Public Accountancy Act until July 1, 2000. Effective July 1, 2000 the Public Accountancy Act is repealed."

Section 7

Section 7. Section 61-29-19 NMSA 1978 (being Laws 1978, Chapter 203, Section 2, as amended) is amended to read:

"61-29-19. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico real estate commission is terminated on July 1, 1999 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 61, Article 29 NMSA 1978 until July 1, 2000. Effective July 1, 2000, Chapter 61, Article 29 NMSA 1978 is repealed."

Section 8

Section 8. A new section of the Real Estate Appraisers Act, Section 61-30-24 NMSA 1978, is enacted to read:

"61-30-24. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The real estate appraisers board is terminated effective July 1, 1997. The Real Estate Appraisers Act shall continue in effect until July 1, 1998. The Real Estate Appraisers Act is repealed effective July 1, 1998." SB 675

CHAPTER 84

RELATING TO HEALTH FACILITIES; PROVIDING FOR A MORATORIUM OF LICENSURE FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY

RETARDED; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 24-1-5.3 NMSA 1978 (being Laws 1990, Chapter 97, Section 1) is amended to read:

"24-1-5.3. INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED--LICENSURE MORATORIUM.--

A. The department shall not issue a license to any new intermediate care facility for the mentally retarded nor shall the department issue a license for an increase over the bed capacity that existed on January 1, 1993 in an existing facility. No such facility shall apply for licensure, except as provided in Subsection B of this section.

B. The department may accept applications for and issue licenses to intermediate care facilities for the mentally retarded on and after the earliest of the folowing dates:

(1) July 1, 1995, provided that the secretary of human services certifies to the secretary of health that the human services department and the department of health have approved and begun implementation of a plan to control the growth of intermediate care facilities for the mentally retarded and to establish the future role of intermediate care facilities for the mentally retarded in the developmental disabilities service system;

(2) the date that the human services department receives notice that the federal department of health and human services has not approved the New Mexico developmental disabilities medicaid waiver program or has approved that waiver program without expanding the number of available slots that substantially meets the needs of eligible persons; or

(3) the date the secretary of health certifies to the department of finance and administration that an emergency exists that threatens the health and safety of persons with developmental disabilities; provided that licenses granted under this paragraph do not exceed the total statewide bed capacity that existed on January 1, 1993.

C. As used in this section, "intermediate care facility for the mentally retarded" means any intermediate care facility eligible for certification as an intermediate care facility for the mentally retarded."

Section 2

Section 2. A new section of the Developmental Disabilities Community Services Act is enacted to read:

"DEVELOPMENTAL DISABILITIES PLANNING COUNCIL--ADDITIONAL DUTIES.--The developmental disabilities planning council shall cooperate with the department of health and the human services department to:

A. provide data to support an amendment to the developmental disabilities medicaid waiver program to increase the number of eligible persons served;

B. develop a contingency plan to describe the role and control the growth of intermediate care facilities for the mentally retarded; and

C. develop flexibility in the system of prioritization for admission to allow persons to move within the service system to an appropriate level of service, including movement of residents of intermediate care facilities for the mentally retarded to the developmental disabilities medicaid waiver program."

Section 3

Section 3. Section 3 of Chapter 97 of Laws 1990 is amended to read:

"Section 3. DELAYED REPEAL.--Sections 1 and 2 of this act are repealed effective July 1, 1995." SB 718

CHAPTER 85

RELATING TO INSURANCE; AMENDING SECTION 59A-18-17 NMSA 1978 (BEING LAWS 1984, CHAPTER 127, SECTION 346).

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

Section 1

Section 1. Section 59A-18-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 346) is amended to read:

"59A-18-17. STANDARD PROVISIONS, IN GENERAL.--

A. Insurance contracts shall contain such standard or uniform provisions as are required by applicable provisions of the Insurance Code pertaining to contracts of particular kinds of insurance.

B. No policy shall contain any provision inconsistent with or contradictory to any standard or uniform provision used or required to be used, but the superintendent

may approve any substitute provision which is, in his opinion, not less favorable in any particular to the insured, owner or beneficiary than the provision otherwise required or which is designed to comply with Chapter 59A, Article 19 NMSA 1978.

C. Insurance coverage provided in residential property insurance policies shall provide coverage for the cost to repair or replace without deduction for depreciation. If the insured elects to effectuate repairs to the property himself, a reasonable overhead expense shall be allowed.

D. In lieu of the provisions required by the Insurance Code for contracts for particular kinds of insurance, substantially similar provisions required by the laws of the domicile of a foreign or alien insurer may be used when approved by the superintendent.

E. A policy issued by a domestic insurer for delivery in another jurisdiction may contain any provision required or permitted under the laws of such jurisdiction." SB 742

CHAPTER 86

RELATING TO CRIMINAL LAW; ENACTING THE HARASSMENT AND STALKING ACT; PROVIDING CRIMINAL PENALTIES.

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

Section 1

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

"SHORT TITLE.--This act may be cited as the "Harassment and Stalking Act"."

Section 2

Section 2. A new section of the Criminal Code is enacted to read:

"HARASSMENT--PENALTIES.--

A. Harassment consists of knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and which serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.

B. Whoever commits harassment is guilty of a misdemeanor."

Section 3

Section 3. A new section of the Criminal Code is enacted to read:

"STALKING--PENALTIES.--

A. Stalking consists of knowingly pursuing a pattern of conduct that poses a credible threat to another person and that is intended to place that person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint; provided that, in furtherance of the threat, the stalker must commit one or more of the following acts on more than one occasion:

(1) following a person, other than in the residence of the stalker;

(2) placing a person under surveillance by remaining present outside that person's school, residence, workplace or vehicle or any other place frequented by the person other than in the residence of the stalker; or

(3) harassing a person.

B. As used in this section, "credible threat" means a threat, verbal or nonverbal, made with the intent and the apparent ability to carry out the threat, that would cause a reasonable person to fear for his safety or the safety of a household member, including a spouse, former spouse, family member, present or former household member or co-parent of a child.

C. Whoever commits stalking is guilty of a misdemeanor. Upon a second conviction, the offender shall be sentenced to a jail term of at least seventy-two consecutive hours that shall not be suspended, deferred or taken under advisement. Upon a third or subsequent conviction, the offender shall be guilty of a fourth degree felony."

Section 4

Section 4. A new section of the Criminal Code is enacted to read:

"EXCEPTIONS.--The provisions of the Harassment and Stalking Act do not apply to:

A. picketing or public demonstrations that are otherwise lawful or that arise out of a bona fide labor dispute; or

B. a law enforcement officer in the performance of his duties."

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.

HB 8

CHAPTER 87

RELATING TO EDUCATION; AMENDING A SECTION OF THE PUBLIC SCHOOL FINANCE ACT PERTAINING TO SIZE ADJUSTMENT PROGRAM UNITS.

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

Section 1

Section 1. Section 22-8-23 NMSA 1978 (being Laws 1975, Chapter 119, Section 1, as amended) is amended to read:

"22-8-23. SIZE ADJUSTMENT PROGRAM UNITS.--

A. An approved public school with a MEM of less than 400, including early childhood education full-time equivalent MEM but excluding special education class C and class D MEM, is eligible for additional program units. Separate schools established to provide special programs, including but not limited to vocational and alternative education, shall not be classified as public schools for purposes of generating size adjustment program units. The number of additional program units to which a school district is entitled under this subsection is the sum of elementary-junior high units and senior high units computed in the following manner:

Elementary-Junior High Units

$\frac{200 - MEM}{200} \times 1.0 \times MEM = Units$

where MEM is equal to the membership of an approved elementary or junior high school, including early childhood education full-time equivalent membership but excluding special education class C and class D membership;

Senior High Units

$\frac{200 - MEM}{200} \times 2.0 \times MEM = Units$

or,

Senior High Units

$\frac{400 - MEM}{} \times 1.6 \times MEM = Units$

400

whichever calculation for senior high units is higher, where MEM is equal to the membership of an approved senior high school, excluding special education class C and class D membership.

B. A school district with total MEM of less than 4,000, including early childhood education full-time equivalent MEM and special education MEM, is eligible for additional program units. The number of additional program units to which a district is entitled under this subsection is the number of district units computed in the following manner:

District Units

$$\frac{4000 - MEM}{4000} \times 0.15 \times MEM = Units$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

C. A school district with over 10,000 MEM with a ratio of MEM to senior high schools less than 4,000:1 is eligible for additional program units based on the number of approved regular senior high schools that are not eligible for senior high units under Subsection A of this section. The number of additional program units to which an eligible school district is entitled under this subsection is the number of units computed in the following manner:

$$\frac{4000 - MEM}{\text{Senior High Schools}} \times 0.50 = Units$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education embership, and where senior high schools are equal to the number of approved regular senior high schools in the district.

D. A school district with a total MEM of greater than ten thousand but less than fifteen thousand, including early childhood education full-time equivalent MEM and special education MEM, is eligible for additional program units. The number of additional program units to which an eligible district is entitled under this subsection is the number of units computed in the following manner:

$$\frac{MEM - 10{,}000}{10{,}000} \times .15 \times MEM = Units$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

E. A school district with a total MEM of greater than fifteen thousand but less than thirty-five thousand, including early childhood education full-time equivalent MEM and special education MEM, is eligible for additional program units. The number of additional program units to which an eligible district is entitled under this subsection is the number of units computed in the following manner:

MEM - 15,000 x .l5 x MEM = Units

15,000

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

F. A school district with a total MEM of greater than thirty-five thousand, including early childhood education full-time equivalent MEM and special education MEM, is eligible for additional program units. The number of additional program units to which an eligible district is entitled under this subsection is the number of units computed in the following manner:

MEM - 35,000 x .023 x MEM = Units

35,000

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership."

HB 49

CHAPTER 88

RELATING TO STATE REVENUES; PROVIDING ADDITIONAL DUTIES FOR THE TAXATION AND REVENUE DEPARTMENT RELATING TO THE AUDITING OF FEDERAL ROYALTIES; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. TAXATION AND REVENUE DEPARTMENT--ADDITIONAL DUTIES.--The taxation and revenue department shall develop and implement a program to conduct audits and related investigations with respect to royalties paid for oil and gas and other minerals produced from federal lands within New Mexico. Pursuant to the

Federal Oil and Gas Royalty Management Act of 1982, the secretary of taxation and revenue shall petition the secretary of the United States department of the interior for a delegation of authority to conduct the audits and related investigations. After the delegation of authority is made, the secretary of taxation and revenue shall seek reimbursement from the United States department of the interior for all costs associated with any activities undertaken pursuant to the delegation.

Section 2

Section 2. APPROPRIATION.--Two hundred thousand dollars ($200,000) is appropriated from the general fund to the taxation and revenue department for expenditure in the eighty-first and eighty-second fiscal years for the purpose of carrying out the provisions of this act. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Section 3

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.HB 51

CHAPTER 89

RELATING TO NATURAL RESOURCES; DELAYING THE DATE THAT THE SURTAX RATE ON COAL IS IMPOSED.

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

Section 1

Section 1. Section 7-26-6 NMSA 1978 (being Laws 1982, Chapter 77, Section 1, as amended) is amended to read:

"7-26-6. SEVERANCE TAX ON COAL--SURTAX.--

A. The severance tax on coal is measured by the quantity of coal severed and saved. The taxable event is sale, transportation out of New Mexico or consumption of the coal, whichever first occurs. Upon each short ton (two thousand pounds) of coal severed and saved, there shall be imposed on the severer a severance tax. For the period commencing on July 1, 1982, the severance tax rate shall be:

(1) surface coal, fifty-seven cents ($.57); and

(2) underground coal, fifty-five cents ($.55).

B. The severance tax on coal shall be increased by a surtax, hereby imposed. The surtax shall be imposed on the unit of quantity of such product or natural resource at the following rates:

(1) surface coal, sixty cents ($.60); and

(2) underground coal, fifty-eight cents ($.58).

C. The surtax rate on coal shall be increased on July 1, 1994, and on July 1 of each succeeding year by an amount equal to the product of the dollar amount of the severance tax imposed on each ton of coal by a percentage equal to the percentage rise in the producer price index for coal from the calendar year 1992 to the calendar year just prior to the year in which the surtax rates are computed, but in no case shall the surtax rate be decreased. The rates so computed shall be computed by the department in April of 1994 and in April of each year thereafter and published on or before May 1, 1994 and on or before May 1 of each year thereafter.

If the producer price index for coal is substantially revised or if the base year used as an index of one hundred is changed, the department shall make an adjustment in the percentage used to compute the surtax rates that would produce results equivalent, as nearly as possible, to those that would have been obtained if the producer price index for coal had not been so revised or if the base year had not been changed. If this index ceases to become available, then a comparable index based upon changes in the price of coal shall be adopted by the department by regulation.

D. As used in this section:

(1) "producer price index for coal" means the commodity code 05-1 as reported annually by the bureau of labor statistics at the United States department of labor in their annual producer price indexes data;

(2) "surface coal" means coal that is severed using surface mining methods;

(3) "surface mining" means the extraction of coal from the earth by removing the material overlying a coal seam and then removing the coal by common methods, including, but not limited to, contour mining, strip mining, mountain top removal mining, box cut mining, open pit mining and area mining; and

(4) "underground coal" means all coal that is not surface coal."HB 149

CHAPTER 90

RELATING TO DOMESTIC AFFAIRS; AMENDING A SECTION OF THE NMSA 1978 TO PROVIDE FOR DIVISION OF PROPERTY AND DEBTS, DISTRIBUTION OF SPOUSAL OR CHILD SUPPORT AND DETERMINATION OF PATERNITY WHEN

DEATH OCCURS DURING PROCEEDINGS FOR DISSOLUTION OF MARRIAGE, SEPARATION OR ANNULMENT OF MARRIAGE.

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

Section 1

Section 1. Section 40-4-20 NMSA 1978 (being Laws 1901, Chapter 62, Section 31, as amended) is amended to read:

"40-4-20. FAILURE TO DIVIDE OR DISTRIBUTE PROPERTY ON THE ENTRY OF A DECREE OF DISSOLUTION OF MARRIAGE OR SEPARATION--DISTRIBUTION OF SPOUSAL OR CHILD SUPPORT AND DETERMINATION OF PATERNITY WHEN DEATH OCCURS DURING PROCEEDINGS FOR DISSOLUTION OF MARRIAGE, SEPARATION, ANNULMENT OF MARRIAGE OR PATERNITY.--

A. The failure to divide or distribute property on the entry of a decree of dissolution of marriage or of separation shall not affect the property rights of either the husband or wife, and either may subsequently institute and prosecute a suit for division and distribution or with reference to any other matter pertaining thereto that could have been litigated in the original proceeding for dissolution of marriage or separation.

B. Upon the filing and service of a petition for dissolution of marriage, separation, annulment, division of property or debts, spousal support, child support or determination of paternity pursuant to the provisions of Chapter 40, Article 4 or 11 NMSA 1978, if a party to the action dies during the pendency of the action, but prior to the entry of a decree granting dissolution of marriage, separation, annulment or determination of paternity, the proceedings for the determination, division and distribution of marital property rights and debts, distribution of spousal or child support or determination of paternity shall not abate. The court shall conclude the proceedings as if both parties had survived. The court may allow the spouse or any children of the marriage support as if the decedent had survived, pursuant to the provisions of Chapter 40, Article 4 or 11 NMSA 1978. In determining the support, the court shall, in addition to the factors listed in Chapter 40, Article 4 NMSA 1978, consider the amount and nature of the property passing from the decendent to the person for whom the support would be paid, whether by will or otherwise."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.

HB 154

CHAPTER 91

RELATING TO EDUCATION; AMENDING A SECTION OF THE PUBLIC SCHOOL FINANCE ACT PERTAINING TO THE CALCULATION OF THE STAFF TRAINING AND EXPERIENCE INDEX.

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

Section 1

Section 1. Section 22-8-24 NMSA 1978 (being Laws 1974, Chapter 8, Section 15, as amended) is amended to read:

"22-8-24. INSTRUCTIONAL STAFF TRAINING AND EXPERIENCE INDEX--DEFINITIONS--FACTORS--CALCULATIONS.--

A. For the purpose of calculating the instructional staff training and experience index, the following definitions and limitations shall apply:

(1) "instructional staff" means the personnel assigned to the instructional program of the school district, excluding principals, substitute teachers, instructional aides, secretaries and clerks;

(2) the number of instructional staff to be counted in calculating the instructional staff training and experience index is the actual number of full-time equivalent instructional staff on the October payroll;

(3) the number of years of experience to be used in calculating the instructional staff training and experience index is that number of years of experience allowed for salary increment purposes on the salary schedule of the school district; and

(4) the academic degree and additional credit hours to be used in calculating the instructional staff training and experience index is the degree and additional semester credit hours allowed for salary increment purposes on the salary schedule of the school district.

B. The factors for each classification of academic training by years of experience are provided in the following table:

	Years of Experience				
Academic Classification	0 - 2	3 - 5	6 - 8	9 - 15	Over 15
Bachelor's degree or less	.75	.90	1.00	1.05	1.05
Bachelor's degree plus 15 credit hours	.80	.95	1.00	1.10	1.15

Master's degree or
bachelor's degree
plus 45 credit hours .85 1.00 1.05 1.15 1.20

Master's degree plus
15 credit hours .90 1.05 1.15 1.30 1.35

Post-master's degree
or master's degree
plus 45 credit hours 1.00 1.15 1.30 1.40 1.50.

C. The instructional staff training and experience index for each school district shall be calculated in accordance with instructions issued by the state superintendent. The following calculations shall be computed:

(1) multiply the number of full-time equivalent instructional staff in each academic classification by the numerical factor in the appropriate "years of experience" column provided in the table in Subsection B of this section;

(2) add the products calculated in Paragraph (1) of this subsection; and

(3) divide the total obtained in Paragraph (2) of this subsection by the total number of full-time equivalent instructional staff.

D. In the event that the result of the calculation of the training and experience index is 1.0 or less, the district's factor shall be no less than 1.0."HB 159

CHAPTER 92

RELATING TO EDUCATION; AMENDING SECTION 22-2-8.4 NMSA 1978 (BEING LAWS 1986,

CHAPTER 33, SECTION 5, AS AMENDED) TO REMOVE THE REQUIREMENT FOR PASSAGE OF A COMPETENCY EXAMINATION PRIOR TO RECEIPT OF A DIPLOMA; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 22-2-8.4 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended) is amended to read:

"22-2-8.4. GRADUATION REQUIREMENTS.--

A. At the end of the eighth grade or during the ninth grade, each student shall prepare an individual program of study for grades nine through twelve. The program of study shall be signed by a student's parent or guardian.

B. Beginning with students entering the ninth grade in the 1986-87 school year, successful completion of a minimum of twenty-three units shall be required for graduation. These units shall be as follows:

(1) four units in English, with major emphasis on grammar and literature;

(2) three units in mathematics;

(3) two units in science, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography, and government and economics;

(5) one unit in physical fitness;

(6) one unit in communication skills, with major emphasis on writing and speaking, which may include a language other than English; and

(7) nine elective units. Only the following elective units shall be counted toward meeting the requirements for graduation: fine arts, i.e., music, band, chorus and art; practical arts; physical education; languages other than English; speech; drama; vocational education;
mathematics; science; English; R.O.T.C.; social science; computer science; health education; and other electives approved by the state board.

C. Effective with the 1987-88 school year, final examinations shall be administered to all students in all classes offered for credit.

D. Beginning with those students who entered the ninth grade in the 1986-87 school year, no student shall receive a high school diploma who has not passed a state competency examination. However, for those students not passing the state competency examination, the state board shall establish alternative assessment measures that will provide students the opportunity to demonstrate that they have the necessary competencies for receiving a high school diploma.

E. The state board may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code.

F. If students enrolled in special education complete their educational requirements as determined by their individualized education program committee, they shall receive a high school diploma.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.HB 213

CHAPTER 93

RELATING TO DOMESTIC AFFAIRS; ENACTING THE GRANDPARENT'S VISITATION PRIVILEGES ACT; PROVIDING VISITATION PRIVILEGES FOR GRANDPARENTS OF A MINOR CHILD; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 40-9-1 NMSA 1978 (being Laws 1979, Chapter 13, Section 1, as amended) is repealed and a new Section 40-9-1 NMSA 1978 is enacted to read:

"40-9-1. SHORT TITLE.--Chapter 40, Article 9 NMSA 1978 may be cited as the "Grandparent's Visitation Privileges Act"."

Section 2

Section 2. A new Section 40-9-1.1 NMSA 1978 is enacted to read:

"40-9-1.1. DEFINITIONS.--As used in the Grandparent's Visitation Privileges Act, "grandparent" means:

A. the biological grandparent or great-grandparent of a minor child; or

B. a person who becomes a grandparent or great-grandparent due to the adoption of a minor child by a member of that person's family."

Section 3

Section 3. Section 40-9-2 NMSA 1978 (being Laws 1979, Chapter 13, Section 2, as amended) is repealed and a new Section 40-9-2 NMSA 1978 is enacted to read:

"40-9-2. CHILDREN--VISITATION BY GRANDPARENT--PETITION--MEDIATION.--

A. In rendering a judgment of dissolution of marriage, legal separation or the existence of the parent and child relationship pursuant to the provisions of the Uniform Parentage Act, or at any time after the entry of the judgment, the district court may grant reasonable visitation privileges to a grandparent of a minor child, not in conflict with the child's education or prior established visitation or time-sharing privileges.

B. If one or both parents of a minor child are deceased, any grandparent of the minor child may petition the district court for visitation privileges with respect to the minor. The district court may order temporary visitation privileges until a final order regarding visitation privileges is issued by the court.

C. If a minor child resided with a grandparent for a period of at least three months and the child was less than six years of age at the beginning of the three-month period and the child was subsequently removed from the grandparent's home by the child's parent or any other person, the grandparent may petition the district court for visitation privileges with respect to the child, if the child's home state is New Mexico, as provided in the Child Custody Jurisdiction Act.

D. If a minor child resided with a grandparent for a period of at least six months and the child was six years of age or older at the beginning of the six-month period and the child was subsequently removed from the grandparent's home by the child's parent or any other person, the grandparent may petition the district court for visitation privileges with respect to the child, if the child's home state is New Mexico, as provided in the Child Custody Jurisdiction Act.

E. A biological grandparent may petition the district court for visitation privileges with respect to a grandchild when the grandchild has been adopted or adoption is sought, pursuant to the provisions of the Adoption Act, by:

(1) a stepparent;

(2) a relative of the grandchild;

(3) a person designated to care for the grandchild in the provisions of a deceased parent's will; or

(4) a person who sponsored the grandchild at a baptism or confirmation conducted by a recognized religious organization.

F. When a minor child is adopted by a stepparent and the parental rights of the natural parent terminate or are relinquished, the biological grandparents are not precluded from attempting to establish visitation privileges. When a petition filed pursuant to the provisions of the Grandparent's Visitation Privileges Act is filed during the pendency of an adoption proceeding, the petition shall be filed as part of the adoption proceedings. The provisions of the Grandparent's Visitation

Privileges Act shall have no application in the event of a relinquishment or termination of parental rights in cases of other statutory adoption proceedings.

G. When considering a grandparent's petition for visitation privileges with a child, the district court shall assess:

(1) the best interests of the child;

(2) the prior interaction between the grandparent and the child;

(3) the prior interaction of the grandparent and each parent of the child;

(4) the present relationship between the grandparent and each parent of the child; and

(5) time-sharing or visitation arrangements that were in place prior to filing of the petition.

H. The district court may order mediation and evaluation in any matter when grandparent's visitation privileges with respect to a minor child are at issue. When a judicial district has established a domestic relations mediation program pursuant to the provisions of the Domestic Relations Mediation Act, the mediation shall conform with the provisions of that act. Upon motion and hearing, the district court shall act promptly on the recommendations set forth in a mediation report and consider assessment of mediation and evaluation to the parties. The district court may order temporary visitation privileges until a final order regarding visitation privileges is issued by the court.

I. When the district court decides that visitation is not in the best interest of the child, the court may issue an order requiring other reasonable contact between the grandparent and the child, including regular communication by telephone, mail or any other reasonable means.

J. The provisions of the Child Custody Jurisdiction Act and Section 30-4-4 NMSA 1978, regarding custodial interference, are applicable to the provisions of the Grandparent's Visitation Privileges Act."

Section 4

Section 4. Section 40-9-3 NMSA 1978 (being Laws 1979, Chapter 13, Section 3) is repealed and a new Section 40-9-3 NMSA 1978 is enacted to read:

"40-9-3. VISITATION--MODIFICATION--RESTRICTIONS.--

A. When the district court grants reasonable visitation privileges to a grandparent pursuant to the provisions of the Grandparent's Visitation Privileges Act, the court shall issue any necessary order to enforce the visitation privileges and may modify the privileges or order upon a showing of good cause by any interested person.

B. Absent a showing of good cause, no grandparent shall file a petition pursuant to the provisions of the Grandparent's Visitation Privileges Act more often than once a year."

Section 5

Section 5. Section 40-9-4 NMSA 1978 (being Laws 1979, Chapter 13, Section 4, as amended) is repealed and a new Section 40-9-4 NMSA 1978 is enacted to read:

"40-9-4. CHANGE OF CHILD'S DOMICILE--NOTICE TO GRANDPARENT.--When a grandparent is granted visitation privileges with respect to a minor child pursuant to the provisions of the Grandparent's Visitation Privileges Act and the child's custodian intends to depart the state with the intention of changing that child's domicile, the custodian shall:

A. notify the grandparents of the minor child of the custodian's intent to change the child's domicile at least five days prior to the child's departure from the state;

B. provide the grandparent with an address and telephone number for the minor child; and

C. afford the grandparent of the minor child the opportunity to communicate with the child."

Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 225

CHAPTER 94

RELATING TO WILDLIFE; PROHIBITING INTERFERENCE WITH HUNTERS, TRAPPERS OR FISHERMEN; ESTABLISHING CRIMINAL AND CIVIL PENALTIES.

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

Section 1

Section 1. A new section of Chapter 17, Article 2 NMSA 1978 is enacted to read:

"INTERFERENCE PROHIBITED--CRIMINAL PENALTIES--CIVIL PENALTIES--REVOCATION OF LICENSE, CERTIFICATE OR PERMIT.--

A. It is unlawful for a person to commit interference with another person who is lawfully hunting, trapping or fishing in an area where hunting, trapping or fishing is permitted by a custodian of public property or an owner or lessee of private property.

B. A person who commits a:

(1) first offense of interference is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; and

(2) second or subsequent offense of interference is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. When a person who commits interference possesses a license, certificate or permit issued to him by the state game commission, the license, certificate or permit shall be subject to revocation by the commission pursuant to the provisions of Sections 17-1-14 and 17-3-34 NMSA 1978.

D. As used in this section, "interference" means:

(1) intentionally placing oneself in a location where a human presence may affect the behavior of a game animal, bird or fish or the feasibility of killing or taking a game animal, bird or fish with the intent of interfering with or harassing another person who is lawfully hunting, trapping or fishing;

(2) intentionally creating a visual, aural, olfactory or physical stimulus for the purpose of affecting the behavior of a game animal, bird or fish with the intent
of interfering with or harassing another person who is lawfully hunting, trapping or fishing; or

(3) intentionally affecting the condition or altering the placement of personal property used for the purpose of killing or taking a game animal, bird or fish.

E. Nothing in this section shall be construed to include a farmer or rancher in pursuit of his normal farm or ranch operation or law enforcement officer in pursuit of his official duties."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 230

CHAPTER 95

RELATING TO TRANSPORTATION; PROVIDING FOR A MOTOR CARRIER SINGLE STATE REGISTRATION SYSTEM; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 65-2-115 NMSA 1978 (being Laws 1981, Chapter 358, Section 36) is amended to read:

"65-2-115. INTERSTATE CARRIERS--CERTIFICATE OF REGISTRATION--PROCEDURE.--

A. No common or contract motor carrier engaged exclusively in interstate commerce shall operate for the transportation of persons or property for hire upon any public highway in this state without first either obtaining from the commission a certificate of registration under the provisions of this section or complying with the provisions of Section 65-2-115.1 NMSA 1978, as directed by the commission.

B. The certificate of registration shall be issued to interstate carriers, as a matter of course, upon proper application being made and shall designate the route and type of service specified in the application. No certificate of registration shall authorize the holder to engage in whole or in part as a common or contract motor carrier in intrastate business within this state or to engage in any business or operate over any route not specified in the certificate of registration. The certificate of registration shall become void unless the applicant to which it is granted begins operations within thirty days from the date the certificate of registration is issued and shall become void if the service is thereafter discontinued or unless, in either event, an extension is granted upon proper showing by order of the commission.

C. The commission shall adopt rules prescribing the manner and form in which interstate motor carriers shall apply for certificates of registration, but the application shall be in writing and sworn to and shall show the name and address of the applicant and, if a corporation, the names of its officers and directors and their addresses, the entire route within this state over which the applicant desires to operate and the kind of transportation, whether passenger or freight or both, in which the applicant proposes to engage, together with a brief description of each vehicle which the
applicant intends to use, including the seating capacity if for passenger traffic or the tonnage capacity if for freight, a specification of the proposed schedule, the proposed rate, schedule or schedules of rates for transportation or for services in connection therewith and other information as the commission may require covering observance of New Mexico state police regulations and payment of license taxes and fees.

D. This certificate of registration shall be subject to all the motor carrier provisions of the revised Interstate Commerce Act, as amended, Subtitle 4, Title 49, United States Code."

Section 2

Section 2. A new section of the Motor Carrier Act, Section 65-2-115.1 NMSA 1978, is enacted to read:

"65-2-115.1. INTERSTATE CARRIERS--ESTABLISHMENT OF SINGLE STATE REGISTRATION SYSTEM.--

A. The commission is authorized to collect an annual ten dollar ($10.00) fee per motor vehicle, enter into agreements with states, agencies and governments and promulgate all rules and regulations necessary to enable New Mexico to participate in the single state registration system for motor carriers under Section 4005 of the federal Intermodal Surface Transportation Efficiency Act of 1991, and implementing rules and regulations promulgated by the interstate commerce commission.

B. Compliance by any common motor carrier or contract motor carrier with the provisions of the federal Intermodal Surface Transportation Efficiency Act of 1991 shall not in and of itself authorize the carrier to engage in whole or in part as a common motor carrier or contract motor carrier in New Mexico intrastate business."

Section 3

Section 3. Section 65-2-125 NMSA 1978 (being Laws 1981, Chapter 358, Section 46, as amended) is amended to read:

"65-2-125. FEES--REFUNDS--DISPOSITION OF RECEIPTS--FORFEITURE OF DEPOSITS.--

A. The commission shall charge and collect the following miscellaneous fees, except as required in Paragraph (3) of this subsection, in connection with the administration of the Motor Carrier Act:

(1) for filing application for certificate of public convenience and necessity or contract carrier
permit, two hundred fifty dollars ($250);

(2) for filing application for an intrastate certificate of registration, twenty-five dollars ($25.00);

(3) for each annual registration number, stamp or decal for each vehicle to be operated intrastate in New Mexico, other than the vehicles provided for in Subsection F of Section 65-2-116 NMSA 1978, provided that the taxation and revenue

department may substitute electronic means of identifying vehicles that have paid the annual registration fee in lieu of issuing a stamp or decal, ten dollars ($10.00) per vehicle per year or portion thereof;

(4) for filing application for broker's or agent's license, one hundred dollars ($100);

(5) for filing application for intrastate temporary authority, one hundred dollars ($100) and for each extension of any such authority, fifty dollars ($50.00);

(6) for filing application for change of name, ten dollars ($10.00);

(7) for filing application for lease or transfer of any certificate of public convenience and necessity or permit, two hundred dollars ($200);

(8) for filing application to change intrastate tariff for rate, fare or charge, two hundred dollars ($200);

(9) for filing application for rate change pursuant to zone of rate freedom provisions, fifteen dollars ($15.00);

(10) for filing application for voluntary suspension of certificate or permit, fifteen dollars ($15.00);

(11) for filing proof of insurance or property damage and liability security relating to intrastate motor carrier operations, fifteen dollars ($15.00) per filing;

(12) for filing application for reinstatement of certificate or permit following voluntary or involuntary suspension, one hundred dollars ($100);

(13) for filing lease or equipment interchange agreement and other miscellaneous filings, five dollars ($5.00);

(14) for certifying copies of any record, order, permit or certificate, fifteen dollars ($15.00);

(15) for filing requests to vacate or continue hearing filed fewer than ten calendar days before the scheduled hearing date, fifty dollars ($50.00); and

(16) for copies of written commission documents or records, one dollar ($1.00) per page and for other records, including but not limited to magnetic tapes, an amount set by the commission, in addition to any applicable certification charge.

All fees shall be collected by the commission at the time of performance of the service for which the fees are payable and shall be remitted to the state treasurer and deposited in the "motor transportation fees receipt fund", hereby created.

B. Whenever any fees specified in Subsection A of this section have been erroneously paid, the person having paid such fees may apply in writing to the commission for a refund no later than sixty days after the payment. Upon approval of the application by the commission, the amount erroneously paid shall be refunded to the person who made the payment from the motor transportation fees receipt fund. At the end of each month, the state treasurer shall transfer the unencumbered balance in the motor transportation fees receipt fund to the state road fund.

C. All applications made after the passage of the Motor Carrier Act shall be fully completed within sixty days after all deposits or fees have been tendered. In the event any person, firm or corporation neglects or fails to fully complete an application within the time designated, the deposit or fee shall be forfeited to the state. If the applicant desires to renew his application, he shall tender and pay an additional fee in the same amount as the original."

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect
immediately.HB 267

CHAPTER 96

RELATING TO INSURANCE; CLARIFYING THE ROLES OF ADMINISTRATORS AND SERVICE COMPANIES FOR WORKERS' COMPENSATION SELF-INSURED GROUPS; AMENDING THE GROUP SELF-INSURANCE ACT.

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

Section 1

Section 1. Section 52-6-10 NMSA 1978 (being Laws 1986, Chapter 22, Section 84, as amended) is amended to read:

"52-6-10. ADMINISTRATORS AND SERVICE COMPANIES-- CONFLICTS.--

A. Each group shall have an administrator. In providing day-to-day management for the group, the administrator may provide claims adjustment; safety engineering; compilation of statistics and the preparation of premium, loss and tax reports; preparation of other required self-insurance reports; development of members' assessments and fees; and administration of a claim fund.

B. Each group may have a service company. The service company may provide services the administrator delegates to it or does not itself provide.

C. No service company or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, an administrator for the same group. No administrator or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a service company for the same group. Nothing in this section shall prohibit an administrator or service company for one group from being an administrator or service company for another group.

D. An administrator, officer, trustee or employee of a group or an employee of an administrator shall disclose in writing to the group's board of trustees and director a conflict of interest. For purposes of this subsection, a "conflict of interest" means that a person accepts or is a beneficiary of a fee, brokerage, gift or other thing of value, other than fixed salary or compensation, as consideration for an investment, loan, deposit, purchase, sale, exchange, insurance, reinsurance or other similar transaction made by or for the group, or that a person is financially interested in any capacity in a transaction for the group except on behalf of the group.

E. No group shall pay remuneration, compensation or any thing of value to an officer, administrator or director of the group unless the payment has been authorized by the group's board of trustees.

F. A service contract shall state that, unless the director permits otherwise, the service company shall handle, to their conclusion, all claims and other obligations incurred during the contract period."HB 372

CHAPTER 97

RELATING TO WATER RIGHTS; AMENDING LAWS 1991, CHAPTER 99, SECTION 2 PERTAINING TO THE NEW MEXICO IRRIGATION WORKS CONSTRUCTION FUND.

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

Section 1

Section 1. Laws 1991, Chapter 99, Section 2 is amended to read:

"APPROPRIATIONS--CONDITIONS.--

A. Subject to conditions set forth in Subsection B of this section, the following amounts are appropriated to the interstate stream commission as follows:

(1) one million dollars ($1,000,000) is appropriated from the New Mexico irrigation works construction fund for expenditure in the eighty-first fiscal year for the purpose of purchasing water rights along the Pecos River basin that would effectively aid the state in complying with the Pecos River Compact and the United States supreme court's amended decree in Texas v. New Mexico, No. 65 original; and

(2) two million dollars ($2,000,000) is appropriated from the New Mexico irrigation works construction fund in each of the eighty-second through the eighty-sixth fiscal years for expenditure in each of the eighty-second through the eighty-sixth fiscal years for the purpose of retiring water rights along the Pecos River basin that would effectively aid New Mexico in compliance with the United States supreme court's amended decree in Texas v. New Mexico, No. 65 original.

B. The appropriations set forth in Subsection A of this section are subject to the following conditions:

(1) the interstate stream commission shall review the expenditures of the appropriation made in Subsection A of this section at each of the interstate stream commission's regularly scheduled meetings or as it deems necessary throughout the seventy-ninth through eighty-sixth fiscal years. This review shall be based on, at a minimum, the conditions set forth in this section;

(2) the interstate stream commission shall only expend the money appropriated in Subsection A of this section, subject to the following schedule of priorities in the following order of importance:

(a) to purchase water rights, without purchasing the appurtenant land, from willing and able sellers, within the Pecos River basin;

(b) to purchase water rights with the appurtenant land within the Pecos River basin; and

(c) to purchase water, either surface or subsurface, within the Pecos River basin; and

(3) the interstate stream commission shall before any purchases are made using the money appropriated in Subsection A of this section have market evaluations or appraisals made that take into consideration recent and comparable sales, including but not limited to, sales that included surface acreage with and without improvements. The market evaluation or appraisal along with other relevant considerations shall be the basis for any purchase."HB 382

CHAPTER 98

RELATING TO PETROLEUM PRODUCTS; ENACTING THE PETROLEUM PRODUCTS STANDARDS ACT; REPEALING CERTAIN SECTIONS OF THE NMSA 1978; PROVIDING ADMINISTRATIVE PENALTIES.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Petroleum Products Standards Act".

Section 2

Section 2. PURPOSE.--It is the purpose of the Petroleum Products Standards Act to guarantee adequate quality and quantity standards for petroleum products through a strong and comprehensive program involving inspection, sampling, testing and enforcement measures.

Section 3

Section 3. DEFINITIONS.--As used in the Petroleum Products Standards Act:

A. "board" means the board of regents at New Mexico state university;

B. "dealer" means a dealer as defined by the Special Fuels Act;

C. "department" means the New Mexico department of agriculture;

D. "director" means the director of the New Mexico department of agriculture;

E. "distributor" means a distributor as defined by the Gasoline Tax Act;

F. "lubricating oil" means any oil used to lubricate transmissions, gears or axles;

G. "motor fuel" means any liquid product used for the generation of power in an internal combustion engine, excluding liquified petroleum gases and aviation fuels;

H. "motor oil" means oil for use in lubricating internal combustion engines;

I. "person" means any natural person, firm, partnership, association or corporation;

J. "petroleum product" means motor fuel, kerosene, lubricating oil, motor oil, anti-freeze or brake fluid;

K. "retailer" means any person who sells motor fuel and delivers the motor fuel into the supply tanks of motor vehicles.

Section 4

Section 4. DUTIES OF THE BOARD--AUTHORITY OF THE DIRECTOR.--

A. The board shall be responsible for the administration and enforcement of the provisions of the Petroleum Products Standards Act. The board shall adopt rules and regulations necessary to administer and enforce the provisions of that act. The board shall provide public notice and allow public comment on all proposed rules and regulations.

B. The director shall have the authority to:

(1) inspect, investigate, analyze and take appropriate actions to administer and enforce the provisions of the Petroleum Products Standards Act;

(2) enter any commercial premises during normal business hours. If the premises are not open to the public, the director shall present his credentials and enter only with consent from the commercial entity. If no consent is given, the director shall obtain a search warrant;

(3) collect or cause to be collected samples of petroleum products offered for sale and cause such samples to be tested or analyzed to determine if they are in compliance with the provisions of the Petroleum Products Standards Act and regulations adopted pursuant to that act;

(4) issue and enforce stop-sale, hold and removal orders with respect to a petroleum product kept, offered or exposed for sale in violation of the provisions of the Petroleum Products Standards Act and regulations adopted pursuant to that act;

(5) require distributors and retailers to retain records pertaining to petroleum product purchases and sales for a period of not more than one year;

(6) maintain and operate a petroleum product testing laboratory to ensure that all petroleum products offered for sale in New Mexico meet standards prescribed in the Petroleum Products Standards Act and regulations adopted pursuant to that act;

(7) issue and enforce stop-use orders for measuring equipment or vehicle tanks that are used commercially and that do not conform to the provisions of the Petroleum Products Standards Act and regulations adopted pursuant to that act; and

(8) delegate to authorized representatives any of the responsibilities for the proper administration of the Petroleum Products Standards Act.

Section 5

Section 5. QUALITY STANDARDS.--Unless modified by regulation of the board, the quality standards, tests and methods of conducting analyses on petroleum products manufactured, kept, stored, sold or offered for sale in New Mexico shall be those last adopted and published by the American society for testing and materials or the society of automotive engineers and shall be used to determine compliance with the Petroleum Products Standards Act and regulations adopted pursuant to that act. In the absence of a petroleum product quality standard, test or method from the American society for testing and materials or the society of automotive engineers, the board may adopt a regulation that establishes a quality standard, test or method to conduct analyses on petroleum products.

Section 6

Section 6. INSPECTION OF MEASURING DEVICES.--

A. The director shall inspect all equipment used commercially in measuring or dispensing petroleum products in the state. The director shall ascertain that all such equipment is correct and accurate. The specifications, tolerances and other requirements for equipment used commercially in measuring petroleum products shall be set by regulations adopted by the board.

B. No person shall refuse to permit the director or his authorized representative to inspect, test and seal as necessary any commercial device designed to measure and dispense petroleum products. No person shall break the seal without permission from the director or his authorized representative. Abroken seal on a commercial device designed to measure or dispense petroleum products shall be prima facie evidence of a violation of the Petroleum Products Standards Act.

Section 7

Section 7. INSPECTION AND CERTIFICATION OF VEHICLE TANKS USED AS MEASURES.--

A. The director shall establish calibration stations to inspect, measure and calibrate the capacity of a vehicle tank used as a measure to deliver petroleum products in New Mexico. The director shall determine where to locate the stations.

B. The owner or operator of a vehicle tank used as a measure to deliver petroleum products in the state shall notify the director before he uses the vehicle tank, and the director shall set a time to inspect and calibrate the vehicle tank at a calibration station. The director may accept calibration certificates from other agencies.

Section 8

Section 8. LABELING.--

A. No person shall sell, offer for sale or permit the sale of any petroleum product unless there is firmly attached or painted on the container or dispenser from which the petroleum product is offered for sale a sign or label stating the grade or type of product being offered for sale. The sign or label shall be plainly, visibly and prominently displayed in a manner prescribed by regulation of the board.

B. The board may identify petroleum products of a special nature, composition or quality, and it may establish labeling requirements for such products.

C. A sign or label used in connection with motor oil or lubricating oil shall include the society of automotive engineers viscosity grade classification number preceded by the letters "SAE" and the American petroleum institute service classification preceded by the words "API service".

Section 9

Section 9. DECEIT--PETROLEUM PRODUCTS--PURCHASERS.--No person shall store, sell, offer or advertise for sale a petroleum product that may deceive, tends to deceive or has the effect of deceiving the purchaser of that product about the composition, grade, quantity or price of the product or that the product meets the standards prescribed by the Petroleum Products Standards Act and regulations adopted pursuant to that act.

Section 10

Section 10. FEES.--The board may authorize the director to establish and publish a schedule of fees to recover the cost of services performed by the director at the request of
a person or firm.

Section 11

Section 11. MONEY COLLECTED.--All money collected pursuant to the provisions of the Petroleum Products Standards Act shall be deposited with the board of regents of New Mexico state university for use by the department in carrying out the provisions of that act.

Section 12

Section 12. PENALTIES--ADMINISTRATIVE PROCEDURES--APPEALS.--

A. No person, by himself, by his servant or agent or as the servant or agent of another person shall:

(1) violate the provisions of the Petroleum Products Standards Act;

(2) violate any regulation adopted pursuant to the Petroleum Products Standards Act; or

(3) misrepresent a petroleum product as meeting the standards of the Petroleum Products Standards Act.

B. Any person who violates Subsection A of this section shall be guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

C. The board shall establish a system of administrative penalties for violations of the Petroleum Products Standards Act. The administrative penalties may be assessed by the director in lieu of or in addition to other penalties provided by statute. In establishing the system of administrative penalties, the board, after public notice and public hearing, shall adopt regulations that meet the following minimum requirements:

(1) the maximum amount of any administrative penalty shall not exceed one thousand dollars ($1,000) for any one violation of the Petroleum Products Standards Act by any person;

(2) violations for which administrative penalties may be assessed shall be clearly defined, along with a scale of administrative penalties relating the amount of the administrative penalty to the severity and frequency of the violation;

(3) provisions shall be included for due process, including proper notification of administrative proceedings, right to discovery of charges and evidence and appeal procedures; and

(4) prior to assessing administrative penalties pursuant to the provisions of the Petroleum Products Standards Act, the department shall comply with Paragraphs (2) and (3) of this subsection.

D. Appeals from decisions of the director regarding the assessment of an administrative penalty shall be to the district court in the county where the violation is alleged to have occurred. The appeal shall be limited to the record of the administrative proceedings, except that in cases of alleged irregularities not shown in the record, testimony may be taken.

Section 13

Section 13. INJUNCTION.--

A. In order to ensure compliance with, and in order to enforce the provisions of, the Petroleum Products Standards Act the director may apply to a court of competent jurisdiction to have a person enjoined from engaging in a practice prohibited by that act.

B. Upon application to a court for the issuance of an injunction against a person who is not complying with the provisions of the Petroleum Products Standards Act, the court may issue an order to restrain the person temporarily from engaging in the prohibited practice. The court shall hear the matter and, upon a preponderance of the evidence that the person is not complying with the provisions of the Petroleum Products Standards Act, the court shall enjoin the person from engaging in the prohibited practice.

Section 14

Section 14. REPEAL.--Sections 57-19-1 through 57-19-22 and Section 57-19-24 NMSA 1978 (being Laws 1937, Chapter 102, Sections 1 through 11, Laws 1977, Chapter 71, Sections 3 and 4, Laws 1937, Chapter 102, Sections 12 through 15 and Section 17, Laws 1971, Chapter 78, Section 2, Laws 1973, Chapter 117, Sections 7 through 9 and Laws 1987, Chapter 91, Section 2, as amended) are repealed.

Section 15

Section 15. SEVERABILITY.--If any part or application of the Petroleum Products Standards Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 16

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 480

CHAPTER 99

RELATING TO ACEQUIAS AND COMMUNITY DITCHES; AMENDING A SECTION OF THE NMSA 1978 TO CHANGE THE DISTRIBUTION OF THE ACEQUIA AND COMMUNITY DITCH FUND; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 73-2A-3 NMSA 1978 (being Laws 1988, Chapter 157, Section 3, as amended) is amended to read:

"73-2A-3. FUND CREATED.--

A. An "acequia and community ditch fund" is created in the state treasury, to be expended upon order of the director of the department of agriculture to carry out the purposes of contracting with acequia and ditch associations constituting a majority of acequias or ditches within an adjudication suit or a separately administered portion of an adjudication suit to provide assistance to acequias and community ditch associations in the adjudication process, including historical studies, economic impact reports, expert witness fees, legal fees and other technical services related to the adjudication process.

B. Money in the acequia and community ditch fund may be used to enter into agreements for grants-in-aid to satisfy costs and expenses incurred by acequias and community ditch associations. The amount of funding provided to acequia and ditch associations in any given year shall be determined by a simple majority of a committee consisting of the director of the department of agriculture, the chairman of the interstate stream commission and a third person who will be elected from within the New Mexico acequia commission. The committee shall consider financial need, progress of the adjudication and the trial schedule; however, the committee is not limited to these factors in awarding grant agreements. No more than one-fourth of the money allocated from the acequia and community ditch fund shall be allocated to one acequia association; provided, however, that the eight most qualified applicant associations may be considered to receive one-twelfth of the money that is in the fund and available for any given fiscal year unless the association requests less than that amount. The committee shall consider the state engineer's report on the eligibility and priority of applicants for funds. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the department of agriculture or his authorized representative. Balances in the fund at the end of any fiscal year shall not revert to the general fund and may be expended to carry out the purposes of the Acequia and Community Ditch Fund Act."

Section 2

Section 2. EMERGENCY.--It is necessary for the public, peace, health and safety that this act take effect immediately.HB 511

CHAPTER 100

RELATING TO FEES; EARMARKING CERTAIN FUNDS; CREATING CERTAIN FUNDS; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 25-1-5 NMSA 1978 (being Laws 1977, Chapter 309, Section 5, as amended) is amended to read:

"25-1-5. OPTIONAL POWERS.--

A. The board may establish a system of grading food service establishments for the purpose of certifying compliance with the Food Service Sanitation Act and regulations requiring food service establishments to display in a designated manner a grade as notice of compliance to the public. Such regulations shall include provisions for the revocation and reinstatement of the permit that are consistent with due process of law.

B. The board shall establish a schedule of fees for the issuance and renewal of permits issued by the division under the Food Service Sanitation Act. The board shall set the schedule of fees so that no fee established by such schedule shall be less than seventy-five dollars ($75.00) or more than one hundred dollars ($100) annually for a food service establishment. The board shall establish a separate schedule of fees not to exceed twenty-five dollars ($25.00) per single event or celebration per temporary food service establishment. Fees shall be waived for all temporary non-potentially hazardous food service operations, for any temporary food service establishment operating no more than two calendar days in any calendar month and for any food service establishment that provides food to the general public at no charge. Fees collected for the issuance and renewal of permits pursuant to the Food Service Sanitation Act shall be deposited in the food service sanitation fund."

Section 2

Section 2. Section 74-1-8 NMSA 1978 (being Laws 1971, Chapter 277, Section 11, as amended) is amended to read:

"74-1-8. ENVIRONMENTAL IMPROVEMENT BOARD--DUTIES.--

A. The board is responsible for environmental management and consumer protection. In that respect, the board shall promulgate regulations and standards in the following areas:

(1) food protection;

(2) water supply, including regulations establishing a reasonable system of fees for the provision of services by the agency to public water supply systems;

(3) liquid waste;

(4) air quality management as provided in the Air Quality Control Act;

(5) radiation control as provided in the Radiation Protection Act;

(6) noise control;

(7) nuisance abatement;

(8) vector control;

(9) occupational health and safety as provided in the Occupational Health and Safety Act;

(10) sanitation of public swimming pools and public baths;

(11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;

(12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act;

(13) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act; and

(14) solid waste as provided in the Solid Waste Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats.

C. Fees collected pursuant to Paragraph (2) of Subsection A of this section shall be deposited in the water supply fund."

Section 3

Section 3. Section 74-6-5 NMSA 1978 (being Laws 1973, Chapter 326, Section 4, as amended) is amended to read:

"74-6-5. PERMITS--APPEALS--PENALTY.--

A. By regulation the commission may require persons to obtain from a constituent agency designated by the commission a permit for the discharge of any water contaminant either directly or indirectly into water.

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

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

D. The constituent agency may deny any application for a permit if:

(1) it appears that the effluent would not meet applicable state or federal effluent regulations or limitations;

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

(3) it appears that the effluent would cause any state or federal stream standard to be exceeded.

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

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

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

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

(2) sample effluents in accordance with methods and at locations and intervals as may be prescribed by the commission;

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

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

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

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

I. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Water Quality Act and any applicable regulations of the commission.

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

(1) violation of any condition of the permit;

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

(3) violation of any provisions of the Water Quality Act;

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

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

K. If the constituent agency denies, terminates or modifies a permit or grants a permit subject to condition, the constituent agency shall notify the applicant or permittee by certified mail of the action taken and the reasons. If the applicant or permittee is dissatisfied with the action taken by the constituent agency, he may file a petition for hearing before the commission. The petition shall be made in writing to the director of the constituent agency within thirty days after notice of the constituent agency's action has been received by the applicant or permittee. Unless a timely request for hearing is made, the decision of the constituent agency shall be final.

L. If a timely petition for hearing is made, the commission shall hold a hearing within thirty days after receipt of the petition. The constituent agency shall notify the petitioner by certified mail of the date, time and place of the hearing. Provided that if the commission upon receipt of the petition deems the basis for the petition for hearing by the commission is affected with substantial public interest, it shall ensure that the public shall receive notice of the date, time and place of the hearing and shall be given a reasonable chance to submit data, views or arguments orally or in writing and to

examine witnesses testifying at the hearing. Any public member submitting data, views or arguments orally or in writing shall be subject to examination at the hearing. In the hearing, the burden of proof shall be upon the petitioner. The commission may designate a hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the commission shall sustain, modify or reverse the action of the constituent agency.

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

N. A petitioner may appeal the decision of the commission by filing with the court of appeals a notice of appeal within thirty days after the date the decision is made. The appeal shall be on the record made at the hearing. The petitioner shall certify in his notice of appeal that arrangements have been made with the commission for preparation of a sufficient number of transcripts of the record of the hearing on which the appeal depends to support his appeal to the court, at the expense of the petitioner, including two copies, which he shall furnish to the commission.

O. A person who violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not less than three hundred dollars ($300) or more than ten thousand dollars ($10,000) per day or by imprisonment for not more than one year or both.

P. In addition to the remedy provided in Subsection O of this section, the trial court may impose a civil penalty for a violation of any provision of this section not exceeding five thousand dollars ($5,000) per day."

Section 4

Section 4. A new section of the Water Quality Act is enacted to read:

"WATER QUALITY MANAGEMENT FUND CREATED.--There is created in the state treasury the "water quality management fund" to be administered by the department of environment. All fees collected pursuant to the regulations adopted by the commission under Subsection H of Section 74-6-5 NMSA 1978 shall be deposited in the fund. Money in the fund is appropriated to the department of environment for the purpose of administering the regulations adopted by the commission pursuant to Section 74-6-5 NMSA 1978. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of environment."

Section 5

Section 5. A new section of the Food Service Sanitation Act is enacted to read:

"FOOD SERVICE SANITATION FUND.--The "food service sanitation fund" is created in the state treasury to be administered by the department of environment for the purpose of paying the costs of administering regulations promulgated by the board to carry out the provisions of the Food Service Sanitation Act."

Section 6

Section 6. A new section of the Environmental Improvement Act is enacted to read:

"WATER SUPPLY FUND CREATED.--The "water supply fund" is created in the state treasury to be administered by the department of environment. All fees collected pursuant to the provisions of Paragraph (2) of Subsection A of Section 74-1-8 NMSA 1978 shall be deposited in the fund. Money in the fund is appropriated to the department of environment for the purpose of paying the costs of administering water supply regulations."

Section 7

Section 7. A new section of the Hazardous Waste Act is enacted to read:

"UNDERGROUND STORAGE TANK FUND CREATED.--The "underground storage tank fund" is created in the state treasury to be administered by the department. All balances in the fund are appropriated to the department for the sole purpose of meeting necessary expenses in the administration and operation of the underground storage tank program. All fees collected pursuant to Subsection D of Section 74-4-4.4 NMSA 1978 shall be credited to the underground storage tank fund."

Section 8

Section 8. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. HB 534

CHAPTER 101

RELATING TO COMMISSIONS; ABOLISHING THE ECONOMIC DEVELOPMENT AND TOURISM COMMISSION; CREATING THE ECONOMIC DEVELOPMENT COMMISSION; CREATING THE TOURISM COMMISSION; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 9-15-3 NMSA 1978 (being Laws 1983, Chapter 297, Section 3, as amended) is amended to read:

"9-15-3. DEFINITIONS.--As used in the Economic Development Department Act:

A. "commission" means the economic development commission;

B. "department" means the economic development department; and

C. "secretary" means the secretary of economic development."

Section 2

Section 2. Section 9-15-6 NMSA 1978 (being Laws 1983, Chapter 297, Section 6, as amended) is amended to read:

"9-15-6. SECRETARY--DUTIES AND GENERAL POWERS.--

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

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

(1) except as otherwise provided in the Economic Development Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

(3) organize the department into those organizational units he deems will enable it to function most efficiently;

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

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

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

(8) prepare an annual budget of the department based upon the five-year economic development plan approved by the commission. The economic development plan shall be updated and approved annually by the commission;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies;

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

(11) give bond in the penal sum of twenty-five thousand dollars ($25,000) and require directors to each give bond in the penal sum of ten thousand dollars ($10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act. The department shall pay the costs of these bonds; and

(12) require performance bonds of such department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of these bonds.

C. The secretary may apply for and receive in the name of the department any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary, unless otherwise provided by statute. Unless otherwise provided by statute,

no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act."

Section 3

Section 3. Section 9-15-7 NMSA 1978 (being Laws 1983, Chapter 297, Section 7, as amended) is amended to read:

"9-15-7. SECRETARY--ADDITIONAL DUTIES.--In addition to the secretary's responsibility for the overall supervision of the department's operation in support of the purposes of the Economic Development Department Act, the secretary shall:

A. work with and provide staff support to the commission in formulating and implementing the state's five-year economic development plan;

B. advise the commission of proposed rules, regulations, projects and contractual arrangements;

C. enter into contracts with state, federal or private entities, apply for and accept any state, federal or private funds or grants for such projects and accept similar donations and bequests from any source;

D. maintain and update records on the status of all completed and ongoing projects of the department;

E. develop, maintain and provide economic and demographic information; and

F. perform such other duties as requested by the commission in order to further the purposes of the Economic Development Department Act."

Section 4

Section 4. Section 9-15-11 NMSA 1978 (being Laws 1988, Chapter 81, Section 5, as amended) is amended to read:

"9-15-11. ECONOMIC DEVELOPMENT COMMISSION CREATED--MEMBERSHIP--ADMINISTRATIVELY ATTACHED TO THE DEPARTMENT.--

A. The "economic development commission" is created. The commission shall be a planning commission administratively attached to the economic development department. The commission shall provide advice to the department on policy matters. The commission shall be responsible for the annual approval and update of the state's five-year economic development plan. The commission shall consist of seven members who shall be qualified electors of the state of New Mexico, no more than four of whom, at the time of their appointment, shall be members of the same political party and at least one of whom shall be a Native American. Members shall be appointed by the governor and confirmed by the senate. Two members shall be appointed from each of the three congressional districts. The seventh member shall be the governor's science advisor hereby named. The governor's science advisor shall advise the governor on matters relating to science and technology, technological innovation, technical excellence, technology-based new business development, research and development and other science and technology projects conducted at research institutes and institutions of higher education throughout the state, with emphasis on commercialization of such projects and technology transfer for economic development purposes.

B. Appointments shall be made for seven-year terms expiring on January 1 of the appropriate year. Commission members shall serve staggered terms as determined by the governor at the time of their initial appointment. Annually, the governor shall designate a chairman of the commission from among the members.

C. The commission shall meet at the call of the chairman, not less than once each quarter, and shall invite representatives of appropriate legislative committees, other state agencies and interested persons to its meetings for the purpose of information exchange and coordination.

D. Commission members shall not vote by proxy. A majority of the members constitutes a quorum for the conduct of business.

E. Members of the commission shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given the member being removed. The senate shall be given exclusive original jurisdiction over proceedings to remove members of the commission under such rules as it may promulgate. The senate's decision in connection with such matters shall be final. A vacancy in the membership of the commission occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

F. Commission members shall not be paid, but shall receive per diem and mileage as provided in the Per Diem and Mileage Act."

Section 5

Section 5. Section 9-15-12 NMSA 1978 (being Laws 1983, Chapter 297, Section 12, as amended) is amended to read:

"9-15-12. COMMISSION--POWERS AND DUTIES.--The commission shall:

A. develop and recommend policies and provide policy and program guidance for the economic development department;

B. review, modify and approve annual updates to the state's five-year economic development plan generated by the department;

C. advise, assist and promote the department on matters relating to technology, technology-based new business development and technology commercialization projects; and

D. establish such rules and regulations for its own operations as are necessary to achieve the purposes of the Economic Development Department Act. Rules and regulations of the commission shall be adopted in the same procedural manner as rules and regulations of the department are adopted and shall be filed in accordance with the State Rules Act."

Section 6

Section 6. Section 9-15A-1 NMSA 1978 (being Laws 1991, Chapter 21, Section 1) is amended to read:

"9-15A-1. SHORT TITLE.--Chapter 9, Article 15A NMSA 1978 may be cited as the "Tourism Department Act"."

Section 7

Section 7. Section 9-15A-2 NMSA 1978 (being Laws 1991, Chapter 21, Section 2) is amended to read:

"9-15A-2. DEFINITIONS.--As used in the Tourism Department Act:

A. "commission" means the tourism commission;

B. "department" means the tourism department; and

C. "secretary" means the secretary of tourism."

Section 8

Section 8. Section 9-15A-6 NMSA 1978 (being Laws 1991, Chapter 21, Section 6) is amended to read:

"9-15A-6. SECRETARY--DUTIES AND GENERAL POWERS.--

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

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

(1) except as otherwise provided in the Tourism Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

(3) organize the department into those organizational units he deems will enable it to function most efficiently;

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

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for which administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

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

(8) prepare an annual budget of the department based upon the five-year tourism plan approved by the commission. This plan shall be updated and approved annually by the commission;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance;

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

(11) give bond in the penal sum of twenty-five thousand dollars ($25,000) and require directors each to give bond in the penal sum of ten thousand dollars ($10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act. The department shall pay the costs of these bonds; and

(12) require performance bonds of such department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of these bonds.

C. The secretary may apply for and receive in the name of the department any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and

mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act."

Section 9

Section 9. Section 9-15A-7 NMSA 1978 (being Laws 1991, Chapter 21, Section 7) is amended to read:

"9-15A-7. SECRETARY--ADDITIONAL DUTIES.--In addition to the secretary's responsibility for the overall supervision of the department's operation in support of the purposes of the Tourism Department Act, the secretary shall:

A. work with and provide staff support to the commission in formulating and implementing the state's five-year tourism plan;

B. advise the commission of proposed rules, regulations, projects and contractual arrangements;

C. enter into contracts with state, federal or private entities, apply for and accept any state, federal or private funds or grants for such projects and accept similar donations and bequests from any source;

D. maintain and update records on the status of all completed and ongoing projects of the department; and

E. perform such other duties as requested by the commission in order to further the purposes of the Tourism Department Act."

Section 10

Section 10. A new section of the Tourism Department Act, Section 9-15A-8 NMSA 1978, is enacted to read:

"9-15A-8. TOURISM COMMISSION CREATED--MEMBERSHIP--ADMINISTRATIVELY ATTACHED TO THE DEPARTMENT.--

A. The "tourism commission" is created. The commission shall be a planning commission administratively attached to the department. The commission shall provide advice to the department on policy matters. The commission shall be responsible for the annual approval and update of
the state's five-year tourism plan. The commission shall consist of seven members who shall be qualified electors of the state of New Mexico, no more than four of whom, at the time of their appointment, shall be members of the same political party and at least one of whom shall be a Native American. Members shall be appointed by the governor and

confirmed by the senate. Two members shall be appointed from each of the three congressional districts. One member shall be appointed from the state at large.

B. Appointments shall be made for seven-year terms expiring on January 1 of the appropriate year. Commission members shall serve staggered terms as determined by the governor at the time of their initial appointment. Annually, the governor shall designate a chairman of the commission from among the members.

C. The commission shall meet at the call of the chairman, not less than once each quarter, and shall invite representatives of appropriate legislative committees, other state agencies and interested persons to its meetings for the purpose of information exchange and coordination.

D. Commission members shall not vote by proxy. A majority of the members constitutes a quorum for the conduct of business.

E. Members of the commission shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given the member being removed. The senate shall be given exclusive original jurisdiction over proceedings to remove members of the commission under such rules as it may promulgate. The senate's decision in connection with such matters shall be final. A vacancy in the membership of the commission occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

F. Commission members shall not be paid, but shall receive per diem and mileage as provided in the Per Diem and Mileage Act."

Section 11

Section 11. A new section of the Tourism Department Act, Section 9-15A-9 NMSA 1978, is enacted to read:

"9-15A-9. COMMISSION--POWERS AND DUTIES.--The commission shall:

A. develop and recommend policies and provide policy and program guidance for the department;

B. review, modify and approve annual updates to the state's five-year tourism plan generated by the department; and

C. establish such rules and regulations for its own operations as are necessary to achieve the purposes of the Tourism Department Act. Rules and regulations of the commission shall be adopted in the same procedural manner as rules

and regulations of the department are adopted and shall be filed in accordance with the State Rules Act."

Section 12

Section 12. REPEAL.--Section 9-15-20 NMSA 1978 (being Laws 1986, Chapter 38, Section 5, as amended) is repealed.HB 575

CHAPTER 102

RELATING TO TRANSPORTATION; PROVIDING FOR ADDITIONS TO THE STATE TRANSPORTATION AUTHORITY; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 73-23-3 NMSA 1978 (being Laws 1985 (1st S.S.), Chapter 14, Section 3, as amended) is amended to read:

"73-23-3. CREATION OF STATE TRANSPORTATION AUTHORITY--MEMBERS--COMPENSATION--ORGANIZATION.--

A. There is created the "state transportation authority", a body politic and corporate, subject to the oversight of the legislature, consisting of the following members:

(1) the secretary of highway and transportation or his designee;

(2) the secretary of economic development or his designee;

(3) the commissioner of public lands or his designee;

(4) the secretary of tourism or his designee;

(5) the secretary of energy, minerals and natural resources or his designee;

(6) the secretary of environment or his designee;

(7) one Native American representative appointed by the governor with the advice and consent of the senate;

(8) two representatives of the transportation and mining industries appointed by the governor with the advice and consent of the senate; and

(9) three representatives of the public at large, at least one of whom shall represent a recognized environmental group, appointed by the governor with the advice and consent of the senate.

B. The members of the state transportation authority appointed by the governor shall serve for five-year terms. Any vacancy occurring in the governor's appointed membership of the authority shall be filled by appointment by the governor for the unexpired term of the member. Members serving by virtue of their offices shall serve terms coextensive with their terms in that office, and their successors in office shall automatically succeed them.

C. The members of the state trnsportation authority shall elect a chairman and a secretary.

D. Actions of the state transportation authority shall be taken only by a majority of the entire membership.

E. The state highway and transportation department, the economic development department, the state land office, the department of environment, the tourism department, the energy, minerals and natural resources department and other executive departments of the state shall provide adequate staff for the state transportation authority to carry out its duties.

F. The state transportation authority shall meet quarterly and at such other times as the chairman may designate.

G. The attorney general's office shall provide legal advice to the state transportation authority when requested.

H. The appointed members of the state transportation authority shall receive compensation for their services as provided in the Per Diem and Mileage Act."HB 599

CHAPTER 103

RELATING TO INSURANCE; REQUIRING PREMIUM DISCOUNTS FOR HOME OWNERS WITH BURGLAR ALARMS OR WROUGHT IRON ON DOORS AND WINDOWS; ENACTING A NEW SECTION OF THE NMSA 1978.

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

Section 1

Section 1. A new section of the New Mexico Insurance Code is enacted to read:

"DISCOUNTS FOR COMPREHENSIVE COVERAGE.--Any insurer licensed to write homeowner's insurance, as defined by the superintendent of insurance, within the state shall provide a minimum premium discount of ten percent for houses with electronic alarm systems designed to prevent unauthorized entry into the house. The insurer shall also provide a minimum premium discount of five percent for houses with wrought iron bars covering all the doors and windows of the house. These discounts shall apply to comprehensive coverage and shall be approved by the superintendent pursuant to Section 59A-17-13 NMSA 1978 as part of the insurer's rate filing. Some or all of the premium discounts required by this section may be omitted upon demonstration to the superintendent in an insurer's rate filing that the discounts are duplicative of other discounts provided by the insurer."HB 748

CHAPTER 104

RELATING TO MOTOR VEHICLES; AMENDING SECTION 66-7-413 NMSA 1978 (BEING LAWS 1978, CHAPTER 35, SECTION 484, AS AMENDED) TO PROVIDE FOR MOVEMENT BY DEALERS OF CERTAIN IMPLEMENTS OF HUSBANDRY.

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

Section 1

Section 1. Section 66-7-413 NMSA 1978 (being Laws 1978, Chapter 35, Section 484, as amended) is amended to read:

"66-7-413. PERMITS FOR EXCESSIVE SIZE AND WEIGHT--SPECIAL NOTIFICATION REQUIRED ON MOVEMENT OF MANUFACTURED HOMES.--

A. The motor transportation division and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 on any highway under the jurisdiction of the state highway commission or local authorities. Except for the movement of manufactured homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route to be traversed, the type of load to be transported and any other restrictions or conditions deemed necessary by the body granting the permit. In every other case, the permit shall be issued for a single trip and may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection to any peace officer. It is a misdemeanor for any person to violate any of the conditions or terms of the special permit.

B. The motor transportation division shall charge and collect, when the movement consists of any load of a width of twenty feet or greater for a distance of five

miles or more, the sum of three hundred dollars ($300) a day or fraction thereof to defray the cost of state or local police escort. The permit issued and the fee charged shall be based upon the entire movement at one time requiring police escort and not upon the number of vehicles involved.

C. The motor transportation division shall promulgate regulations in accordance with the State Rules Act pertaining to safety practices, liability insurance and equipment for escort vehicles provided by the motor carrier himself and for escort vehicles provided by a private business in this state.

(1) If a motor carrier provides his own escort vehicles and personnel, the motor transportation division shall not charge an escort fee but shall provide the motor carrier escort personnel with a copy of applicable regulations and shall inspect the escort vehicles for the safety equipment required by the regulations. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the motor carrier holds a valid certificate of public convenience and necessity or permit, as applicable, issued pursuant to Chapter 65, Article 2 NMSA 1978, the motor transportation division shall issue the special permit.

(2) If the escort service is a private business, the business shall have applied to the state corporation commission for and been issued a permit or certificate to operate as a contract or common motor carrier pursuant to Chapter 65, Article 2 NMSA 1978. The state corporation commission shall supply copies of applicable regulations to the business by mail and shall supply additional copies upon request. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the escort service holds a certificate, the special permit shall be issued and the motor transportation division shall not charge an escort fee.

(3) The movement of vehicles upon the highways of this state requiring a special permit and required to use an escort of the type noted in Paragraphs (1) and (2) of this subsection is subject to motor transportation division authority and inspection at all times.

(4) The state highway and transportation department shall conduct engineering investigations and engineering inspections to determine which four-lane highways are safe for the operation or movement of manufactured homes without an escort. After making that determination, the state highway and transportation department shall hold public hearings in the area of the state affected by the determination, after which it may adopt regulations designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If any portion of such a four-lane highway lies within the boundaries of a municipality, the state highway and transportation department, after obtaining the approval of the municipal governing body, shall include such portions in its regulations.

D. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the motor transportation

division for a period not to exceed one year for a fee of sixty dollars ($60.00). The permits may allow excessive height, length and width for a vehicle or combination of vehicles or load thereon and may include a provision for excessive weight if the operation is to be within the vicinity of a municipality.

E. Special permits for a single trip for a vehicle or combination of vehicles or load thereon of excessive weight, width, length and height may be issued for a single vehicle for a fee of fifteen dollars ($15.00).

F. If the vehicle for which a permit is issued under this section is a manufactured home, the motor transportation division or local highway authority issuing the permit shall furnish the following information to the property tax division which shall then forward the information:

(1) to the county assessor of any county from which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to if within the same county, the name of the owner of the manufactured home and the identification and registration numbers of the manufactured home;

(2) to the county assessor of any county in this state to which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to, the name of the owner of the manufactured home and the registration and identification numbers of the manufactured home; and

(3) to the owner of a manufactured home having a destination in this state, notification that the information required in Paragraphs (1) and (2) of this subsection is being given to the respective county assessors and that manufactured homes are subject to property taxation.

G. Except as provided in Subsection H of this section, if the movement of a manufactured home originates in this state, no permit shall be issued under Subsection F of this section until the owner of the manufactured home or his authorized agent obtains and presents to the motor transportation division proof that a certificate has been issued by the county assessor or treasurer of the county in which the manufactured home movement originates showing that either:

(1) all property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid, except for manufactured homes located on an Indian reservation; or

(2) no liability for property taxes on the manufactured home exists for the current tax year or any past tax years, except for manufactured homes located on an Indian reservation.

H. The movement of a manufactured home from the lot or business location of a manufactured home dealer to its destination designated by an owner-purchaser is not subject to the requirements of Subsection G of this section if the manufactured home movement originates from the lot or business location of the dealer and the manufactured home was part of his inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or his authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of Subsection G of this section whether the destination is the business location of a dealer or some other destination.

I. No permit shall be issued under this section for movement of a manufactured home whose width exceeds eighteen feet with no more than a six-inch roof overhang on the left side or twelve inches on the right side in addition to the eighteen foot width of the manufactured home. Manufactured homes exceeding the limitations of this section shall only be moved on dollies placed on the front and the rear of the structure.

J. The secretary may by regulation provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes; however, in no case may the cost of each permit be less than fifteen dollars ($15.00).

K. The secretary may provide by regulation for dealers of implements of husbandry to self-issue permits for the movement of certain sizes of implements of husbandry from the lot or business location of the dealer over specific routes with specific escort requirements, if necessary, to a destination designated by an owner-purchaser or for purposes of a working demonstration on the property of a proposed owner-purchaser. The department shall charge a fee for each self-issued permit not to exceed fifteen dollars ($15.00).

L. Any private motor carrier requesting an oversize or overweight permit must provide proof of insurance in at least the following amounts:

(1) bodily injury liability, providing:

(a) fifty thousand dollars ($50,000) for each person; and

(b) one hundred thousand dollars ($100,000) for each accident; and

(2) property damage liability, providing twenty-five thousand dollars ($25,000) for each accident.

M. Any common motor carrier requesting an oversize permit must produce a copy of a form "e" or other acceptable evidence that the common motor

carrier maintains the insurance minimums prescribed by the state corporation commission."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 750

CHAPTER 105

RELATING TO STATE FINANCE; ESTABLISHING THE OFFICE OF THE STATE CASH MANAGER UNDER THE OFFICE OF THE STATE TREASURER; PROVIDING POWERS AND DUTIES; PROVIDING FOR WARRANTS UPON THE STATE TREASURY; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. STATE CASH MANAGER--POWERS AND DUTIES.--

A. The "office of the state cash manager" is established under the office of the state treasurer. The state treasurer shall appoint the state cash manager, who shall manage efficiently all state cash balances in the custody of the state not otherwise invested or deposited, and in consultation with the state board of finance perform the duties necessary to carry out that management responsibility.

B. The duties of the state cash manager include:

(1) issuance of cash management regulations, procedures and enforcement policy to assure implementation of and compliance with the federal Cash Management Improvement Act of 1990 and other provisions of law;

(2) obtaining from each state agency periodic reports of all money from any source in the agency's custody, including detailed information on receipts, disbursements and balances on hand or on deposit in a financial institution;

(3) periodic review of all deposits made and balances on hand to assure that all money received by each state agency is deposited in a timely manner in the state fiscal agent bank and, if applicable, to the state agency's account in the state treasury;

(4) projection of the state's short-term and long-term cash needs to determine the amount available for short-term and long-term investment;

(5) determination and periodic update of the warrant clearance pattern to project the time lag between warrant issuance date and warrant clearance date to facilitate cash management activities; and

(6) preparation of a monthly written report showing state fund balances in each financial institution and
sending the report to the state board of finance, the legislative finance committee, the state investment council, the educational retirement board and the retirement board of the public employees retirement association.

C. In addition to the specific duties in Subsection B of this section, the state cash manager shall ensure that non-income producing state cash balances are kept to a minimum in accordance with established guidelines. The state cash manager shall report any actual or anticipated deviations from such established guidelines to the state board of finance, the investing board or council, and the legislative finance committee.

D. The state cash manager shall have access to all accounts, files and other records of funds in the custody of the state. Upon approval of the state board of finance, the state cash manager may conduct any periodic investigation he deems necessary to enable him to perform his duties pursuant to this section.

E. As used in this section, "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions, other than state educational institutions designated by Article 12, Section 11 of the constitution of New Mexico, and includes the New Mexico mortgage finance authority and the New Mexico finance authority.

Section 2

Section 2. STATEMENTS OF CONDITION REQUIRED TO BE TRANSMITTED TO THE STATE CASH MANAGER.--As a condition of retaining state deposits or investments, each financial institution certified or designated to receive state public money on deposit shall submit to the state cash manager its quarterly statement of condition at the same time the statement is sent to the federal or state financial authority. The statement shall be certified by an authorized officer of the institution. If the statement is not received by the state cash manager within ten days of its submission to the authority, the manager shall notify the institution of that fact, and the institution shall submit the certified statement within ten days of the notification. Within that twenty-day period, the institution shall not be disqualified from retaining state deposits or investments. If the institution fails to submit the certified statement within the twenty-day period, the state cash manager shall advise the state treasurer, who may withdraw all state funds from the institution in order to protect those state funds.

Section 3

Section 3. Section 6-5-6 NMSA 1978 (being Laws 1957, Chapter 252, Section 7, as amended) is amended to read:

"6-5-6. DETERMINATIONS TO BE MADE PRIOR TO ISSUANCE OF WARRANTS.--No warrant upon the state treasury for the disbursement of funds shall be issued except upon the determination of the financial control division that the amount of the expenditure:

A. does not exceed the appropriation made to the agency;

B. does not exceed the periodic allotment made to the agency or the unencumbered balance of funds at its disposal unless the warrant includes federal funds that will be receipted based upon established warrant-clearing patterns; and

C. is for a purpose included within the appropriation or otherwise authorized by law."

Section 4

Section 4. Section 8-6-7 NMSA 1978 (being Laws 1987, Chapter 183, Section 1) is amended to read:

"8-6-7. WRONGFUL DRAWING OR PAYMENT OF WARRANT BY SECRETARY OR TREASURER--PENALTY.--

A. If the secretary of finance and administration draws any warrant on the state treasurer when he knows or, with the use of available accounting information, should reasonably know there is an insufficient unexpended and unencumbered balance available for the purpose for which the warrant is drawn, he shall be in violation of this section.

B. If the state treasurer pays any warrant when he knows or, with the use of available accounting information, should reasonably know there are insufficient funds available in the treasury for the purpose to pay the warrant, he shall be in violation of this section unless the warrant includes federal funds that will be receipted based upon established warrant-clearing patterns.

C. A violation of this section shall be punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one year or by both such fine and imprisonment in the discretion of the judge."HB 823

CHAPTER 106

RELATING TO COURTS; CREATING THE JURY AND WITNESS FEE FUND; PROVIDING FOR THE COLLECTION OF CIVIL JURY FEES TO PAY FOR CERTAIN COSTS; MAKING AN APPROPRIATION.

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

Section 1

Section 1. JURY AND WITNESS FEE FUND CREATED--ADMINISTRATION--DISTRIBUTION.--

A. There is created in the state treasury the "jury and witness fee fund" to be administered by the administrative office of the courts.

B. All balances in the jury and witness fee fund may be expended only upon appropriation by the legislature to the administrative office of the courts for the purpose of paying the costs of:

(1) jurors and prospective jurors;

(2) witnesses of fact or character subpoenaed by the court, the prosecution or the defense;

(3) expert witnesses for grand juries and magistrate courts; and

(4) court interpreters.

C. All jury fees that the courts collect from parties requesting civil juries, except for jury demand fees as set forth in Section 35-6-1 NMSA 1978 and interest earned on money in the jury and witness fee fund shall be credited to the fund. Payments shall be made upon certification by judicial agencies of eligible amounts. No part of the fund shall revert at the end of any fiscal year.

D. Payments from the jury and witness fee fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts or his designee upon warrants drawn by the secretary of finance and administration.

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 21

CHAPTER 107

RELATING TO HEALTH; REQUIRING HUMAN IMMUNODEFICIENCY VIRUS TESTS FOR PERSONS CONVICTED OF CERTAIN CRIMINAL OFFENSES; AMENDING AND ENACTING SECTIONS OF THE HUMAN IMMUNODEFICIENCY VIRUS TEST ACT.

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

Section 1

Section 1. Section 24-2B-1 NMSA 1978 (being Laws 1989, Chapter 227, Section 1) is amended to read:

"24-2B-1. SHORT TITLE.--Chapter 24, Article 2B NMSA 1978 may be cited as the "Human Immunodeficiency Virus Test Act"."

Section 2

Section 2. Section 24-2B-2 NMSA 1978 (being Laws 1989, Chapter 227, Section 2) is amended to read:

"24-2B-2. INFORMED CONSENT.--No person shall perform a test designed to identify the human immunodeficiency virus or its antigen or antibody without first obtaining the informed consent of the person upon whom the test is performed, except as provided in Section 24-2B-5 or 24-2B-5.1 NMSA 1978. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses and limitations and the meaning of its results. Consent need not be in writing provided there is documentation in the medical record that the test has been explained and the consent has been obtained."

Section 3

Section 3. A new section of the Human Immunodeficiency Virus Test Act, Section 24-2B-5.1 NMSA 1978, is enacted to read:

"24-2B-5.1. INFORMED CONSENT NOT REQUIRED--TESTING OF PERSONS CONVICTED OF CERTAIN CRIMINAL OFFENSES--RESPONSIBILITY TO ADMINISTER AND PAY FOR TEST.--

A. A test designed to identify the human immunodeficiency virus or its antigen or antibody may be performed, without his consent, on an offender convicted pursuant to state law of any criminal offense:

(1) involving contact between the penis and vulva;

(2) involving contact between the penis and anus;

(3) involving contact between the mouth and penis;

(4) involving contact between the mouth and vulva;

(5) involving contact between the mouth and anus; or

(6) when the court determines from the facts of the case that there was a transmission or likelihood of transmission of blood, semen or vaginal secretions from the offender to the victim.

B. When consent to perform a test on an offender cannot be obtained pursuant to the provisions of Section 24-2B-2 or 24-2B-3 NMSA 1978, the victim of a criminal offense described in Subsection A of this section may petition the court to order that a test be performed on the offender. The petition and all proceedings in connection therewith shall be under seal. When the victim of the criminal offense is a minor or incompetent, the parent or legal guardian of the victim may petition the court to order that a test be performed on the offender. The court shall order and the test shall be administered to the offender within ten days after the petition is filed by the victim, his parent or guardian. The results of the test shall be disclosed only to the offender and to the victim or the victim's parent or legal guardian. When the offender has a positive test result, both the offender and victim shall be provided with counseling, as described in Section 24-2B-4 NMSA 1978.

C. When the offender is sentenced to imprisonment in a state corrections facility, the curt's order shall
direct the department of health to be responsible for the administration of and payment for the test and the lawful distribution of the test results.

D. When the offender is convicted of a misdemeanor or petty misdemeanor offense or is convicted of a felony offense that is suspended or deferred, the court's order shall direct the department of health to be responsible for the administration of and payment for the test and the lawful distribution of the test results.

E. When the offender is a minor adjudicated as a
delinquent child pursuant to the provisions of the Children's Code and the court transfers legal custody of the minor to the children, youth and families department, the court's order shall direct the children, youth and families department to be responsible for the administration of and payment for the test and the lawful distribution of the test results.

F. When the offender is a minor adjudicated as a delinquent child pursuant to the provisions of the Children's Code and the court does not transfer legal custody of the minor to the children, youth and families department, the court's order shall direct the department of health to be responsible for the administration of and payment for the test and the lawful distribution of the test results."

Section 4

Section 4. SEVERABILITY.--If any part or application of the Human Immunodeficiency Virus Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 36

CHAPTER 108

RELATING TO CORRECTIONS; ENACTING SECTIONS OF THE NATIVE AMERICAN COUNSELING ACT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. A new section of the Native American Counseling Act is enacted to read:

"DEFINITIONS.--As used in the Native American Counseling Act:

A. "native American" means any person who is descended from or is a member of an American Indian tribe, pueblo or band or is a native Hawaiian or Alaskan native; and

B. "native American religion" means any religion or religious belief that is practiced by a native American, the origin and interpretation of which is from a traditional native American culture or community, and includes the native American church."

Section 2

Section 2. A new section of the Native American Counseling Act is enacted to read:

"FREEDOM OF WORSHIP.--

A. Native American religions shall be afforded by the corrections department the same standing and respect as Judeo-Christian religions. The practice of native American religion shall be permitted at each state corrections facility, including women's corrections facilities, to the extent that it does not threaten the reasonable security of the corrections facility.

B. Upon the request of any native American inmate or group of native American inmates, a state corrections facility shall permit access on a regular basis, for at least six consecutive hours per week, to:

(1) native American spiritual advisers;

(2) items and materials used in religious ceremonies provided by the inmate or a spiritual advisor, including cedar, corn husks, corn pollen, eagle and other feathers, sage, sweet grass, tobacco, willow, drums, gourds, lava rock, medicine bundles, bags or pouches, pipes, staffs
and other traditional items and materials, except that the sacramental use of peyote by an inmate while incarcerated is prohibited in conformance with the religious and spiritual beliefs and policies of the Native American church; and

(3) a sweat lodge on the grounds of the corrections facility.

C. A secure place at the site of worship in which to store the items and materials used to conduct the religious ceremonies shall be provided. Any native American inmate may possess items and materials used in religious ceremonies as defined in Section 2 Subsection B of this Act as long as this possession does not threaten the reasonable security of the corrections facility.

D. Native American spiritual advisers shall be afforded by the administration of a state corrections facility the same stature, respect and inmate contact as is afforded the clergy of any Judeo-Christian religion.

E. No native American inmate shall be required to cut his hair if it conflicts with his traditional native American religious beliefs."

Section 3

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.SB 61

CHAPTER 109

RELATING TO DOMESTIC RELATIONS; AMENDING CERTAIN SECTIONS OF THE FAMILY VIOLENCE PROTECTION ACT; PROVIDING A PENALTY.

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

Section 1

Section 1. Section 40-13-2 NMSA 1978 (being Laws 1987, Chapter 286, Section 2) is amended to read:

"40-13-2. DEFINITIONS.--As used in the Family Violence Protection Act:

A. "co-parents" means persons who have a child in common, regardless of whether they have been married or have lived together at any time;

B. "court" means the district court of the judicial district where an alleged victim of domestic abuse resides or is found;

C. "domestic abuse" means any incident by a household member against another household member resulting in:

(1) physical harm;

(2) severe emotional distress;

(3) bodily injury or assault;

(4) a threat causing imminent fear of bodily injury by any household member;

(5) criminal trespass;

(6) criminal damage to property;

(7) repeatedly driving by a residence or work place;

(8) telephone harassment;

(9) stalking;

(10) harassment; or

(11) harm or threatened harm to children as set forth in the paragraphs of this subsection;

D. "household member" means a spouse, former spouse, family member, including a relative, child, co-parent of a child or a person with whom the petitioner has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section; and

E. "order of protection" means a court order granted for the protection of victims of domestic abuse."

Section 2

Section 2. Section 40-13-3 NMSA 1978 (being Laws 1987, Chapter 286, Section 3) is amended to read:

"40-13-3. PETITION FOR ORDER OF PROTECTION--CONTENTS--INDIGENT PETITIONERS--STANDARD FORMS.--

A. A victim of domestic abuse may petition the court under the Family Violence Protection Act for an order of protection.

B. The petition shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts showing the alleged domestic abuse.

C. The petition shall state whether any other domestic action is pending between the petitioner and the respondent.

D. If any other domestic action is pending between the petitioner and the respondent, the parties shall not be compelled to mediate any aspect of the case arising from the Family Violence Protection Act unless the court finds that appropriate safeguards exist to protect each of the parties and that both parties can fairly mediate with such safeguards.

E. Any action brought under that act is independent of any proceeding for annulment, separation or divorce between the petitioner and the respondent.

F. Any remedies granted are in addition to other available civil or criminal remedies.

G. If the petition is accompanied by an affidavit showing that the petitioner is unable to pay the costs of the proceeding, the court may order that the petitioner be permitted to proceed as an indigent without payment of court costs. In determining the financial status of the petitioner for the purpose of this subsection, the income of the respondent shall not be considered.

H. Standard simplified petition forms with instructions for completion shall be available to petitioners not represented by counsel. Law enforcement agencies shall keep such forms and make them available upon request to victims of domestic violence."

Section 3

Section 3. Section 40-13-5 NMSA 1978 (being Laws 1987, Chapter 286, Section 5) is amended to read:

"40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE TO PROPERTY NOT AFFECTED.--

A. Upon finding that domestic abuse has occurred, the court shall enter an order of protection ordering the respondent to refrain from abusing the petitioner or any other household member. The court shall specifically describe the acts the court has ordered the respondent to do or refrain from doing. As a part of any order of protection, the court may:

(1) grant sole possession of the residence or household to the petitioner during the period the order of protection is effective or order the respondent to provide temporary suitable alternative housing for petitioner and any children to whom the respondent owes a legal obligation of support;

(2) award temporary custody of any children involved when appropriate and provide for visitation rights, child support and temporary support for the petitioner on a basis that gives primary consideration to the safety of the victim and the children;

(3) order that the respondent shall not initiate contact with the petitioner;

(4) restrain the parties from transferring, concealing, encumbering or otherwise disposing of petitioner's property or the joint property of the parties except in the usual course of business or for the necessities of life and require the parties to account to the court for all such transferences, encumbrances and expenditures made after the order is served or communicated to the party restrained in court; and

(5) order other injunctive relief as the court deems necessary for the protection of the petitioner, including orders to law enforcement agencies as provided by this section.

B. The order shall contain a notice that violation of any provision of the order constitutes contempt of court and may result in a fine or imprisonment or both.

C. If the order supersedes or alters prior orders of the court pertaining to domestic matters between the parties, the order shall say so on its face. If an action relating to child custody or child support is pending or has concluded with entry of an order at the time the petition for an order of protection was filed, the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pnding or prior custody or support action.

D. No order issued under the Family Violence Protection Act shall affect title to any property or allow the petitioner to transfer, conceal, encumber or otherwise dispose of respondent's property or the joint property of the parties.

E. Either party may request a review hearing to amend the order. An order of protection involving child custody or support may be modified without proof of a substantial or material change of circumstances."

Section 4

Section 4. Section 40-13-6 NMSA 1978 (being Laws 1987, Chapter 286, Section 6) is amended to read:

"40-13-6. SERVICE OF ORDER--DURATION--PENALTY--REMEDIES NOT EXCLUSIVE.--

A. An order of protection granted under the Family Violence Protection Act shall be filed with the clerk of the court and a copy shall be sent by the clerk to the local law enforcement agency. The order shall be personally served upon the respondent, unless he or his attorney was present at the time the order was issued. If the petitioner has been found by the court to be unable to pay court costs, the order shall be served without cost to the petitioner.

B. An order of protection granted by the court involving custody or support shall be effective for a fixed period of time not to exceed six months. The order may be extended for good cause upon motion of the petitioner for an additional period of time not to exceed six months. Injunctive orders shall continue until modified or rescinded upon motion by either party, or until the court approves a subsequent consent agreement entered into by the petitioner and the respondent.

C. A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order pursuant to this section.

D. State courts shall give full faith and credit to tribal court orders of protection.

E. A person convicted of violating an order of protection granted by a court under the Family Violence Protection Act is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a second or subsequent conviction, an offender shall be sentenced to a jail term of not less than seventy-two consecutive hours that shall not be suspended, deferred or taken under advisement.

F. In addition to any other punishment provided in the Family Violence Protection Act, the court shall order a person convicted to make full restitution to the party injured by the violation of an order of protection and order the person convicted to participate in and complete a program of professional counseling, at his own expense, if possible.

G. In addition to charging the person with violating an order of protection, a peace officer shall file all other possible criminal charges arising from an incident of domestic violence when probable cause exists.

H. The remedies provided in the Family Violence Protection Act are in addition to any other civil or criminal remedy available to the petitioner."SB 66

CHAPTER 110

RELATING TO DOMESTIC AFFAIRS; ENACTING A SECTION OF THE NMSA 1978 TO AUTHORIZE THE USE OF A LIFE INSURANCE POLICY AS SECURITY FOR THE PAYMENT OF SPOUSAL OR CHILD SUPPORT OR FOR THE PAYMENT OF PROPERTY DIVISION COSTS.

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

Section 1

Section 1. A new Section 40-4-7.1 NMSA 1978 is enacted to read:

"40-4-7.1. USE OF LIFE INSURANCE POLICY AS SECURITY.--In any proceeding brought pursuant to the provisions of Section 40-4-7 NMSA 1978 or in any other proceeding for the division of property or spousal or child support brought pursuant to the provisions of Chapter 40 NMSA 1978, the court may require either party or both parties to the proceeding to maintain the minor children of the parties or a spouse or former spouse as beneficiaries on a life insurance policy as security for the payment of:

(1) support for the benefit of the minor children;

(2) spousal support; or

(3) the cost to equalize a property division in the event of the death of the insured on the life insurance policy. The court may also allocate the cost of the premiums of the life insurance policy between the parties."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.
SB 152

CHAPTER 111

RELATING TO DOMESTIC AFFAIRS; AMENDING SECTIONS OF THE NMSA 1978 TO CLARIFY PROVISIONS CONCERNING THE USE OF A MONEY ALLOWANCE FOR SPOUSAL OR CHILD SUPPORT AS A LIEN ON REAL ESTATE.

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

Section 1

Section 1. Section 40-4-13 NMSA 1978 (being Laws 1947, Chapter 16, Section 2, as amended) is amended to read:

"40-4-13. SPOUSAL SUPPORT TO CONSTITUTE LIEN ON REAL ESTATE.--

A. The decree making the allowance for spousal support to either spouse shall be a lien on the real estate of the obligor spouse from the date of filing of a notice of order or decree in the office of the county clerk of each county where any of the property is situated.

B. The notice of order or decree shall contain:

(1) the caption of the case from which the duty of spousal support arose, including the state, county and court in which the case was heard, the case number and the names of the parties when the case was heard;

(2) the date of entry of the judgment, order or decree from which the duty of spousal support arose;

(3) the current names, social security numbers and dates of birth of the parties; and

(4) each party's last known address, unless ordered otherwise in the judgment, order or decree from which the duty of spousal support arose.

C. The notice shall be executed and acknowledged in the same manner as a grant of land is executed and acknowledged.

D. A copy of the recorded notice shall be sent to the obligor spouse at his last known address."

Section 2

Section 2. Section 40-4-15 NMSA 1978 (being Laws 1947, Chapter 16, Section 4, as amended) is amended to read:

"40-4-15. CHILD SUPPORT TO CONSTITUTE LIEN ON REAL AND PERSONAL PROPERTY.--

A. In case a sum of money is allowed to the children by the decree for the support, education or maintenance of the children, the decree shall become a lien on the real and personal property of the obligor party from the date of filing of a notice of order or decree in the office of the county clerk of each county where any of the property may be situated.

B. The notice of order or decree shall contain:

(1) the caption of the case from which the duty of child support arose, including the state, county and court in which the case was heard, the case number and the names of the parties when the case was heard;

(2) the date of entry of the judgment, order or decree from which the duty of child support arose;

(3) the current names, social security numbers and dates of birth of the parties; and

(4) each party's last known address, unless ordered otherwise in the judgment, order or decree from which the duty of child support arose.

C. The notice shall be executed and acknowledged in the same manner as a grant of land is executed and acknowledged.

D. A copy of the recorded notice shall be sent to the obligor spouse at his last known address."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.
SB 160

CHAPTER 112

RELATING TO INTEREST ON JUDGMENTS AND DECREES; AMENDING A CERTAIN SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 56-8-4 NMSA 1978 (being Laws 1851-1852, p. 255, as amended) is amended to read:

"56-8-4. JUDGMENTS AND DECREES--BASIS OF COMPUTING INTEREST.--

A. Interest shall be allowed on judgments and decrees for the payment of money from entry and shall be calculated at the rate of eight and three-quarters percent per year, unless the judgment is rendered on a written instrument having a different rate of interest, in which case interest shall be computed at a rate no higher than specified in the instrument or the judgment is based on tortious conduct, bad faith, intentional or willful acts, in which case interest shall be computed at the rate of fifteen percent.

B. The court in its discretion may allow interest of up to ten percent from the date the complaint is served upon the defendant after considering among other things:

(l) if the plaintiff was the cause of unreasonable delay in the adjudication of the plaintiff's claims; and

(2) if the defendant had previously made a reasonable and timely offer of settlement to the plaintiff.

C. Nothing contained in this section shall affect the award of interest or the time from which interest is computed as otherwise permitted by statute or common law.

D. The state and its political subdivisions are exempt from the provisions of this section except as otherwise provided by statute or common law."
SB 166

CHAPTER 113

RELATING TO PUBLIC FINANCE; AUTHORIZING THE STATE INVESTMENT COUNCIL TO PROVIDE INVESTMENT ADVISORY AND MANAGEMENT SERVICES FOR CERTAIN STATE AGENCIES; PROVIDING FOR A POOLED INVESTMENT FUND; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

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

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

A. Subject to the limitations, conditions and restrictions contained in policy-making regulations or resolutions adopted by the council and subject to prior authorization by the council, the state investment officer has the power to make

purchases, sales, exchanges, investments and reinvestments of the permanent fund. The state investment officer is charged with the duty of seeing that money invested is at all times handled in the best interests of the state.

B. Securities or investments purchased or held may be sold or exchanged for other securities and investments; provided, however, that no sale or exchange is at a price less than the going market at the time the securities or investments are sold or exchanged.

C. In purchasing bonds, the state investment officer shall require a certified or original written opinion of a reputable bond attorney or the attorney general of the state certifying the legality of the bonds to be purchased; provided, however, this written opinion may be the approving legal opinion ordinarily furnished with the bond issue.

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

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

F. For the purposes of the investment of the severance tax permanent fund, the state investment officer shall manage the fund in such a prudent manner as to ensure a reasonable diversification and reasonable yield.

G. For funds available for investment for more than one year, the state investment officer may contract with any state agency to provide investment advisory or investment management services, separately or through a pooled investment fund, provided the state agency enters into a joint powers agreement with the state investment council and that state agency pays at least the direct cost of such services. Notwithstanding any statutory provision governing state agency investments, the state investment officer may invest funds of a state agency in any type of investment permitted for the permanent fund under the same standard of care applicable to investments of the permanent fund. In performing investment services for a state agency, the council and the state investment officer are exempt from the New Mexico

Securities Act of 1986. As used in this subsection, "state agency" means any branch, agency, department, board, instrumentality or institution of the state, other than the educational retirement board and the retirement board created by the Public Employees Retirement Act."
SB 179

CHAPTER 114

RELATING TO TECHNICAL AND VOCATIONAL INSTITUTES; PROVIDING FOR REFUNDING BONDS; ENACTING A NEW SECTION OF THE TECHNICAL AND VOCATIONAL INSTITUTE ACT.

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

Section 1

Section 1. A new section of the Technical and Vocational Institute Act is enacted to read:

"ADOPTION OF RESOLUTION BY BOARD--PROVIDING FOR REFUNDING BONDS.--

A. The board of a technical and vocational institute district may, with the approval of the commission on higher education and the state board of finance, issue refunding bonds for the purpose of refunding any of the general obligation bonded indebtedness of the district. The board shall adopt a resolution stating the facts that make the issuance of the refunding bonds necessary or advisable, including the determination of the necessity or advisability by the board and the amount of refunding bonds that the board concludes is necessary and advisable to issue. The resolution shall further establish:

(1) the form of the bonds;

(2) the interest rate of the bonds, but the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act;

(3) the date of the refunding bonds;

(4) the denominations of the refunding bonds;

(5) the maturity dates, the last of which shall not be more than twenty years from the date of the refunding bonds; and

(6) the place of payment of both principal and interest.

B. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form. They shall bear:

(1) the signature or the facsimile signature of the president and the secretary of the board;

(2) the seal of the board; and

(3) the seal of the technical and vocational institute district.

C. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or sold as directed by the board. The proceeds of the sale shall be applied only to the purpose for which the bonds were issued and for the payment of any incidental expenses incurred."
SB 231

CHAPTER 115

RELATING TO INSURANCE; REPEALING SECTION 59A-29-8 (BEING LAWS 1985,

CHAPTER 61, SECTION 8, AS AMENDED) TO CONTINUE THE FAIR PLAN ACT.

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

Section 1

Section 1. REPEAL.--Section 59A-29-8 NMSA 1978 (being Laws 1985, Chapter 61, Section 8, as amended) is repealed.
SB 247

CHAPTER 116

RELATING TO CRIMINAL OFFENSES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 REGARDING THE SEXUAL EXPLOITATION OF CHILDREN.

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

Section 1

Section 1. Section 30-6A-2 NMSA 1978 (being Laws 1984, Chapter 92, Section 2) is amended to read:

"30-6A-2. DEFINITIONS.--As used in the Sexual Exploitation of Children Act:

A. "prohibited sexual act" means:

(1) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;

(2) bestiality;

(3) masturbation;

(4) sadomasochistic abuse for the purpose of sexual stimulation; or

(5) lewd and sexually explicit exhibition with a focus on the genitals or pubic area of any person for the purpose of sexual stimulation;

B. "visual or print medium" means:

(1) any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer or electronically generated imagery; or

(2) any book, magazine or other form of publication or photographic reproduction containing or incorporating any film, photograph, negative, slide, computer diskette, videotape, videodisc or any computer generated or electronically generated imagery;

C. "performed publicly" means performed in a place which is open to or used by the public; and

D. "manufacture" means the production, processing, copying by any means, printing, packaging or repackaging of any visual or print medium depicting any prohibited sexual
act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age."

Section 2

Section 2. Section 30-6A-3 NMSA 1978 (being Laws 1984, Chapter 92, Section 3, as amended) is amended to read:

"30-6A-3. SEXUAL EXPLOITATION OF CHILDREN.--

A. It is unlawful for any person to intentionally distribute or possess with intent to distribute any visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under

eighteen years of age. Any person who violates this subsection is guilty of a third degree felony.

B. It is unlawful for any person to intentionally cause or permit a child under eighteen years of age to engage in any prohibited sexual act or simulation of such an act if that person knows, has reason to know or intends that the act may be recorded in any visual or print medium or performed publicly. Any person who violates this subsection is guilty of a third degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a second degree felony.

C. It is unlawful for any person to intentionally manufacture any visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age. Any person who violates this subsection is guilty of a second degree felony.

D. The penalties provided for in this section shall be in addition to those set out in Section 30-9-11 NMSA 1978."
SB 260

CHAPTER 117

RELATING TO TORT LIABILITY; ENACTING THE EQUINE LIABILITY ACT.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Equine Liability Act".

Section 2

Section 2. LEGISLATIVE PURPOSE AND FINDINGS.--The legislature recognizes that persons who participate in or observe equine activities may incur injuries as a result of the numerous inherent risks involved in such activities. The legislature also finds that the state and its citizens derive numerous personal and economic benefits from such activities. It is the purpose of the legislature to encourage owners, trainers, operators and promoters to sponsor or engage in equine activities by providing that no person shall recover for injuries resulting from the risks related to the behavior of equine animals while engaged in any equine activities.

Section 3

Section 3. DEFINITIONS.--As used in the Equine Liability Act:

A. "equine" means a horse, pony, mule, donkey or hinny;

B. "equine activities" means:

(1) equine shows, fairs, competitions, rodeos, gymkhana, performances or parades that involve any or all breeds of equines and any of the equine disciplines;

(2) training or teaching activities;

(3) boarding equines;

(4) riding an equine belonging to another whether or not the owner has received some monetary consideration or other thing of equivalent value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect or evaluate the equine;

(5) rides, shows, clinics, trips, hunts or other equine occasions of any type, however informal or impromptu, connected with any equine or nonequine group or club; and

(6) equine racing;

C. "behavior of equine animals" means the propensity of an equine animal to kick, bite, shy, buck, stumble, bolt, rear, trample, be unpredictable or collide with other animals, objects or persons; and

D. "rider" means a person, whether amateur or professional, who is engaged in an equine activity.

Section 4

Section 4. LIMITATION ON LIABILITY.--

A. No person, corporation or partnership is liable for personal injuries to or for the death of a rider that may occur as a result of the behavior of equine animals while engaged in any equine activities.

B. No person, corporation or partnership shall make any claim against, maintain any action against or recover from a rider, operator, owner, trainer or promoter for injury, loss or damage resulting from equine behavior unless the acts or omissions of the rider, owner, operator, trainer or promoter constitute negligence.

C. Nothing in the Equine Liability Act shall be construed to prevent or limit the liability of the operator, owner, trainer or promoter of an equine activity who:

(1) provided the equipment or tack, and knew or should have known that the equipment or tack was faulty and an injury was the proximate result of the faulty condition of the equipment or tack;

(2) provided the equine and failed to make reasonable and prudent efforts to determine the ability of the rider to:

(a) engage safely in the equine activity; or

(b) safely manage the particular equine based on the rider's representations of his ability;

(3) owns, leases, rents or otherwise is in lawful possession and control of the land or facilities upon which a rider sustained injuries because of a dangerous condition that was known to the operator, owner, trainer or promoter of the equine activity;

(4) committed an act or omission that constitutes conscious or reckless disregard for the safety of a rider and an injury was the proximate result of that act or omission; or

(5) intentionally injures a rider.

Section 5

Section 5. POSTING OF NOTICE.--Operators, owners, trainers and promoters of equine activities or equine facilities, including but not limited to stables, clubhouses, ponyride strings, fairs and arenas, and persons engaged in instructing or renting equine animals shall post clearly visible signs at one or more prominent locations that shall include a warning regarding the inherent risks of the equine activity and the limitations on liability of the operator, owner, trainer or promoter.SB 268

CHAPTER 118

RELATING TO INSURANCE; AMENDING SECTION 59A-54-3 NMSA 1978 (BEING LAWS 1987,

CHAPTER 154, SECTION 3 AS AMENDED) TO CHANGE THE DEFINITION OF INSURER FOR PURPOSES OF THE COMPREHENSIVE HEALTH INSURANCE POOL ACT.

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

Section 1

Section 1. Section 59A-54-3 NMSA 1978 (being Laws 1987, Chapter 154, Section 3, as amended) is amended to read:

"59A-54-3. DEFINITIONS.--As used in the Comprehensive Health Insurance Pool Act:

A. "board" means the board of directors of the pool;

B. "health care facility" means any entity providing health care services that is licensed by the department of health;

C. "health care services" means any services or products included in the furnishing to any individual of medical care or hospitalization or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any person of any other services or products for the purpose of preventing, alleviating, curing or healing human illness or injury;

D. "health insurance" means any hospital and medical expense-incurred policy, nonprofit health care service plan contract, health maintenance organization subscriber contract, short-term, accident, fixed indemnity, specified disease policy or disability income contracts and limited benefit or credit insurance, or as defined by Section 59A-7-3 NMSA 1978. The term does not include insurance arising out of the Workers' Compensation Act or similar law, automobile medical payment insurance or insurance under which benefits are payable with or without regard to fault and which is required by law to be contained in any liability insurance policy;

E. "health maintenance organization" means any person who provides, at a minimum, either directly or through contractual or other arrangements with others, basic health care services to enrollees on a fixed prepayment basis and who is responsible for the availability, accessibility and
quality of the health care services provided or arranged, or as defined by Subsection F of Section 59A-46-2 NMSA 1978;

F. "health plan" means any arrangement by which persons, including dependents or spouses, covered or making application to be covered under the pool have access to hospital and medical benefits or reimbursement, including group or individual insurance or subscriber contract; coverage through health maintenance organizations, preferred provider organizations or other alternate delivery systems; coverage under prepayment, group practice or individual practice plans; coverage under uninsured arrangements of group or group-type contracts, including employer self-insured, cost-plus or other benefits methodologies not involving insurance or not subject to New Mexico premium taxes; coverage under group-type contracts which are not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefits. The term includes coverage through health insurance;

G. "insured" means an individual resident of this state who is eligible to receive benefits from any insurer or other health plan;

H. "insurer" means an insurance company authorized to transact health insurance business in this state, a nonprofit health care plan, a health maintenance organization and self insurers not subject to federal preemption. "Insurer" does not include an insurance company that is licensed under the Prepaid Dental Plan Law or a company that is solely engaged in the sale of dental insurance and is licensed not under that act, but under another provision of the Insurance Code;

I. "medicare" means coverage under both Part A and B of Title XVIII of the Social Security Act, 42 USC 1395 et seq., as amended;

J. "pool" means the New Mexico comprehensive health insurance pool;

K. "superintendent" means the superintendent of insurance; and

L. "therapist" means a licensed physical, occupational, speech or respiratory therapist." _____SB 307

CHAPTER 119

RELATING TO COUNTIES; CHANGING THE TERMS OF COUNTY COMMISSIONERS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 4-38-6 NMSA 1978 (being Laws 1899, Chapter 30, Section 1, as amended) is amended to read:

"4-38-6. ELECTION--TERM.--

A. In each county all county commissioners shall be elected to serve four-year terms, subject to the provisions of Subsection B of this section.

B. In those counties that consist of a three-member board of county commissioners, the secretary of state shall designate by lottery the terms for each county commission district, which shall elect two county commissioners for terms of four years and one county commissioner for a term of two years. The terms for two commissioners shall expire in the same year.

C. In those counties that, prior to 1992, have not had four-year terms for elected officials, the assessor, sheriff and probate judge shall be elected to four-year terms and the treasurer and clerk shall be elected to two-year terms in the 1994 general

election; thereafter, all elected officials shall be elected for terms of four years. The terms of the assessor, sheriff and probate judge shall expire in the same year, and the terms of the treasurer and clerk shall expire in the same year."

Section 2

Section 2. REPEAL.--Sections 4-39-1, 4-40-1, 4-41-1 and 4-43-1 NMSA 1978 (being Laws 1884, Chapter 63, Section 1, Laws 1868-1869, Chapter 36, Section 1, Laws 1851-1852, page 198 and Laws 1868-1869, Chapter 36, Section 1, as amended) are repealed.SB 308

CHAPTER 120

RELATING TO LAW ENFORCEMENT; PROVIDING CORRECTIONAL OFFICERS OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT WITH PEACE OFFICER POWERS IN CERTAIN SITUATIONS.

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

Section 1

Section 1. CORRECTIONAL OFFICERS--CHILDREN, YOUTH AND FAMILIES DEPARTMENT--ACTING AS PEACE OFFICERS.--

A. Correctional officers of the children, youth and families department who have completed an appropriate American correction association training course and who have at the particular time the principal duty to hold in custody or supervise any person accused or convicted of a delinquent act or criminal offense shall have the power of a peace officer with respect to arrests and enforcement of laws when:

(1) on the premises of a children, youth and families department facility or while transporting a person committed to or under the supervision of the children, youth and families department;

(2) supervising any person committed to or under the supervision of the children, youth and families department anywhere within the state; or

(3) engaged in any effort to pursue or apprehend any such person.

B. No correctional officer of the children, youth and families department shall be convicted or held liable for any act performed pursuant to this section if a peace officer could lawfully have performed the same act in the same circumstances.

C. Crimes against a correctional officer of the children, youth and families department while in the lawful discharge of duties that confer peace officer status

pursuant to this section shall be deemed the same crimes and shall bear the same penalties as crimes against a peace officer."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. _____SB 326

CHAPTER 121

RELATING TO CRIMINAL LAW; PROHIBITING ESCAPE FROM THE CUSTODY OF A CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE FACILITY; PROVIDING CRIMINAL PENALTIES; ENACTING A NEW SECTION OF THE CRIMINAL CODE.

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

Section 1

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

"ESCAPE FROM THE CUSTODY OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT.--Escape from the custody of the children, youth and families department consists of any person who has been adjudicated as a delinquent child and has been committed lawfully to the custody of a department juvenile justice facility:

A. escaping or attempting to escape from custody within the confines of a children, youth and families department juvenile justice facility; or

B. escaping or attempting to escape from another lawful place of custody or confinement that is not within the confines of a children, youth and families department juvenile justice facility.

Any person who commits escape from the custody of a children, youth and families department juvenile justice facility is guilty of a misdemeanor."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. SB 350

CHAPTER 122

RELATING TO LOCAL GOVERNMENT; PROVIDING FOR THE IMPOSITION, COLLECTION AND ADMINISTRATION OF DEVELOPMENT FEES.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Development Fees Act".

Section 2

Section 2. DEFINITIONS.--As used in the Development Fees Act:

A. "affordable housing" means any housing development built to benefit those whose income is at or below eighty percent of the area median income; and who will pay no more than thirty percent of their gross monthly income towards such housing;

B. "approved land use assumptions" means land use assumptions adopted originally or as amended under the Development Fees Act;

C. "assessment" means a determination of the amount of an impact fee;

D. "capital improvement" means any of the following facilities that have a life expectancy of ten or more years and are owned and operated by or on behalf of a municipality or county:

(1) water supply, treatment and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage and flood control facilities;

(2) roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state and federal highways;

(3) buildings for fire, police and rescue and essential equipment costing ten thousand dollars ($10,000) or more and having a life expectancy of ten years or more; and

(4) parks, recreational areas, open space trails and related areas and facilities;

E. "capital improvements plan" means a plan required by the Development Fees Act that identifies capital improvements or facility expansion for which impact fees may be assessed;

F. "county" means a county of any classification;

G. "facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization or expansion of an existing facility to better serve existing development, including schools and related facilities;

H. "hook-up fee" means a reasonable fee for connection of a service line to an existing gas, water, sewer or municipal or county utility;

I. "impact fee" means a charge or assessment imposed by a municipality or county on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, development fees and any other fee that functions as described by this definition. The term does not include hook-up fees, dedication of rights of way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs if the dedication or construction is required by a previously adopted valid ordinance or regulation and is necessitated by and attributable to the new development;

J. "land use assumptions" includes a description of the service area and projections of changes in land uses, densities, intensities and population in the service area over at least a five-year period;

K. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and H class counties, including any home rule municipality or H class county chartered under the provisions of Article 10, Section 6 of the constitution of New Mexico;

L. "new development" means the subdivision of land; reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units;

M. "qualified professional" means a professional engineer, surveyor, financial analyst or planner providing services within the scope of his license, education or experience;

N. "roadway facilities" means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the municipality or county, including bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state or federal highways;

O. "service area" means the area within the corporate boundaries or extraterritorial jurisdiction of a municipality or the boundaries of a county to be served by

the capital improvements or facility expansions specified in the capital improvements plan designated on the basis of sound planning and engineering standards; and

P. "service unit" means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements or facility expansions.

Section 3

Section 3. AUTHORIZATION OF FEE.--

A. Unless otherwise specifically authorized by the Development Fees Act, no municipality or county may enact or impose an impact fee.

B. If it complies with the Development Fees Act, a municipality or county may enact or impose impact fees on land within its respective corporate boundaries.

C. A municipality and county may enter into a joint powers agreement to provide capital improvements within an area subject to both county and municipal platting and subdivision jurisdiction or extraterritorial jurisdiction and may charge an impact fee under the agreement but if an impact fee is charged in that area, the municipality and county shall comply with the Development Fees Act.

Section 4

Section 4. ITEMS PAYABLE BY FEE.--

A. An impact fee may be imposed only to pay the following specified costs of constructing capital improvements or facility expansions:

(1) estimated capital improvements plan cost;

(2) planning, surveying and engineering fees paid to an independent qualified professional who is not an employee of the municipality or county for services provided for and directly related to the construction of capital improvements or facility expansions;

(3) fees actually paid or contracted to be paid to an independent qualified professional, who is not an employee of the municipality or county, for the preparation or updating of a capital improvements plan; and

(4) up to three percent of total impact fees collected for administrative costs for municipal or county employees who are qualified professionals.

B. Projected debt service charges may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on bonds, notes or other obligations issued to finance construction of capital improvements or facility expansions identified in the capital improvements plan.

Section 5

Section 5. ITEMS NOT PAYABLE BY FEE.--Impact fees shall not be imposed or used to pay for:

A. construction, acquisition or expansion of public facilities or assets that are not capital improvements or facility expansions identified in the capital improvements plan;

B. repair, operation or maintenance of existing or new capital improvements or facility expansions;

C. upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;

D. upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;

E. administrative and operating costs of a municipality or county except as provided in Paragraph (4) of Subsection A of Section 4 of the Development Fees Act;

F. principal payments or debt service charges on bonds or other indebtedness, except as allowed by Section 4 of the Development Fees Act; or

G. libraries, community centers, schools, projects for economic development and employment growth, affordable housing or apparatus and equipment of any kind, except capital improvements defined in Paragraph (3) of Subsection C of Section 2 of the Development Fees Act.

Section 6

Section 6. CAPITAL IMPROVEMENTS PLAN.--

A. A municipality or county shall use qualified professionals to prepare the capital improvements plan and to calculate the impact fee. The capital improvements plan shall follow the infrastructure capital improvement planning guidelines established by the department of finance and administration and shall address the following:

(1) a description, as needed to reasonably support the proposed impact fee, which shall be prepared by a qualified professional, of the existing capital

improvements within the service area and the costs to upgrade, update, improve, expand or replace the described capital improvements to adequately meet existing needs and usage and stricter safety, efficiency, environmental or regulatory standards;

(2) an analysis, which shall be prepared by a qualified professional, of the total capacity, the level of current usage and commitments for usage of capacity of the existing capital improvements;

(3) a description, which shall be prepared by a qualified professional, of all or the parts of the capital improvements or facility expansions and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions;

(4) a definitive table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of capital improvements or facility expansions and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial and industrial;

(5) the total number of projected service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(6) the projected demand for capital improvements or facility expansions required by new service units accepted over a reasonable period of time, not to exceed ten years; and

(7) anticipated sources of funding independent of impact fees.

B. The analysis required by Paragraph (2) of Subsection A of this section may be prepared on a system-wide basis within the service area for each major category of capital improvement or facility expansion for the designated service area.

C. The governing body of a municipality or county is responsible for supervising the implementation of the capital improvements plan in a timely manner.

Section 7

Section 7. MAXIMUM FEE PER SERVICE UNIT.--The fee shall not exceed the cost to pay for a proportionate share of the cost of system improvements, based upon service units, needed to serve new development.

Section 8

Section 8. TIME FOR ASSESSMENT AND COLLECTION OF FEE.--

A. Assessments of an impact fee shall be made at the earliest possible time. Collection of the impact fee shall occur at the latest possible time.

B. For land that has been platted in accordance with the subdivision or platting procedures of a municipality or county before the effective date of theDevelopment Fees Act or for land on which new development occurs or is proposed without platting, the municipality or county may assess the impact fees at the time of development approval or issuance of a building permit, whichever date is earlier. The assessment shall be valid for a period of not less than four years from the date of development approval or issuance of a building permit, whichever date is earlier.

C. For land that is platted after the effective date of the Development Fees Act, the municipality or county shall assess the fees at the time of recording of the subdivision plat and this assessment shall be valid for a period of not less than four years from the date of recording of the plat.

D. Collection of impact fees shall occur no earlier than the date of issuance of a building permit.

E. For new development that is platted in accordance with the subdivision or platting procedures of a municipality or county before the adoption of an impact fee, an impact fee shall not be collected on any service unit for which a valid building permit has been issued.

F. After the expiration of the four-year period described in Subsections B and C of this section, a municipality or county may adjust the assessed impact fee to the level of current impact fees as provided in the Development Fees Act.

Section 9

Section 9. ADDITIONAL FEE PROHIBITED--EXCEPTION.--Except as provided in Subsection F of Section 8 of the Development Fees Act, after assessment of the impact fees attributable to the new development or execution of an agreement for payment of impact fees, additional impact fees or increases in fees may not be assessed for any reason unless the number of service units to be developed increases. In the event of an increase in the number of service units, the impact fees to be imposed are limited to the amount attributable to the additional service units.

Section 10

Section 10. AGREEMENT WITH OWNER REGARDING PAYMENT.--A municipality or county is authorized to enter into an agreement with the owner of a tract of land for which a plat has been recorded providing for a method of payment of the impact fees over an extended period of time otherwise in compliance with the Development Fees Act.

Section 11

Section 11. COLLECTION OF FEES IF SERVICES NOT AVAILABLE.--Impact fees may be assessed but shall not be collected unless the:

A. collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the municipality or county commits to complete construction within seven years and to have the service available within a reasonable period of time after completion of construction considering the type of capital improvement or facility expansion to be constructed but in no event longer than seven years;

B. municipality or county agrees that the owner of a new development may construct to adopted municipal or county standards or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development or agrees to reimburse the owner for such costs from impact fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the property owner of record at the time the plat of the other new development is recorded; or

C. time period set forth in Subsection A of this section can be extended, provided the municipality or county obtains a performance bond or similar surety securing performance of the obligation to construct the capital improvements or facility expansions but in no event longer than seven years from commencement of construction of the capital improvements or facility expansion for which fees have been collected. The municipality or county shall establish written procedures to ensure that the owner of a new development shall not lose the value of the credits. Any refund for fees shall be made as provided in Section 17 of the Development Fees Act.

Section 12

Section 12. ENTITLEMENT TO SERVICES.--Any new development for which an impact fee has been paid is entitled to the permanent use and benefit of the services for which the fee was exacted and is entitled to receive prompt service from any existing facilities with actual capacity to serve the new service units.

Section 13

Section 13. AUTHORITY OF MUNICIPALITY OR COUNTY TO SPEND FUNDS OR ENTER INTO AGREEMENTS TO REDUCE FEES.--Municipalities or counties may spend funds from any lawful source or pay for all or a part of the capital improvements or facility expansions to reduce the amount of impact fees. A developer and a municipality or county may agree to offset or reduce part or all of the impact fee assessed on that new development, provided that the public policy which supports the reduction is contained in the appropriate planning documents of the municipality or

county and provided that the development's new proportionate share of the system improvement is funded with revenues other than impact fees from other new developments.

Section 14

Section 14. REQUIREMENT FOR GOVERNMENTAL ENTITIES TO PAY FEES.--Governmental entities shall pay all impact fees imposed under the Development Fees Act.

Section 15

Section 15. CREDITS AGAINST FACILITIES FEES.--Any construction of, contributions to or dedications of on-site or off-site facilities, improvements, or real or personal property with off-site benefits not required to serve the new development, in excess of minimum municipal and county standards established by a previously adopted and valid ordinance or regulation and required by a municipality or county as a condition of development approval shall be credited against impact fees otherwise due from the development. The credit shall include the value of:

A. dedication of land for parks, recreational areas, open space trails and related areas and facilities or payments in lieu of that dedication; and

B. dedication of rights of way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs.

Section 16

Section 16. ACCOUNTING FOR FEES AND INTEREST.--

A. The order, ordinance or resolution imposing an impact fee shall provide that all money collected through the adoption of an impact fee shall be maintained in separate interest-bearing accounts clearly identifying the payor and the category of capital improvements or facility expansions within the service area for which the fee was adopted.

B. Interest earned on impact fees shall become part of the account on which it is earned and shall be subject to all restrictions placed on the use of impact fees under the Development Fees Act.

C. Money from impact fees may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by the Development Fees Act.

D. The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours of the municipality or county.

E. As part of its annual audit process, a municipality or county shall prepare an annual report describing the amount of any impact fees collected, encumbered and used during the preceding year by category of capital improvement and service area identified as provided
in Subsection A of this section.

Section 17

Section 17. REFUNDS.--

A. Upon the request of an owner of the property on which an impact fee has been paid, the municipality or county shall refund the impact fee if existing facilities are available and service is not provided or the municipality or county has, after collecting the fee when service was not available, failed to complete construction within the time allowed under Section 11 of the Development Fees Act or service is not available within a reasonable period of time after completion of construction considering the type of capital improvement or facility expansion to be constructed, but in no event later than seven years from the date of payment under Subsection A of Section 11 of the Development Fees Act.

B. Upon completion of the capital improvements or facility expansions identified in the capital improvements plan, the municipality or county shall recalculate the impact fee using the actual costs of the capital improvements or facility expansion. If the impact fee calculated based on actual costs is less than the impact fee paid, including any sources of funding not anticipated in the capital improvements plan, the municipality or county shall refund the difference if the difference exceeds the impact fee paid by more than ten percent, based upon actual costs.

C. The municipality or county shall refund any impact fee or part of it that is not spent as authorized by the Development Fees Act within seven years after the date of payment.

D. A refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 56-8-3 NMSA 1978.

E. All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by a governmental entity, payment shall be made to the governmental entity.

F. The owner of the property on which an impact fee has been paid or a governmental entity that has paid the impact fee has standing to sue for a refund under this section.

Section 18

Section 18. COMPLIANCE WITH PROCEDURES REQUIRED.--
Except as otherwise provided by the Development Fees Act, a municipality or county shall comply with that act to levy an impact fee.

Section 19

Section 19. HEARING ON LAND USE ASSUMPTIONS.--To impose an impact fee, a municipality or county shall schedule and publish notice of a public hearing to consider land use assumptions within the designated service area that will be used to develop the capital improvements plan.

Section 20

Section 20. INFORMATION ABOUT ASSUMPTIONS AVAILABLE TO PUBLIC.--
On or before the date of the first publication of the notice of the hearing on land use assumptions, the municipality or county shall make available to the public its land use assumptions, the time period of the projections and a description of the general nature of the capital improvement facilities that may be proposed.

Section 21

Section 21. NOTICE OF HEARING ON LAND USE ASSUMPTIONS.--

A. The municipality or county shall publish notice of the hearing conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice shall contain:

(1) a headline to read as follows: "NOTICE OF PUBLIC HEARING ON LAND USE ASSUMPTIONS RELATING TO POSSIBLE ADOPTION OF IMPACT FEES";

(2) the time, date and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the land use assumptions that will be used to develop a capital improvements plan under which an impact fee may be imposed;

(4) an easily understandable map of the service area to which the land use assumptions apply; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the land use assumptions.

C. The municipality or county, within thirty days after the date of the public hearing, shall approve or
disapprove the land use assumptions.

D. An ordinance, order or resolution approving land use assumptions shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act.

Section 22

Section 22. SYSTEM-WIDE LAND USE ASSUMPTIONS.--

A. A municipality or county may adopt system-wide land use assumptions for water supply and treatment facilities in lieu of adopting land use assumptions for each service area for such facilities.

B. Prior to adopting system-wide land use assumptions, a municipality or county shall follow the public notice, hearing and other requirements for adopting land use assumptions.

C. After adoption of system-wide land use assumptions, a municipality or county is not required to adopt additional land use assumptions for a service area for water supply, treatment and distribution facilities or wastewater collection and treatment facilities as a prerequisite to the adoption of a capital improvements plan or impact fee, provided the capital improvements plan and impact fee are consistent with the system-wide land use assumptions.

Section 23

Section 23. CAPITAL IMPROVEMENTS PLAN REQUIRED AFTER APPROVAL OF LAND USE ASSUMPTIONS.--If the governing body adopts an ordinance, order or resolution approving the land use assumptions, the municipality or county shall provide for a capital improvements plan to be developed by qualified professionals using generally accepted engineering and planning practices in accordance with Section 6 of the Development Fees Act.

Section 24

Section 24. HEARING ON CAPITAL IMPROVEMENTS PLAN AND IMPACT FEE.--Upon completion of the capital improvements plan, the governing body shall schedule and publish notice of a public hearing to discuss the adoption of the capital improvements plan and imposition of the impact fee. The public hearing must be held by

the governing body of the municipality or county to discuss the proposed ordinance, order or resolution adopting a capital improvements plan and imposing an impact fee.

Section 25

Section 25. INFORMATION ABOUT PLAN AVAILABLE TO PUBLIC.--On or before the date of the first publication of the notice of the hearing on the capital improvements plan and impact fee, the plan shall be made available to the public.

Section 26

Section 26. NOTICE OF HEARING ON CAPITAL IMPROVEMENTS PLAN AND IMPACT FEE.--

A. The municipality or county shall publish notice of the hearing conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice must contain the following:

(1) a headline to read as follows: "NOTICE OF PUBLIC HEARING ON CAPITAL IMPROVEMENTS PLAN AND ADOPTION OF IMPACT FEES";

(2) the time, date and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the proposed capital improvements plan and the adoption of an impact fee;

(4) an easily understandable map of the service area in which the proposed fee will be imposed;

(5) the amount of the proposed impact fee per service unit; and

(6) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the plan and proposed fee.

Section 27

Section 27. ADVISORY COMMITTEE COMMENTS ON CAPITAL IMPROVEMENTS PLAN AND IMPACT FEES.--The advisory committee created under Section 37 of the Development Fees Act shall file its written comments on the proposed capital improvements plan and impact fees before the fifth business day before the date of the public hearing on the plan and fees.

Section 28

Section 28. APPROVAL OF CAPITAL IMPROVEMENTS PLAN AND IMPACT FEE REQUIRED.--

A. The municipality or county, within thirty days after the date of the public hearing on the capital
improvements plan and impact fee, shall approve, disapprove or modify the adoption of the capital improvements plan and imposition of an impact fee.

B. An ordinance, order or resolution approving the capital improvements plan and imposition of an impact fee shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act.

Section 29

Section 29. CONSOLIDATION OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN.--

A. In lieu of separately adopting the land use assumptions and capital improvements plan for a service area containing not greater than three hundred units, a municipality or county may consolidate the land use assumptions and the capital improvements plan, and adopt the assumptions, the plan and the impact fee simultaneously.

B. If a municipality or county elects to consolidate the land use assumptions and capital improvements plan as authorized by Subsection A of this section, the municipality or county shall first comply with Section 20 of the Development Fees Act and follow the public notice and hearing requirements for adopting a capital improvements plan and impact fee as provided in Section 21 of that act, except:

(1) the headline for the notice by publication shall read as follows: "NOTICE OF PUBLIC HEARING ON ADOPTION OF LAND USE ASSUMPTIONS AND IMPACT FEES";

(2) the notice shall state that the municipality or county intends to adopt land use assumptions, a capital improvements plan and impact fees at the hearing and does not intend to hold separate hearings to adopt the land use assumptions, capital improvements plan and impact fees;

(3) the notice shall specify a date, not earlier than sixty days after publication of the first notice, and must state that if a person, by not later than the date specified, makes a written request for separate hearings, the governing body shall hold separate hearings to adopt the land use assumptions and capital improvements plan; and

(4) the notice shall provide the name and mailing address of the official of the municipality or county to whom a request for separate hearings shall be sent.

C. In addition to the requirements of Subsection B of this section, the municipality or county shall comply with all other requirements for adopting land use assumptions, a capital improvements plan and an impact fee.

Section 30

Section 30. PERIODIC UPDATE OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED.--

A. A municipality or county imposing an impact fee shall update the land use assumptions and capital improvements plan at least every five years. The initial five-year period begins on the day the capital improvements plan is adopted.

B. The municipality or county shall review and evaluate its current land use assumptions and shall cause an update of the capital improvements plan to be prepared in accordance with the Development Fees Act.

Section 31

Section 31. HEARING ON UPDATED LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN.--The governing body of the municipality or county shall, within sixty days after the date it receives the update of the land use assumptions and the capital improvements plan, schedule and publish notice of a public hearing to discuss and review the update and shall determine whether to amend the plan.

Section 32

Section 32. HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN OR IMPACT FEE.--A public hearing shall be held by the governing body of the municipality or county to discuss the proposed ordinance, order or resolution amending land use assumptions, the capital improvements plan or the impact fee. On or before the date of the first publication of the notice of the hearing on the amendments, the land use assumptions and the capital improvements plan, including the amount of any proposed amended impact fee per service unit, shall be made available to the public.

Section 33

Section 33. NOTICE OF HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN OR IMPACT FEE.--

A. The municipality or county shall publish notice of the hearing conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice must contain the following:

(1) a headline to read as follows: "NOTICE OF PUBLIC HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN OR IMPACT FEES";

(2) the time, date and location of the hearing;

(3) a statement that the purpose of the hearing is to consider amendments to land use assumptions, capital improvements plan or impact fees;

(4) an easily understandable description and map of the service area on which the update is being prepared; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the update.

Section 34

Section 34. ADVISORY COMMITTEE COMMENTS ON AMENDMENTS.--The advisory committee created under Section 37 of the Development Fees Act shall file its written comments with the applicable municipality or county on the proposed amendments to the land use assumptions, capital improvements plan or impact fees before the fifth business day before the date of the public hearing on the amendments.

Section 35

Section 35. APPROVAL OF AMENDMENTS REQUIRED.--

A. The municipality or county, within thirty days after the date of the public hearing on the amendments, shall approve, disapprove, revise or modify the amendments to the land use assumptions, the capital improvements plan or impact fees.

B. An ordinance, order or resolution approving the amendments to the land use assumptions, the capital improvements plan or impact fees shall not be adopted as an emergency measure and such adoption must comply with the procedural requirements of the Development Fees Act.

Section 36

Section 36. DETERMINATION THAT NO UPDATE OF LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN OR IMPACT FEE IS NEEDED.--

A. If at the time an update under Section 30 of the Development Fees Act is required, the governing body determines that no changes to the land use assumptions, capital improvements plan or impact fees are needed, it may, as an alternative to the updating requirements of Sections 30 through 35 of the Development Fees Act, publish notice of its determination conforming to locally adopted regulations governing change-of-zone requests, except as otherwise provided in this section.

B. The notice shall contain the following:

(1) a headline to read as follows: "NOTICE OF DETERMINATION NOT TO UPDATE LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN OR IMPACT FEES";

(2) a statement that the governing body of the municipality or county has determined that no change to the land use assumptions, capital improvements plan or impact fees are necessary;

(3) an easily understandable description and a map of the service area in which the updating has been determined to be unnecessary;

(4) a statement that if, within a specified date, which date shall be at least sixty days after publication of the notice, a person makes a written request to the designatd official of the municipality or county requesting that the land use assumptions, capital improvements plan or impact fees be updated, the governing body may accept or reject such request by following the requirements of Sections 30 through 35 of the Development Fees Act; and

(5) a statement identifying the name and mailing address of the official of the municipality or county to whom a request for an update should be sent.

C. The advisory committee shall file its written comments on the need for updating the land use assumptions, capital improvements plan and impact fees before the fifth business day before the earliest notice of the governing body's decision that no update is necessary is mailed or published.

D. If by the date specified in Paragraph (4) of Subsection B of this section, a person requests in writing that the land use assumptions, capital improvements plan or impact fees be updated, the governing body shall cause, accept or reject an update of the land use assumptions and capital improvements plan to be prepared in accordance with Sections 30 through 35 of the Development Fees Act.

E. An ordinance, order or resolution determining the need for updating land use assumptions, capital improvements plan or impact fees shall not be adopted as an emergency measure and its adoption must comply with the procedural requirements of the Development Fees Act.

Section 37

Section 37. ADVISORY COMMITTEE.--

A. On or before the date on which the order, ordinance or resolution is adopted under Section 19 of the Development Fees Act, the governing body of a municipality or county shall appoint a capital improvements advisory committee.

B. The advisory committee shall be composed of not less than five members who shall be appointed by a majority vote of the governing body. Not less than forty percent of the membership of the advisory committee must be representative of the real estate, development or building industries. No members shall be employees or officials of a municipality or county or other governmental entity.

C. The advisory committee serves in an advisory capacity and shall:

(1) advise and assist the municipality or county in adopting land use assumptions;

(2) review the capital improvements plan and file written comments;

(3) monitor and evaluate implementation of the capital improvements plan;

(4) file annual reports with respect to the progress of the capital improvements plan and report to the municipality or county any perceived inequities in implementing the plan or imposing the impact fee; and

(5) advise the municipality or county of the need to update or revise the land use assumptions, capital improvements plan and impact fee.

D. The municipality or county shall make available to the advisory committee any professional reports with respect to developing and implementing the capital improvements plan.

E. The governing body of the municipality or county shall adopt procedural rules for the advisory committee to follow in carrying out its duties.

Section 38

Section 38. DUTIES TO BE PERFORMED WITHIN TIME LIMITS.--If the governing body of the municipality or county does not perform a duty imposed under the Development Fees Act within the prescribed period, a person who has paid an impact fee or an owner of land on which an impact fee has been paid has the right to present a written request to the governing body of the municipality or county stating the nature of the unperformed duty and requesting that it be performed within sixty days after the date of the request. If the governing body of the municipality or county finds that the duty is required under the Development Fees Act and is late in being performed, it shall cause the duty to commence within sixty days after the date of the request and continue until completion.

Section 39

Section 39. RECORDS OF HEARINGS.--A record shall be made of any public hearing provided for by the Development Fees Act. The record shall be maintained and be made available for public inspection by the municipality or county for at least ten years after the date of the public hearing.

Section 40

Section 40. PRIOR IMPACT FEES REPLACED BY FEES UNDER DEVELOPMENT FEES ACT.--An impact fee that is in place on the effective date of the Development Fees Act shall be replaced by an impact fee imposed under that act by July 1, 1995. Any municipality or county having an impact fee that has not been replaced under that act by July 1, 1995 shall be liable to any party who, after the effective date of that act, pays an impact fee that exceeds the maximum permitted under that act by more than ten percent for an amount equal to two times the difference between the maximum impact fee allowed and the actual impact fee imposed, plus reasonable attorneys' fees and court costs.

Section 41

Section 41. NO EFFECT ON TAXES OR OTHER CHARGES.--The Development Fees Act does not prohibit, affect or regulate any tax, fee, charge or assessment specifically authorized by state law.

Section 42

Section 42. MORATORIUM ON DEVELOPMENT PROHIBITED.--A moratorium shall not be placed on new development for the sole purpose of awaiting the completion of all or any part of the process necessary to develop, adopt or update impact fees.

Section 43

Section 43. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 361

CHAPTER 123

RELATING TO PUBLIC RECORDS; PROTECTING VICTIMS OF CRIMES OR ACCIDENTS FROM COMMERCIAL SOLICITATION.

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

Section 1

Section 1. PROTECTION OF VICTIMS OF CRIMES OR ACCIDENTS--POLICE REPORTS--COMMERCIAL SOLICITATION PROHIBITED.--No attorney, health care provider or their agents shall inspect, copy or use police reports or information obtained from police reports for the purpose of the solicitation of victims or the solicitation of the relatives of victims of reported crimes or accidents. SB 367

CHAPTER 124

RELATING TO CHILD SUPPORT; AMENDING CERTAIN SECTIONS OF THE CHILD SUPPORT HEARING OFFICER ACT.

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

Section 1

Section 1. Section 40-4B-4 NMSA 1978 (being Laws 1988, Chapter 127, Section 4) is amended to read:

"40-4B-4. CHILD SUPPORT HEARING OFFICERS--APPOINTMENT--TERMS--QUALIFICATIONS--COMPENSATION.--

A. Child support hearing officers shall be appointed by and serve at the pleasure of the judges of the judicial districts determined pursuant to Subsection D of this section. Each hearing officer shall be selected by a majority of the district court judges in the judicial district to which he is assigned. The child support hearing officers shall be paid pursuant to a cooperative agreement between the human services department and the judicial districts.

B. Child support hearing officers shall be lawyers who are licensed to practice law in this state and who have a minimum of five years experience in the practice of law, with at least twenty percent of that practice having been in family law or domestic relations matters. Child support hearing officers shall devote full time to their duties under the Child Support Hearing Officer Act and shall not engage in the private

practice of law or in any employment, occupation or business interfering with or inconsistent with the discharge of their duties as a full-time child support hearing officer.

C. A child support hearing officer is required to conform to Canons 21-100 through 21-500 and 21-700 of the Code of Judicial Conduct as adopted by the supreme court. Violation of any such canon shall be grounds for dismissal of any child support hearing officer. Child support hearing officers shall be employees of the judicial branch of government and shall not be subject to the Personnel Act. Their compensation shall be set by the judges who appoint them, but such compensation shall not exceed eighty percent of the current salary for district court judges.

D. Child support hearing officers shall serve in such judicial districts as the secretary deems appropriate
considering the case loads and case needs of the state's Title IV D program."

Section 2

Section 2. Section 40-4B-5 NMSA 1978 (being Laws 1988, Chapter 127, Section 5) is amended to read:

"40-4B-5. REFERENCE.--Actions covered under the Child Support Hearing Officer Act include but are not limited to petitions to establish support obligations, petitions to enforce court orders establishing support obligations, petitions to recover unpaid child support arrearages and post-judgment interest, actions pursuant to the Support Enforcement Act, actions brought to modify existing support obligations, actions to establish parentage and actions under the Revised Uniform Reciprocal Enforcement of Support Act; provided the Child Support Hearing Officer Act does not apply to proceedings for the establishment of custody. The presiding judge or his designee shall refer only matters concerning the establishment and enforcement of support obligations to a child support hearing officer in all of those proceedings in which:

A. the department as the state's Title IV D agency is acting as the enforcing party pursuant to an assignment of support rights under Section 27-2-27 NMSA 1978;

B. the department, pursuant to Section 27-2-27 NMSA 1978, is acting as the representative of a custodial parent who is not receiving aid to families with dependent children; and

C. the department is the enforcing Title IV D party pursuant to a written request for enforcement of a support obligation received from an agency in another state responsible for administering that state's federal Title IV D program."

Section 3

Section 3. Section 40-4B-8 NMSA 1978 (being Laws 1988, Chapter 127, Section 8) is amended to read:

"40-4B-8. REPORT.--

A. The child support hearing officer shall prepare a report with a decision upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, shall set them forth in the report. He shall file the report with the clerk of the court and unless waived by the parties shall file with it a transcript or other authorized recording of the proceedings
and of the evidence and original exhibits. The clerk shall mail immediately notice of the filing to all parties.

B. Within ten days after being served with notice of the filing of the report, any party may file written objections with the district court and serve such objections on the other parties.

C. If the district court judge wishes to review the hearing officer's decision de novo or on the record, he shall take action on the objections presented by the parties within fifteen days after the objections are filed. Failure to act by the district judge within the time allowed is deemed acceptance by the district court of the child support hearing officer's decision and will grant the decision the full force and effect of a district court decision.

D. If the district court's review is on the record, he shall set aside the decision only if the decision is found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record as a whole; or

(3) otherwise not in accordance with law.

E. The effect of a child support hearing officer's report is the same whethr or not the parties have consented to the reference; however, when the parties stipulate that a child support hearing officer's findings of fact shall be final, only questions of law arising upon the report may thereafter be considered."
_____SB 456

CHAPTER 125

RELATING TO COURT ACTIONS; PROVIDING FOR ATTORNEY LIABILITY FOR COURT REPORTER SERVICES.

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

Section 1

Section 1. LIABILITY FOR COURT REPORTING COSTS.--

A. Except as provided in Subsection C of this section, an attorney who engages a court reporter to perform court reporting services shall be jointly and severally liable with the client for whom the services were performed for costs of:

(1) the shorthand reporting of the proceedings;

(2) transcribing the proceedings; and

(3) each copy of the transcript of proceedings requested by the attorney.

B. Any other attorney who orders a copy or transcript of proceedings shall be jointly and severally liable with his client for the costs of preparing the copy he orders.

C. An attorney may agree in writing with the court reporter prior to the commencement of the proceedings that he shall not be liable for costs related to the proceedings. An attorney may also make a statement into the record at the commencement of the proceedings that he shall not be liable for costs. The court reporter may at that time choose not to record the proceedings at no liability to the court reporter.

D. As used in this section, "attorney" means a person engaged in the practice of law.

E. As used in this section, "court reporter" means a person who engages in the verbatim recording of judicial proceedings and who possesses a certificate as a New Mexico certified court reporter. _____SB 458

CHAPTER 126

RELATING TO INSURANCE; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NEW MEXICO INSURANCE CODE.

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

Section 1

Section 1. A new section of the New Mexico Insurance Code, Section 59A-16-13.2 NMSA 1978, is enacted to read:

"59A-16-13.2. DISCRIMINATION ON THE BASIS OF BLINDNESS.--

A. No insurer, including health maintenance organizations, nonprofit health care plans and fraternal benefit societies, shall refuse to insure, or refuse to continue to insure, or limit the amount, extent or kind of coverage available to an individual, or charge an individual a different rate for the same coverage solely because of blindness, including partial blindness.

B. With respect to the underlying cause of the blindness, persons who are blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons, and blindness may be considered as evidence of the severity or progression of the underlying cause.

C. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses his eyesight. However, an insurer may exclude from coverage disabilities consisting solely of blindness when such condition exists at the time the policy is issued."

Section 2

Section 2. A new section of the New Mexico Insurance Code, Section 59A-18-27.1 NMSA 1978, is enacted to read:

"59A-18-27.1. UNIVERSAL CLAIM FORMS.--

A. The superintendent shall devise or designate universal forms to be utilized by every health insurer, including health maintenance organizations, nonprofit health plans and fraternal organizations offering any type of health coverage for individuals residing in this state, for the purpose of receiving claims under their policies. In preparing the forms, the superintendent may consult with insurers, trade associations and other interested parties. Upon adoption of the final forms by the superintendent, he shall notify the insurers affected by sending them a specimen copy of the adopted forms and an explanation of the requirements of this section. Every covered insurer shall begin using the adopted forms not later than six months following the date of the superintendent's notification.

B. A health insurer may not refuse to accept a claim submitted on uniform claim forms adopted pursuant to Subsection A of this section, but may accept claims submitted on any other form.

C. A health insurer does not violate this section by using a claim form that the insurer has been required to use by the state or federal government."

Section 3

Section 3. Section 59A-21-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 407) is amended to read:

"59A-21-10. DEPENDENTS' COVERAGE.--Insurance under any group life insurance policy issued pursuant to Sections 59A-21-4 and 59A-21-6 through 59A-21-8 NMSA 1978 may be extended to insure the dependents, or any class or classes thereof, of each employee or member who so elects. The term "dependent" means the spouse of the employee or member and an employee's or member's minor child, including a child beyond the age of majority up to a maximum of twenty-five years of age while attending an educational institution, and such other children of the employee or member as provided within the group life insurance policy. The premiums for the insurance on such dependents may be paid by the group policyholder or by the employee or member or by the group policyholder and the employee or member jointly."

Section 4

Section 4. Section 59A-22-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 426, as amended) is amended to read:

"59A-22-5. TIME LIMIT ON CERTAIN DEFENSES.--There shall be a provision as follows:

A. After two years from the date of issue of this policy, no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

(The foregoing policy provision shall not be so construed as to affect any initial two-year period nor to limit the application of Sections 59A-22-17 through 59A-22-19, 59A-22-21 and 59A-22-22 NMSA 1978 in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age fifty or (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurance company's option) under the caption "Incontestable":

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.)

B. No claim for loss incurred or disability (as defined in the policy) shall be reduced or denied on the ground that a disease or physical condition disclosed on the application not excluded from coverage by name or a specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

C. An individual policy may, in lieu of the provisions stated in Subsection B of this section, contain provisions under which coverage is excluded during a period of six months following the effective date of coverage as to a given covered insured for a preexisting condition, provided that:

(1) the condition manifested itself within a period of six months prior to the effective date of coverage in such a manner as would cause a reasonably prudent person to seek diagnosis, care or treatment; or

(2) medical advice or treatment relating to the condition was recommended or received within a period of six months prior to the effective date of coverage. This provision shall not be construed to prohibit preexisting condition provisions that are more favorable to the insured."

Section 5

Section 5. Section 59A-23-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 462, as amended) is amended to read:

"59A-23-3. GROUP HEALTH INSURANCE.--

A. Group health insurance is that form of health insurance covering groups of persons, with or without their dependents, and issued upon the following basis:

(1) under a policy issued to an employer, who shall be deemed the policyholder, insuring at least one employee of such employer for the benefit of persons other than the employer. The term "employees", as used in this section, includes the officers, managers and employees of the employer, the partners, if the employer is a partnership, the officers, managers and employees of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners and employees of individuals and firms the business of which is controlled by the insured employer through stock ownership, contract or otherwise. The term "employer", as used in this section, includes any municipal or governmental corporation, unit, agency or department thereof and the proper officers, as such, or any unincorporated municipality or department thereof, as well as private individuals, partnerships and corporations. A small employer shall also be subject to the Small Group Rate and Renewability Act. A "small employer" means any person, firm, corporation, partnership or association actively engaged in business who, on at least fifty percent of its working days during the preceding year, employed no more than twenty-five eligible employees. In determining the number of eligible employees, companies that are affiliated companies or that are eligible to file a combined tax return for purposes of state taxation shall be considered one employer;

(2) under a policy issued to an association, including a labor union and an agricultural association, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of

obtaining insurance, insuring at least twenty-five members of the association for the benefit of persons other than the association or its officers or trustees, as such; or

(3) under a policy issued to any other substantially similar group which, in the discretion of the superintendent, may be subject to the issuance of a group sickness and accident policy or contract.

B. Each policy, as provided by this section, shall contain in substance the following provisions:

(1) a provision that the policy, the application of the policyholder, if such application or copy thereof is attached to such policy, and the individual applications, if any, submitted in connection with such policy by the employees or members, shall constitute the entire contract between the parties, and that all statements, in the absence of fraud, made by any applicant or applicants shall be deemed representations and not warranties, and that no such statement shall void the insurance or reduce benefits thereunder unless contained in a written application for such insurance;

(2) a provision that the insurer will furnish to the policyholder, for delivery to each employee or member of the insured group, an individual certificate setting forth in summary form a statement of the essential features of the insurance coverage of such employee or member and to whom benefits thereunder are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit; and

(3) a provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy.

C. For purposes of this section only, te directors of a corporation shall be deemed to be employees of the corporation."

Section 6

Section 6. Section 59A-23A-1 NMSA 1978 (being Laws 1989, Chapter 136, Section 1) is amended to read:

"59A-23A-1. SHORT TITLE.--Chapter 59A, Article 23A NMSA 1978 may be cited as the "Long-Term Care Insurance Law"."

Section 7

Section 7. Section 59A-23A-2 NMSA 1978 (being Laws 1989, Chapter 136, Section 2) is amended to read:

"59A-23A-2. PURPOSE.--The purpose of the Long-Term Care Insurance Law is to promote the public interest in and the availability of long-term care insurance policies, protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices, establish standards for long-term care insurance, facilitate public understanding and comparison of long-term care insurance policies and facilitate flexibility and innovation in the development of long-term care insurance coverage."

Section 8

Section 8. Section 59A-23A-3 NMSA 1978 (being Laws 1989, Chapter 136, Section 3) is amended to read:

"59A-23A-3. SCOPE.--The provisions of the Long-Term Care Insurance Law shall apply to policies, certificates or riders delivered or issued for delivery in this state on or after July 1, 1989. The Long-Term Care Insurance Law is not intended to supersede any obligations of any entity to comply with the substance of any other provision of law, except that laws and regulations designed and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance."

Section 9

Section 9. Section 59A-23A-4 NMSA 1978 (being Laws 1989, Chapter 136, Section 4) is amended to read:

"59A-23A-4. DEFINITIONS.--As used in the Long-Term Care Insurance Law:

A. "applicant" means:

(1) in the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(2) in the case of a group long-term care insurance policy, the proposed certificate holder;

B. "certificate" means any certificate issued under a group long-term care insurance policy;

C. "group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in this state and issued to:

(1) one or more employers or labor organizations established by one or more employers or labor organizations or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof of the labor organizations;

(2) any professional, trade or occupational association for its members or former or retired members, or a combination thereof, if the association:

(a) is composed of individuals all of whom are or were actively engaged in the same profession, trade or occupation; and

(b) has been maintained in good faith for purposes other than obtaining insurance;

(3) an association or a trust or the trustees of a fund established, created or maintained for the benefit of members of one or more associations. Prior to advertising, marketing or offering such policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the superintendent that the association or associations have at the outset a minimum of twenty-five persons and have been organized and maintained in good faith for purposes other than that of obtaining insurance; have been in active existence for at least one year; and have a constitution and bylaws which provided that:

(a) the association or associations hold regular meetings not less than annually to further purposes of the members;

(b) except for credit unions, the association or associations collect dues or solicit contributions from members; and

(c) the members have voting privileges and representation on the governing board and committees.

Sixty days after such filing the association or associations will be deemed to satisfy such organizational requirements, unless the superintendent finds that the association or associations do not satisfy those organizational requirements; or

(4) a group other than as described in Paragraph (1), (2) or (3) of this subsection, subject to a finding by the superintendent that:

(a) the issuance of the group policy is not contrary to the best interest of the public;

(b) the issuance of the group policy would result in economies of acquisition or administration; and

(c) the benefits are reasonable in relation to the premiums charged;

D. "long-term care insurance" means any insurance coverage advertised, marketed, offered or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid or other

basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services, provided in a setting other than an acute care unit of a hospital, including group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance, and policies or riders which provide for payment of benefits based upon cognitive impairment or the loss of functional capacity. Long-term care insurance may be issued by insurers; fraternal benefit societies; nonprofit health insurers; prepaid health plans; health maintenance organizations or any similar organization to the extent they are otherwise authorized to issue life or health insurance. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage or limited benefit health coverage. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Notwithstanding any other provision contained herein, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions of this article;

E. "long-term care insurance policy" means an individual or group policy or an individual or group certificate of health insurance issued pursuant to the provisions of Chapter 59A, Articles 22, 23, 44, 46 and 47 NMSA 1978; and

F. "rider" means any additional long-term care coverage provision added to any type of policy by issuance of an amending document."

Section 10

Section 10. Section 59A-23A-5 NMSA 1978 (being Laws 1989, Chapter 136, Section 5) is repealed and a new section of the New Mexico Insurance Code, Section 59A-23A-5 NMSA
1978, is enacted to read:

"59A-23A-5. EXTRATERRITORIAL JURISDICTION--GROUP LONG-TERM CARE INSURANCE.--No group long-term care insurance coverage may be offered to a resident of this state under a group policy issued in another state to a group described in Paragraph (4) of Subsection C of Section 59A-23A-4 NMSA 1978, unless the superintendent has determined prior to the offer that:

A. the coverage meets the requirements of Chapter 59A, Article 23A NMSA 1978 and any regulations pertaining thereto, or the insurance commissioner of another state having statutory and regulatory long-term care insurance requirements

substantially similar to those adopted in New Mexico has determined that such requirements have been met; and

B. the requirements of Section 59A-23-8 NMSA 1978 have been met."

Section 11

Section 11. Section 59A-23A-6 NMSA 1978 (being Laws 1989, Chapter 136, Section 6) is amended to read:

"59A-23A-6. LONG-TERM CARE INSURANCE--STANDARDS--REQUIREMENTS.--

A. The superintendent may promulgate regulations in accordance with the provisions of Section 59A-2-9 NMSA 1978 that include standards for full and fair disclosure setting forth the manner, content and required disclosures for the sale of long-term care insurance policies, certificates and riders, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, levels of care, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions and definitions of terms.

B. Long-term care insurance policies and certificates shall contain the standard provisions set forth in Sections 59A-22-2, 59A-22-4, 59A-22-8 through 59A-22-15, 59A-22-18, 59A-22-20, 59A-22-21, 59A-22-23, 59A-22-25, 59A-23-3, 59A-44-19, 59A-46-8 and 59A-47-24 NMSA 1978 and provisions concerning preexisting conditions in accordance with Section 59A-23A-7 NMSA 1978.

C. No long-term care insurance policy, certificate or rider shall:

(1) be canceled, nonrenewed or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder;

(2) contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder;

(3) provide coverage for skilled nursing care only;

(4) provide significantly more coverage for skilled care in a facility than coverage for lower levels of care;

(5) condition eligibility for any benefits on a prior hospitalization or institutionalization requirement or limit or restrict eligibility for any benefits based on such prior requirement or condition eligibility for any benefits other than waiver of premium, post-confinement, post-acute care or recuperative benefits on a prior institutionalization requirement;

(6) provide post-confinement, post-acute care or recuperative benefits unless such benefits are clearly labeled in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits" such limitations or conditions, including any required number of days of confinement; or

(7) condition eligibility of non-institutional benefits on the prior receipt of institutional care involving a stay of more than thirty days.

D. The superintendent may promulgate regulations in accordance with the provisions of Section 59A-2-9 NMSA 1978 establishing loss ratio standards, minimum reserve standards, nonforfeiture standards and rate stabilization standards for long-term care insurance policies, provided that a specific reference to long-term care insurance policies is contained in the regulations.

E. A long-term care insurance policy, certificate or rider, except an employer group policy, certificate or rider, shall have a notice prominently printed on the first page of the policy, certificate or rider, or attached thereto, stating in substance that the policyholder or certificate holder has the right to return the policy, certificate or rider within thirty days of its delivery and to have the premium refunded within thirty days of the return of the policy, certificate or rider if, after examination of the policy, certificate or rider, the policyholder or certificate holder is not satisfied for anyreason.

F. A certificate delivered or issued for delivery in this state shall include:

(1) a description of the principal benefits and coverage provided in the policy; and

(2) a statement of the principal exclusions, reductions and limitations contained in the policy.

G. No long-term care insurance policy, certificate or rider shall be advertised, marketed or offered as long-term care or nursing home insurance unless it complies with the provisions of the Long-Term Care Insurance Law.

H. Long-term care insurance policies, certificates and riders shall be filed in accordance with the provisions of Chapter 59A, Articles 18, 22, 23, 44, 46 and 47 NMSA 1978.

I. An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.

J. The superintendent shall prescribe a standard format, including style, arrangement and overall appearance, and the content of an outline of coverage.

K. In the case of agent solicitations, an agent must deliver the outline of coverage prior to the presentation of an application or enrollment form.

L. In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form.

M. The outline of coverage shall include:

(1) a description of the principal benefits and coverage provided in the policy;

(2) a statement of the principal exclusions, reductions and limitations contained in the policy;

(3) a statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium; continuation or conversion provisions of group coverage shall be specifically described;

(4) a statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

(5) a description of the terms under which the policy or certificate may be returned and premium refunded;

(6) a brief description of the relationship of cost of care and benefits; and

(7) a statement that the coverage afforded is not medicare supplement coverage.

N. A certificate issued pursuant to a group long-term care insurance policy, which policy is delivered or issued for delivery in this state, shall include:

(1) a description of the principal benefits and coverage provided in the policy;

(2) a statement of the principal exclusions, reductions and limitations contained in the policy; and

(3) a statement that the group master policy determines governing contractual provisions.

O. At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make such delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary shall also include:

(1) an explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(2) an illustration of the amount of benefits, the length of benefit and the guaranteed lifetime benefits if any, for each covered person;

(3) any exclusions, reductions and limitations on benefits of long-term care; and

(4) if applicable to the policy type, the summary shall also include:

(a) a disclosure of the effects of exercising other rights under the policy;

(b) a disclosure of guarantees related to long-term care costs of insurance charges; and

(c) current and projected maximum lifetime benefits.

P. Any time a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided to the policyholder. Such report shall include:

(1) any long-term care benefits paid out during the month;

(2) an explanation of any changes in the policy, e.g., death benefits or cash values, due to long-term care benefits being paid out; and

(3) the amount of long-term care benefits existing or remaining."

Section 12

Section 12. Section 59A-23A-8 NMSA 1978 (being Laws 1989, Chapter 136, Section 8) is repealed and a new section of the New Mexico Insurance Code, Section 59A-23A-8 NMSA 1978, is enacted to read:

"59A-23A-8. INCONTESTABILITY PERIOD.--

A. For a policy or certificate that has been in force for less than six months an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is material to the acceptance for coverage.

B. For a policy or certificate that has been in force for at least six months but less than two years an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both material to the acceptance for coverage and which pertains to the condition for which benefits are sought.

C. After a policy or certificate has been in force for two years it is not contestable upon the grounds of misrepresentation alone. Such policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

D. No long-term care insurance policy or certificate may be field issued based on medical or health status. For purposes of this subsection, "field issued" means a policy or certificate issued by an agent or a third party administrator pursuant to the underwriting authority granted to the agent or third party administrator by an insurer.

E. If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments may not be recovered by the insurer in the event that the policy or certificate is rescinded."

Section 13

Section 13. A new section of the New Mexico Insurance Code, Section 59A-23A-9 NMSA 1978, is enacted to read:

"59A-23A-9. AUTHORITY TO PROMULGATE REGULATIONS.--The superintendent shall promulgate regulations in accordance with the provisions of Section 59A-2-9 NMSA 1978 that include minimum standards for marketing practices, agent compensation, agent testing, penalties and reporting practices for long-term care insurance."

Section 14

Section 14. A new section of the New Mexico Insurance Code, Section 59A-23A-10 NMSA 1978, is enacted to read:

"59A-23A-10. PENALTIES.--In addition to any other penalties provided by the laws of this state, any insurer and any agent found to have violated any requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to ten thousand dollars ($10,000), whichever is greater."

Section 15

Section 15. A new section of the New Mexico Insurance Code, Section 59A-23A-11 NMSA 1978, is enacted to read:

"59A-23A-11. FILING REQUIREMENTS FOR ADVERTISING.--

A. Every issuer of long-term care insurance or benefits in this state shall provide a copy of any long-term care insurance advertisement intended for use in this state, whether through written, radio or television media, to the superintendent for review and approval. The advertisement shall comply with all applicable laws of this state and shall be retained by the insurer for at least three years from the date the advertisement was first used.

B. Persons who market long-term care insurance policies, certificates or riders in this state shall not advertise any policies or certificates unless:

(1) the issuer of the policy certificate or rider has provided the superintendent with a copy of the advertisement; and

(2) the superintendent has reviewed and approved the advertisement." _____SB 471

CHAPTER 127

RELATING TO HAZARDOUS WASTE; AMENDING A SECTION OF THE HAZARDOUS WASTE ACT.

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

Section 1

Section 1. Section 74-4-4 NMSA 1978 (being Laws 1977, Chapter 313, Section 4, as amended) is amended to read:

"74-4-4. DUTIES AND POWERS OF THE BOARD.--

A. The board shall adopt regulations for the management of hazardous waste as may be necessary to protect public health and the environment, that are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended:

(1) for the identification and listing of hazardous wastes, taking into account toxicity, persistence and degradability, potential for accumulation in tissue and other related factors, including flammability, corrosiveness and other hazardous characteristics; provided that, except as authorized by Sections 74-4-3.3 and 74-8-2 NMSA 1978, the board shall not identify or list any solid waste or combination of solid wastes as a hazardous waste that has not been listed and designated as a hazardous waste by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(2) establishing standards applicable to generators identified or listed under this subsection, including requirements for:

(a) furnishing information on the location and description of the generator's facility and on the production or energy recovery activity occurring at that facility;

(b) record-keeping practices that accurately identify the quantities of hazardous waste generated, the constituents of the waste that are significant in quantity or in potential harm to human health or the environment and the disposition of the waste;

(c) labeling practices for any containers used for the storage, transport or disposal of the hazardous waste that will identify accurately the waste;

(d) use of safe containers tested for safe storage and transportation of the hazardous waste;

(e) furnishing the information on the general chemical composition of the hazardous waste to persons transporting, treating, storing or disposing of thewaste;

(f) implementation of programs to reduce the volume or quantity and toxicity of the hazardous waste generated;

(g) submission of reports to the secretary at such times as the secretary deems necessary, setting out the quantities of hazardous waste identified or listed pursuant to the Hazardous Waste Act that the generator has generated during a particular time period and the disposition of all hazardous waste reported, the efforts undertaken during a particular time period to reduce the volume and toxicity of waste

generated and the changes in volume and toxicity of waste actually achieved during a particular time period in comparison with previous time periods; and

(h) the use of a manifest system and any other reasonable means necessary to assure that all hazardous waste generated is designated for treatment, storage or disposal in, and arrives at, treatment, storage or disposal facilities, other than facilities on the premises where the waste is generated, for which a permit has been issued pursuant to the Hazardous Waste Act; and that the generator of hazardous waste has a program in place to reduce the volume or quality and toxicity of waste to the degree determined by the generator to be economically practicable; and that the proposed method of treatment, storage or disposal is that practicable method currently available to the generator that minimizes the present and future threat to human health and the environment;

(3) establishing standards applicable to transporters of hazardous waste identified or listed under this subsection or of fuel produced from any such hazardous waste or of fuel from such waste and any other material, as may be necessary to protect human health and the environment, including but not limited to requirements for:

(a) record-keeping concerning the hazardous waste transported and its source and delivery points;

(b) transportation of the hazardous waste only if properly labeled;

(c) compliance with the manifest system referred to in Subparagraph (h) of Paragraph (2) of this subsection; and

(d) transportation of all the hazardous waste only to the hazardous waste treatment, storage or disposal facilities that the shipper designates on the manifest form to be a facility holding a permit issued pursuant to the Hazardous Waste Act or the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.;

(4) establishing standards applicable to distributors or marketers of any fuel produced from hazardous waste, or any fuel that contains hazardous waste, for:

(a) furnishing the information stating the location and general description of the facility; and

(b) furnishing the information describing the production or energy recovery activity carried out at the facility;

(5) establishing performance standards as may be necessary to protect human health and the environment applicable to owners and operators of

facilities for the treatment, storage or disposal of hazardous waste identified or listed under this section, distinguishing, where appropriate, between new facilities and facilities in existence on the date of promulgation, including but not limited to requirements for:

(a) maintaining the records of all hazardous waste identified or listed under this subsection that is treated, stored or disposed of, as the case may be, and the manner in which such waste was treated, stored or disposed of;

(b) satisfactory reporting, monitoring, inspection and compliance with the manifest system referred to in Subparagraph (h) of Paragraph (2) of this subsection;

(c) treatment, storage or disposal of all such waste and any liquid that is not a hazardous waste, except with respect to underground injection control into deep injection wells, received by the facility pursuant to such operating methods, techniques and practices as may be satisfactory to the secretary;

(d) location, design and construction of hazardous waste treatment, disposal or storage facilities;

(e) contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of any hazardous waste;

(f) maintenance and operation of the facilities and requiring any additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility, including financial responsibility for corrective action, as may be necessary or desirable;

(g) compliance with the requirements of Paragraph (6) of this subsection respecting permits for treatment, storage or disposal;

(h) the taking of corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility, regardless of the time at which waste was placed in the unit; and

(i) the taking of corrective action beyond a facility's boundaries where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Regulations adopted and promulgated under this subparagraph shall take effect immediately and shall apply to all facilities operating under permits issued under Paragraph (6) of this subsection and to all landfills, surface impoundments and waste pile units, including any new units, replacements of existing units or lateral expansions of existing units, that receive hazardous waste after July 26, 1982. No private entity shall be precluded by reason of

criteria established under Subparagraph (f) of this paragraph from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where the entity can
provide assurance of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste;

(6) requiring each person owning or operating or both an existing facility or planning to construct a new facility for the treatment, storage or disposal of hazardous waste identified or listed under this subsection to have a permit issued pursuant to requirements established by the board;

(7) establishing procedures for the issuance, suspension, revocation and modification of permits issued under Paragraph (6) of this subsection, which regulations shall provide for public notice, public comment and an opportunity for a hearing prior to the issuance, suspension, revocation or major modification of any permit unless otherwise provided in the Hazardous Waste Act;

(8) defining major and minor modifications; and

(9) establishing procedures for the inspection of facilities for the treatment, storage and disposal of hazardous waste that govern the minimum frequency and manner of the inspections, the manner in which records of the inspections shall be maintained and the manner in which reports of the inspections shall be filed; provided, however, that inspections of permitted facilities shall occur no less often than every two years.

B. The board shall adopt regulations:

(1) concerning hazardous substance incidents; and

(2) requiring notification to the department of any hazardous substance incidents.

C. The board shall adopt regulations concerning underground storage tanks as may be necessary to protect public health and the environment that are equivalent to and no more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended, and that shall include:

(1) standards for the installation, operation and maintenance of underground storage tanks;

(2) requirements for financial responsibility;

(3) standards for inventory control;

(4) standards for the detection of leaks from and the integrity testing and monitoring of underground storage tanks;

(5) standards for the closure and dismantling of underground storage tanks;

(6) requirements for record-keeping; and

(7) requirements for the reporting, containment and remediation of all leaks from any underground storage tanks.

D. Notwithstanding the provisions of Subsection A of this section, the board may adopt regulations for the management of hazardous waste and hazardous waste transformation that are more stringent than federal regulations adopted by the federal environmental protection agency pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended, if the board determines, after notice and public hearing, that such federal regulations are not sufficient to protect public health and the environment. As used in this subsection, "transformation" means an incinerator, pyrolysis, distillation, gasification or biological conversion other than composting.

E. In the event the board wishes to adopt regulations that are identical with regulations adopted by an agency of the federal government, the board, after notice and hearing, may adopt such regulations by reference to the federal regulations without setting forth the provisions of the federal regulations."

_____SB 549

CHAPTER 128

RELATING TO PUBLIC SECURITIES; AMENDING SECTION 6-18-8.1 NMSA 1978 (BEING LAWS 1992,

CHAPTER 96, SECTION 1) AUTHORIZING PUBLIC BODIES TO ENTER INTO CERTAIN CONTRACTS REGARDING BOND OBLIGATIONS OF THOSE BODIES.

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

Section 1

Section 1. Section 6-18-8.1 NMSA 1978 (being Laws 1992, Chapter 96, Section 1) is amended to read:

"6-18-8.1. CONTRACTS TO EXCHANGE INTEREST RATES, CASH FLOWS OR LIMIT EXPOSURE.--

A. A public body that has issued or proposes to issue bonds may enter into contracts authorized in this section if the governing body of that public issuer finds

that such a contract would be in the best interests of that public body and if the state board of finance reviews and approves the contract and determines, in its discretion, that the contract results in a long-term financial benefit for the public body.

B. A public body may enter into any contract that the governing body determines to be necessary or appropriate regarding the bond obligations of the governing body, in whole or in part, on the interest rate, cash flow or other basis desired by the governing body, including, without limitation, contracts commonly known as interest rate swap contracts, forward payment conversion contracts, futures, or contracts providing for payments based on levels of or changes in interest rates, or contracts to exchange cash flows or a series of payments, or contracts including, without limitation, options, puts or calls to hedge payment, rate, price spread or similar exposure. A public body may also enter into any contract that provides collateral for securities. Contracts shall be governed by the terms and conditions established by the governing body, subject to the provisions of Subsection C of this section.

C. A public body may enter into a contract pursuant to this section only if:

(1) the long-term obligations of the person with whom the public body enters the contract are rated in one of the two top rating categories of a nationally recognized rating agency, without regard to any modification of the rating; or

(2) the obligations pursuant to the contract of the person with whom the municipality enters the contract are either:

(a) guaranteed by a person whose long-term debt obligations are rated in either of the two highest rating categories of the rating of a nationally recognized rating agency, without regard to any modification of the rating; or

(b) collateralized by obligations deposited with the public body or an agent of the public body that are rated in either of the two highest rating categories of a nationally recognized rating agency, without regard to any modification of the rating, and that have a market value at the time the contract is made of not less than one hundred percent of the principal amount upon which the exchange of interest rates or other contract permitted by this section is based.

D. A public body may agree, with respect to bonds that the public body has issued or proposes to issue bearing interest at a variable rate, to pay sums equal to interest at a fixed rate or rates or at a different variable rate determined pursuant to a formula set forth in the contract on an amount not to exceed the principal amount of the bonds with respect to which the contract is made, in exchange for a contract to pay sums equal to interest on the same principal amount at a variable rate determined pursuant to a formula set forth in the contract.

E. A public body may agree, with respect to bonds that the public body has issued or proposes to issue bearing interest at a fixed rate or rates, to pay sums equal to interest at a variable rate determined pursuant to a formula set forth in the contract on an amount not to exceed the outstanding principal amount of the bonds with respect to which the contract is made, in exchange for a contract to pay sums equal to interest on the same principal amount at a fixed rate or rates set forth in the contract.

F. The term of a contract shall not exceed the term of the bonds of the public body with respect to which the contract was made.

G. A contract entered into pursuant to this section is not an indebtedness of the public body and in no case shall the principal amount of any outstanding indebtedness of the
public body be increased as a result of the contract.

H. The terms of Section 6-18-14 NMSA 1978 regarding limitations of interest rates and net effective interest rates are applicable to interest rates and net effective interest rates required to be paid by a public body entering into a contract.

I. A public body that has entered into a contract may treat the amount or rate of interest on those bonds as the amount or rate of interest payable after giving effect to the contract for the purpose of calculating:

(1) rates and charges of a revenue-producing enterprise whose revenues are pledged to or used to pay the bonds of the public body;

(2) statutory requirements concerning revenue coverage that are applicable to bonds of the public body;

(3) tax levies and collections to pay debt service on bonds of the public body; and

(4) any other amounts that are based upon the rate of interest of bonds of the public body.

J. Any payments required to be made by the public body under the contract may be made from money pledged to pay debt service on the bonds with respect to which the contract was made or from any other legally available source.

K. Any contract entered into by a public body pursuant to this section shall not impair the contract of that public body with, or impair adversely, the owners of bonds issued by that public body." _____SB 593

CHAPTER 129

RELATING TO DEAD BODIES; DEFINING AUTOPSY; AMENDING SECTION 24-12-4 NMSA 1978 (BEING LAWS 1965,

CHAPTER 86, SECTION 1, AS AMENDED).

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

Section 1

Section 1. Section 24-12-4 NMSA 1978 (being Laws 1965, Chapter 86, Section 1, as amended) is amended to read:

"24-12-4. POST-MORTEM EXAMINATIONS AND AUTOPSIES--CONSENT REQUIRED.--

A. An autopsy or post-mortem examination may be performed on the body of a deceased person by a physician or surgeon whenever consent to the procedure has been given by:

(1) written authorization signed by the deceased during his lifetime;

(2) authorization of any person or on behalf of any entity whom the deceased designated in writing during his lifetime to take charge of his body for burial or other purposes;

(3) authorization of the deceased's surviving spouse;

(4) authorization of an adult child, parent or adult brother or sister of the deceased if there is no surviving spouse or if the surviving spouse is unavailable, incompetent or has not claimed the body for burial after notification of the death of the decedent;

(5) authorization of any other relative of the deceased if none of the persons enumerated in Paragraphs (2) through (4) of this subsection is available or competent to give authorization; or

(6) authorization of the public official, agency or person having custody of the body for burial if none of the persons enumerated in Paragraphs (2) through (5) of this subsection is available or competent to give authorization.

B. An autopsy or post-mortem examination shall not be performed under authorization given under the provisions of Paragraph (4) of Subsection A of this section by any one of the persons enumerated if, before the procedure is performed, any one of the other persons enumerated objects in writing to the physician or surgeon by whom the procedure is to be performed.

C. An autopsy or post-mortem examination may be performed by a pathologist at the written direction of the district attorney or his authorized representative in any case in which the district attorney is conducting a criminal investigation.

D. An autopsy or post-mortem examination may be performed by a pathologist at the direction of the state, district or deputy medical investigator when he suspects the death was caused by a criminal act or omission or if the cause of death is obscure.

E. For purposes of this section, "autopsy" means a post-mortem dissection of a dead human body in order to determine the cause, seat or nature of disease or injury and includes the retention of tissues customarily removed during the course of autopsy for evidentiary, identification, diagnosis, scientific or therapeutic purposes."SB 690

CHAPTER 130

RELATING TO CULTURAL AFFAIRS; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 TO CHANGE THE COMPOSITION OF THE BOARD OF TRUSTEES OF THE NEW MEXICO MUSEUM OF NATURAL HISTORY AND SCIENCE.

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

Section 1

Section 1. Section 18-3A-5 NMSA 1978 (being Laws 1980, Chapter 128, Section 5, as amended) is amended to read:

"18-3A-5. BOARD OF TRUSTEES CREATED--APPOINTMENT--TERMS--OFFICERS.--

A. The "board of trustees of the New Mexico museum of natural history and science" is created. The board shall consist of thirteen residents of New Mexico appointed as follows:

(1) eleven public members shall be appointed by the governor with the advice and consent of the senate. In making these appointments, the governor shall give due consideration to the geographic distribution of places of residence and to individual interest and background in natural history and physical science; provided that:

(a) not less than two of these public members shall be employees of state institutions of higher learning or appropriate state agencies;

(b) not less than two members shall be from the science community; and

(c) not less than two members shall be from the natural history community.

The public members shall be appointed for terms of four years or less so that all terms are coterminous with the current term of the governor appointing them and shall serve at the pleasure of the governor; and

(2) two private members shall be appointed by the board of the New Mexico museum of natural history foundation, inc. for terms of one year or less expiring on June 30 each year. Vacancies in the position of private member shall be filled by the board of the New Mexico museum of natural history foundation, inc.

B. The director shall be an ex-officio nonvoting member of the board.

C. The president of the board shall be designated by the governor and shall serve in that capacity at the pleasure of the governor. Other officers as deemed necessary by the board shall be elected by the board annually at its first scheduled meeting after July 1." _____SB 691

CHAPTER 131

RELATING TO COMMUNITY COLLEGES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 TO PROVIDE FOR DIRECT DISTRIBUTIONS OF TAX PROCEEDS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 7-32-14 NMSA 1978 (being Laws 1959, Chapter 55, Section 14, as amended) is amended to read:

"7-32-14. MONTHLY REPORT TO DEPARTMENT OF FINANCE AND ADMINISTRATION--REMITTANCE TO STATE AND COUNTY TREASURERS--STATE AND COUNTY TREASURERS MAY DISTRIBUTE FUNDS.--

A. By the last day of each month, the department shall prepare and certify a report to the secretary of finance and administration. The report shall be for the preceding month and shall show the amount of taxes collected and distributed to the oil and gas production tax fund, the amount due the state and each taxing district imposing a tax as reflected by the schedules prepared pursuant to Section 7-32-13 NMSA 1978 and any other information required by the secretary of finance and administration. The secretary of finance and administration shall forthwith remit the appropriate amounts from the oil and gas production tax fund to the state treasurer and the respective county treasurers. The state treasurer and the county treasurers shall, upon receipt of such

remittance, make appropriate distribution of the proceeds thereof, except as provided in Subsection B of this section.

B. If the board of county commissioners notifies the secretary of finance and administration that the county elects not to distribute the proceeds of the oil and gas ad valorem production tax due the municipalities, community college districts and school districts within the county, the secretary of finance and administration shall pay amounts due directly to municipalities, community college districts and school districts within the county."

Section 2

Section 2. Section 7-34-9 NMSA 1978 (being Laws 1969, Chapter 119, Section 9, as amended) is amended to read:

"7-34-9. MONTHLY REPORT TO DEPARTMENT OF FINANCE AND ADMINISTRATION--REMITTANCES TO STATE AND COUNTY TREASURERS--STATE AND COUNTY TREASURERS MAY DISTRIBUTE FUNDS.--

A. By the last day of each month, the department shall prepare and certify a report to the secretary of finance and administration. The report shall be for the preceding month and shall show the amount of taxes distributed to the oil and gas equipment tax fund, the amount due the state and each taxing district imposing a tax and any other information required by the secretary of finance and administration. The secretary of finance and administration shall forthwith remit the appropriate amounts from the oil and gas equipment tax fund to the state treasurer and the county treasurers who shall make the appropriate distribution, except as provided in Subsection B of this section.

B. If the board of county commissioners notifies the secretary of finance and administration that the county elects not to distribute the proceeds of the oil and gas ad valorem production equipment tax due the municipalities, community college districts and school districts in the county, the secretary of finance and administration shall pay amounts due directly to municipalities, community college districts and school districts within the county."

Section 3

Section 3. Section 21-13-17 NMSA 1978 (being Laws 1964 (1st S.S.), Chater 16, Section 9, as amended) is amended to read:

"21-13-17. SPECIAL TAX LEVY FOR COMMUNITY COLLEGE OPERATION.--

A. In each community college district, the community college board may call an election within the district for the purpose of authorizing that board to levy taxes on all taxable property within the district to be used for current operations and

maintenance of the community college district. The taxes, if authorized as provided in the Community College Act, shall be in addition to the taxes authorized by Section 21-13-15 NMSA 1978. This election shall be for the purpose of allowing the electors, as the term "electors" is used in Article 8, Section 2 of the constitution of New Mexico, to vote on whether to allow the levy and on a specific limitation not to exceed five dollars ($5.00) on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code. If approved by a majority of the electors voting on the issue, the board of county commissioners, at the direction of the community college board, shall levy the taxes in an amount certified by the commission on higher education as necessary to meet the annual budget approved by the commission on higher education, but in no event shall the taxes levied exceed the rate limitation approved by the electors nor shall it exceed any lower maximum rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 applied to the rate limitation approved by the electors.

B. Levies, assessments and collections and distributions authorized for community college district financing shall be made at the same time and in the same manner as levies, assessments and collections and distributions for ad valorem taxes for school districts are made.

C. The community college board may call an election within the district for the purpose of authorizing the board to raise the levy to a rate not to exceed the maximum authorized in Subsection A of this section, lower the levy or abolish the continuing levy, upon the adoption of a resolution by a majority of the members of the board.

D. Alternatively an election to raise or lower the rate limitation or to abolish the continuing levy shall be called by the community college board upon receipt by it of a valid petition. To be valid, the petition shall be signed by electors of the community college district in a number equal to ten percent of the number of votes cast in the district for the office of governor at the last general election and shall state the question to be voted upon.

E. If the question to be voted on at an election called pursuant to Subsection D of this section fails, it shall not again be submitted to the voters within two years from the date of the election.

F. Any part of the rate authorized by the electors that is not imposed for reasons other than the rate limitation required by Section 7-37-7.1 NMSA 1978 may be authorized to be imposed by the community college board without calling an election."

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. _____SB 773

CHAPTER 132

RELATING TO PROBATE; PROVIDING AN INCREASE IN FILING FEE; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 34-7-14 NMSA 1978 (being Laws 1923, Chapter 29, Section 1, as amended) is amended to read:

"34-7-14. FEES OF PROBATE COURT CLERKS.--Clerks of the probate courts are entitled to receive the following docket fees in all matters:

A. for docketing each cause, to be paid by the party docketing the cause, thirty dollars ($30.00), which shall include all costs of the clerks in any cause in the court; and

B. a fee of fifteen cents ($.15) per folio in addition to the docket fee may be charged for any excess of twenty folios in cases where judgments or decrees or orders exceed twenty folios."SB 778

CHAPTER 133

RELATING TO FOOD DONORS; AUTHORIZING CULINARY PROGRAMS AT COMMUNITY COLLEGES TO PREPARE FOOD FOR NEEDY, INDIGENT OR HUNGRY; AMENDING AND ENACTING SECTIONS OF THE FOOD DONORS LIABILITY ACT.

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

Section 1

Section 1. A new section of the Food Donors Liability Act is enacted to read:

"COMMUNITY COLLEGE CULINARY PROGRAMS AS DISTRIBUTORS OF FOOD.--Culinary programs at community colleges may prepare food to be delivered off campus for donation to social service agency clients or food provider programs to the needy, indigent or hungry."

Section 2

Section 2. Section 41-10-2 NMSA 1978 (being Laws 1981, Chapter 100, Section 2, as amended) is amended to read:

"41-10-2. DEFINITIONS.--As used in the Food Donors Liability Act:

A. "canned food" means any food commercially processed and prepared for human consumption;

B. "gleaner" means any person who harvests for free distribution any part or all of an agricultural crop that has been donated by the owner;

C. "nonprofit organization" means any organization which was organized and is operated for charitable purposes and meets the requirements set forth in Section 170 of the Internal Revenue Code;

D. "perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. "Perishable food" includes but is not limited to fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or vegetables and foods that have been packaged, refrigerated or frozen; and

E. "person who donates food" means any individual, partnership, corporation, association, governmental entity or public or private organization of any character which gives food to others, including restaurants, grocery stores, retail and wholesale businesses and community colleges which give or otherwise provide food, directly or indirectly, to the needy or indigent."SB 836

CHAPTER 134

RELATING TO CORRECTIONS; AMENDING THE COUNTY AND MUNICIPAL GOOD TIME PROVISIONS.

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

Section 1

Section 1. Section 33-3-9 NMSA 1978 (being Laws 1969, Chapter 207, Section 1, as amended) is amended to read:

"33-3-9. COUNTY JAILS--DEDUCTION OF TIME FOR GOOD BEHAVIOR.--

A. The sheriff or jail administrator as defined in Section 4-44-19 NMSA 1978 of any county shall grant any person imprisoned in the county jail a deduction of time from the term of his sentence for good behavior and industry and shall establish rules for the accrual of "good time". Deductions of time shall not exceed one-half of the term of the prisoner's original sentence except when a prisoner is being credited with good time due to community service work that he is performing. A prisoner performing community service work shall receive a deduction of two days from his original sentence for each day of community service work he performs. Deductions of time for community

service work shall not exceed two-thirds of the prisoner's original sentence. Access to opportunities to earn good time shall be equal for women and men. If a prisoner is under two or more cumulative sentences, the sentences shall be treated as one sentence for the purpose of deducting time for good behavior.

B. A part or all of the prisoner's accrued deductions may be forfeited for any conduct violation. The sheriff or jail administrator shall establish rules and procedures for the forfeiture of accrued deductions and keep a record of all forfeitures of accrued deductions and the reasons for the forfeitures. In addition, any independent contractor shall also keep a duplicate record of such forfeitures.

C. No other time allowance or credits in addition to deductions of time permitted under this section may be granted to any prisoner.

D. If a private independent contractor operates a jail, he shall make reports of disciplinary violations and good behavior to the sheriff of the county in which the jail is located. All action on such reports and awards or forfeitures of good time shall be made by the sheriff. The
independent contractor shall not have the power to award or cause the forfeiture of good time pursuant to this section."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. _____HB 65

CHAPTER 135

RELATING TO DEVELOPMENT TRAINING; MAKING CERTAIN PROVISIONS FOR A CLASSROOM AND IN-PLANT DEVELOPMENT TRAINING PROGRAM; EXPANDING THE INDUSTRIAL TRAINING BOARD; AMENDING A SECTION OF THE NMSA 1978; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 21-19-7 NMSA 1978 (being Laws 1983, Chapter 299, Section 1, as amended) is amended to read:

"21-19-7. DEVELOPMENT TRAINING.--

A. The economic development department shall establish a development training program that provides quick-response classroom and in-plant training to furnish qualified manpower resources for new or expanding industries and non-retail service

sector businesses in New Mexico that have business or production procedures that require skills unique to those industries. Training shall be custom-designed for the particular company and shall be based on the special requirements of each company. The program shall be operated on a statewide basis and shall be designed to assist any area in becoming more competitive economically.

B. There is created the "industrial training board" which shall be composed of:

(1) the director of the economic development division of the economic development department;

(2) the director of the vocational education division of the state department of public education;

(3) the director of the job training division of the labor department;

(4) the executive director of the commission on higher education;

(5) one member from organized labor appointed by the governor; and

(6) one public member from the business community appointed by the governor.

C. The industrial training board shall establish policies and promulgate rules and regulations for the administration of appropriated funds and shall provide review and oversight to assure that funds expended from the development training fund will generate business activity and give measurable growth to the economic base of New Mexico within the legal limits preserving the ecological state of New Mexico and its people.

D. Subject to the approval of the industrial training board, the vocational education division of the state department of public education shall:

(1) administer all funds allocated or appropriated for industrial development training purposes;

(2) provide designated training services;

(3) regulate, control and abandon any training program established under the provisions of this section;

(4) assist companies requesting training in the development of a training proposal to meet the companies' manpower needs;

(5) contract for the implementation of all training programs;

(6) provide for training by educational institutions or by the company through in-plant trainng, at the company's request; and

(7) evaluate training efforts on a basis of performance standards set forth by the industrial training board.

E. The state shall contract with a company or an educational institution to provide training or instructional services in accordance with the approved training proposal and within the following limitations:

(1) no payment shall be made for training in excess of one thousand forty hours of training per trainee for the total duration of training;

(2) training applicants shall have resided within the state for a minimum of one year immediately prior to the commencement of the training program and be citizens
of the United States;

(3) payment for institutional classroom training shall be made under any accepted training contract for a qualified training program;

(4) no payment shall be made under any accepted training contract for rental of facilities unless facilities are not available on site or at the educational institution;

(5) all applicants shall be eligible under the federal Fair Labor Standards Act and shall not have terminated a public school program within the past three months except by graduation;

(6) trainees shall be guaranteed full-time employment with the contracted company upon successful completion of the training;

(7) persons employed to provide the instructional services shall be exempt from the minimum requirements established in the state plan for other state vocational programs; and

(8) no payment shall be made for training programs or production of Indian jewelry or imitation Indian jewelry unless a majority of those involved in the training program or production are of Indian descent."

Section 2

Section 2. APPROPRIATIONS--DEVELOPMENT TRAINING FUND--DEVELOPMENT TRAINING PROGRAM.--

A. Three million seven hundred thousand dollars ($3,700,000) is appropriated from the general fund to the development training fund for expenditure for a development training program providing classroom and in-plant training to furnish qualified manpower resources for certain new or expanding industries and businesses in New Mexico in the following amounts for the following fiscal years:

(1) one million two hundred thousand dollars ($1,200,000) for expenditure in the eighty-first fiscal year; and

(2) two million five hundred thousand dollars ($2,500,000) for expenditure in the eighty-second fiscal year.

B. Any unexpended or unencumbered balance remaining in the development training fund at the end of the eighty-second fiscal year from the appropriations in Subsection A of this section shall not revert.

C. Seventy-five thousand dollars ($75,000) is appropriated from the general fund to the economic development department for expenditure in the eighty-second fiscal year to establish one and one-half full-time equivalent positions for administration of the development training program mandated by Section 21-19-7 NMSA 1978. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Section 3

Section 3. APPROPRIATION.--Three hundred thousand dollars ($300,000) is appropriated from the general fund to the vocational education division of the state department of public education for expenditure in the eighty-second fiscal year for the purpose of carrying out the provisions of the Apprenticeship Assistance Act. No more than twenty thousand dollars ($20,000) of this appropriation shall be used for administrative costs. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall not revert to the general fund.

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.HB 100

CHAPTER 136

RELATING TO STATUTES OF LIMITATIONS; ESTABLISHING A STATUTE OF LIMITATIONS FOR ACTIONS BASED ON INJURY CAUSED BY CHILDHOOD SEXUAL ABUSE; ENACTING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. ACTION FOR DAMAGES DUE TO CHILDHOOD SEXUAL ABUSE--LIMITATION ON ACTIONS.--

A. An action for damages based on personal injury caused by childhood sexual abuse shall be commenced by a person, before the latest of the following dates:

(1) the first instant of the person's twenty-fourth birthday;

(2) three years from the date of the time that a person knew or had reason to know, as established by competent medical or psychological testimony, that an injury was caused by childhood sexual abuse; or

(3) three years from the date that a person began receiving treatment administered by a licensed, competent medical practitioner or psychologist for the purpose of treating a disassociated, repressed or forgotten act of childhood sexual abuse.

B. As used in this section, "childhood sexual abuse" means behavior that, if prosecuted in a criminal matter, would constitute a violation of:

(1) Section 30-9-11 NMSA 1978, regarding criminal sexual penetration of a minor;

(2) Section 30-9-13 NMSA 1978, regarding criminal sexual contact of a minor; or

(3) the Sexual Exploitation of Children Act.

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. _____HB 126

CHAPTER 137

RELATING TO INSURANCE; REQUIRING PREMIUM DISCOUNTS FOR VEHICLE OWNERS WITH PASSIVE ANTI-THEFT DEVICES; ENACTING A NEW SECTION OF THE NMSA 1978.

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

Section 1

Section 1. A new section of the New Mexico Insurance Code is enacted to read:

"DISCOUNTS FOR COMPREHENSIVE COVERAGE.--

A. Any insurance company authorized to write private passenger automobile insurance within the state shall provide a minimum premium discount of ten percent for motor vehicles with passive anti-theft devices. These discounts shall apply to comprehensive coverage and shall be approved by the superintendent pursuant to Section 59A-17-13 NMSA 1978 as part of the insurer's rate filing. Some or all of the premium discounts required by this section may be omitted upon demonstration to the superintendent in an insurer's rate filing that the discounts are duplicative of other discounts provided by the insurer.

B. As used in this section, "passive anti-theft device" means any item or system installed in an automobile that is activated automatically when the operator turns the ignition key to the off position and that is designed to prevent unauthorized use, as prescribed by regulations of the superintendent. The "passive anti-theft device" does not include an ignition interlock provided as a standard anti-theft device by the original automobile manufacturer." _____HB 228

CHAPTER 138

RELATING TO HEALTH; CONTINUING A TRIAL PROGRAM FOR THE CERTIFICATION AND TRAINING OF MEDICATION AIDES.

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

Section 1

Section 1. Section 61-3-10.2 NMSA 1978 (being Laws 1991, Chapter 209, Section 1) is amended to read:

"61-3-10.2. MEDICATION AIDES.--

A. This section shall permit the operation of a trial program for certification of medication aides and medication aide training programs in licensed intermediate care facilities for the mentally retarded. The purpose of the trial program is to effectuate a cost containment and efficient program for the administration of the medicaid program. The trial program shall be evaluated, and a report of the results and the necessity of continuing the trial program shall be submitted to the second session of the forty-second legislature. It is the intention of the legislature that costs of initiating the program shall be provided through appropriate agreements between the board and licensed intermediate care facilities for the mentally retarded.

B. For the purposes of this section, "medication aide" means a person who, under the direction of a registered nurse in a licensed intermediate care facility for

the mentally retarded, is permitted to administer oral medications according to the standards adopted by the board.

C. Unless certified as a medication aide under the Nursing Practice Act, no person shall:

(1) practice as a medication aide; or

(2) use the titles "certified medication aide" or "medication aide" or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a certified medication aide.

D. The board shall:

(l) maintain a permanent register of all persons to whom certification to practice as a certified medication aide is provided;

(2) adopt rules and regulations that set reasonable requirements for medication aide educational or training programs and certification that protect the health and well-being of the mentally retarded while facilitating low-cost access to medication services; and

(3) conduct hearings upon charges relating to discipline of a certified medication aide or the denial, suspension or revocation of a medication aide certificate in accordance with the Uniform Licensing Act.

E. Every applicant for certification as a medication aide shall pay the required application fee, submit written evidence of having completed a board-approved program for the certification of medication aides and successfully complete a board-approved examination.

F. The board shall issue a certificate enabling a person to function as a medication aide to any person who fulfills the requirements for medication aides set by law.

G. Every certificate issued by the board to practice as a medication aide shall be renewed biennially upon payment of the required fee. The medication aide seeking renewal shall submit proof of employment as a medication aide and proof of having met any continuing education requirements adopted by the board.

H. Applicants for certification or renewal of certification as certified medication aides shall pay the following fees:

(1) for initial certification by examination or certification after a failure to renew timely an initial certification, the fee shall be set by the board not to exceed thirty dollars ($30.00); and

(2) for renewal of certification, the fee shall be set by the board not to exceed thirty dollars ($30.00).

I. The board shall:

(1) prescribe standards and approve curricula for educational or training programs preparing persons as medication aides;

(2) set a reasonable fee for the review and approval of educational or training programs for certification as certified medication aides not to exceed one hundred fifty dollars ($150) for each initial review and approval, or fifty dollars ($50.00) for each subsequent review and approval in case of change or modification in a training program, except where the change or modification has been required by achange in board policy or board rules and regulations, in which case the fee for each review and approval shall not exceed twenty-five dollars ($25.00);

(3) provide for periodic evaluation at intervals of no less than two years of educational or training programs preparing persons for certification as certified medication aides, including setting a reasonable fee for each periodic evaluation, which shall not exceed seventy-five dollars ($75.00); and

(4) grant, deny or withdraw approval from medication aide programs for failure to meet prescribed standards; provided that in the event of a denial or withdrawal of approval, none of the fees provided for in this section shall be refundable." _____HB 250

CHAPTER 139

RELATING TO CRIMINAL OFFENSES; AMENDING ELEMENTS OF THE OFFENSE OF NEGLIGENT USE OF A DEADLY WEAPON.

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

Section 1

Section 1. Section 30-7-4 NMSA 1978 (being Laws 1963, Chapter 303, Section 7-3, as amended) is amended to read:

"30-7-4. NEGLIGENT USE OF A DEADLY WEAPON.--

A. Negligent use of a deadly weapon consists of:

(1) discharging a firearm into any building or vehicle or so as to knowingly endanger a person or his property;

(2) carrying a firearm while under the influence of an intoxicant or narcotic;

(3) endangering the safety of another by handling or using a firearm or other deadly weapon in a negligent manner; or

(4) discharging a firearm within one hundred fifty yards of a dwelling or building, not including abandoned or vacated buildings on public lands during hunting seasons, without the permission of the owner or lessees thereof.

B. The provisions of Paragraphs (1), (3) and (4) of Subsection A of this section shall not apply to a peace officer or other public employee who is required or authorized by law to carry or use a firearm in the course of his employment and who carries, handles, uses or discharges a firearm while lawfully engaged in carrying out the duties of his office or employment.

C. The exceptions from criminal liability provided for in Subsection B of this section shall not preclude or affect civil liability for the same conduct.

Whoever commits negligent use of a deadly weapon is guilty of a petty misdemeanor." _____HB 310

CHAPTER 140

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSES; AMENDING SECTIONS OF THE MEDICAL RADIATION HEALTH AND SAFETY ACT.

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

Section 1

Section 1. Section 61-14E-4 NMSA 1978 (being Laws 1983, Chapter 317, Section 4, as amended) is amended to read:

"61-14E-4. DEFINITIONS.--As used in the Medical Radiation Health and Safety Act:

A. "advisory council" means the radiation technical advisory council;

B. "board" means the environmental improvement board;

C. "certificate of limited practice" means a certificate issued pursuant to the Medical Radiation Health and Safety Act to persons who perform restricted diagnostic radiography under direct supervision of a licensed practitioner limited to the following specific procedures:

(1) the viscera of the thorax;

(2) extremities;

(3) radiation to humans for diagnostic purposes in the practice of dentistry;

(4) axial/appendicular skeleton; or

(5) the foot, ankle or lower leg;

D. "department" means the department of environment;

E. "licensed practitioner" means a person licensed to practice medicine, dentistry, podiatry, chiropractic or osteopathy in this state;

F. "nuclear medicine technologist" means a person other than a licensed practitioner who applies radiopharmaceutical agents to humans for diagnostic or therapeutic purposes under the direction of a licensed practitioner;

G. "radiation therapy technologist" means a person other than a licensed practitioner whose application of radiation to humans is for therapeutic purposes;

H. "radiographer" means a person other than a licensed practitioner whose application of radiation to humans is for diagnostic purposes;

I. "radiologic technologist" means any person who is a radiographer, a radiation therapy technologist or a nuclear medicine technologist and who is certified pursuant to the Medical Radiation Health and Safety Act;

J. "radiologic technology" means the use of substances or equipment emitting ionizing radiation to humans for diagnostic or therapeutic purposes; and

K. "radiologist" means a licensed practitioner certified by the American board of radiology, the British royal college of radiology, the American osteopathic board of radiology or the American chiropractic board of radiology."

Section 2

Section 2. Section 61-14E-3 NMSA 1978 (being Laws 1983, Chapter 317, Section 3) is amended to read:

"61-14E-3. ADMINISTRATION--ENFORCEMENT.--The administration and enforcement of the Medical Radiation Health and Safety Act is vested in the department."

Section 3

Section 3. Section 61-14E-7 NMSA 1978 (being Laws 1983, Chapter 317, Section 7, as amended) is amended to read:

"61-14E-7. CERTIFICATION--EXCEPTIONS.--It is unlawful, unless certified by the department as a radiologic technologist, for any person to:

A. use ionizing radiation on humans;

B. use the title "radiologic technologist" or the abbreviation "L.R.T." or any other abbreviation thereof or use any other title, abbreviation, letters, figures, signs or other devices to indicate that the person is a certified radiologic technologist; or

C. engage in any of the radiology specialties as defined by the Medical Radiation Health and Safety Act.

The requirement of a certificate shall not apply to a licensed practitioner or auxiliary or health practitioner
licensed or certified by an independent board; provided that any certification and examination program for auxiliaries established by an independent board shall be submitted to the advisory council and approved by the board. The requirement of a certificate shall also not apply to a student who is enrolled in and attending a required individual education program of a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene or radiologic technology to apply radiation to humans under the supervision of a licensed practitioner or under the direct supervision of a certified radiologic technologist."

Section 4

Section 4. Section 61-14E-8 NMSA 1978 (being Laws 1991, Chapter 14, Section 3) is amended to read:

"61-14E-8. TEMPORARY CERTIFICATION.--The department may issue a temporary certificate to practice as a radiologic technologist to a person who satisfactorily completes an approved program in radiologic technology, provided that the temporary certificate:

A. is applied for within one year of graduation;

B. is valid only for a period not to exceed one year;

C. is only issued to a person once; and

D. is contingent upon successful completion of an examination required by the board and expires upon failure to pass the examination."

Section 5

Section 5. Section 61-14E-9 NMSA 1978 (being Laws 1983, Chapter 317, Section 9) is amended to read:

"61-14E-9. FEES FOR CERTIFICATION.--After the promulgation of rules and regulations, the department shall charge and collect the following fees:

A. an initial application fee not to exceed ten dollars ($10.00);

B. an examination fee not to exceed fifty dollars ($50.00) for a full certificate and not to exceed twenty-five dollars ($25.00) for a certificate of limited practice;

C. a full certificate renewal fee determined by the board in an amount not to exceed one hundred dollars ($100) biennially; and

D. a certificate of limited practice renewal fee determined by the board in an amount not to exceed sixty dollars ($60.00) biennially upon submission of proof of at least twenty hours of continuing education requirements as required by the department.

Any person who allows his certificate to lapse by failure to renew as provided in the Medical Radiation Health and Safety Act shall be reinstated by the department on payment of the fee for the current biennium plus a reinstatement fee to be set by the department in an amount which shall not exceed the renewal fee. This provision shall not apply to anyone whose certificate has been revoked or suspended."

Section 6

Section 6. Section 61-14E-10 NMSA 1978 (being Laws 1983, Chapter 317, Section 10, as amended) is amended to read:

"61-14E-10. FUND ESTABLISHED--DISPOSITION--METHOD OF PAYMENT.--

A. There is created in the state treasury the "radiologic technology fund".

B. All fees received by the department pursuant to the Medical Radiation Health and Safety Act shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the radiologic technology fund.

C. Payments out of the radiologic technology fund shall be on vouchers issued and signed by the person designated by the department upon warrants drawn by the department of finance and administration and shall be used by the department for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Medical Radiation Health and Safety Act, the duties imposed by that act and the promotion of education and standards for radiologic technology in this state. All

money unexpended or unencumbered at the end of the fiscal year shall remain in the radiologic technology fund for use in accordance with the provisions of the Medical Radiation Health and Safety Act."

Section 7

Section 7. Section 61-14E-12 NMSA 1978 (being Laws 1983, Chapter 317, Section 12) is amended to read:

"61-14E-12. VIOLATIONS--PENALTIES.--It is a misdemeanor for any person, firm, association or corporation to:

A. knowingly or willfully employ as a radiologic technologist any person who is required to but does not possess a valid certificate or certificate of limited practice to engage in the practice of radiologic technology;

B. sell, fraudulently obtain or furnish any radiologic technology certificate or certificate of limited practice or to aid or abet therein;

C. practice radiologic technology as defined by the Medical Radiation Health and Safety Act unless exempted or duly certified to do so under the provisions of that act; or

D. otherwise violate any provisions of the Medical Radiation Health and Safety Act.

The department shall assist the proper legal authorities in the prosecution of all persons violating the provisions of the Medical Radiation Health and Safety Act. In prosecutions under that act, it shall not be necessary to prove a general course of conduct. Proof of a single act, a single holding out or a single attempt shall constitute a violation, and, upon conviction, such person shall be sentenced to be imprisoned in the county jail for a definite term not to exceed one year or to the payment of a fine of not more than one thousand dollars ($1,000) or both."

_____HB 317

CHAPTER 141

RELATING TO LIMITED PARTNERSHIPS; REGARDING THE FILING OF A CERTIFICATE OF LIMITED PARTNERSHIP; AMENDING A SECTION OF THE UNIFORM LIMITED PARTNERSHIP ACT.

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

Section 1

Section 1. Section 54-2-9 NMSA 1978 (being Laws 1988, Chapter 90, Section 9) is amended to read:

"54-2-9. CERTIFICATE OF LIMITED PARTNERSHIP.--

A. In order to form a limited partnership, a certificate of limited partnership shall be executed and filed in the office of the secretary of state. The certificate shall set forth:

(1) the name of the limited partnership;

(2) the address of the office and the name and address of the agent for service of process required to be maintained by Section 54-2-5 NMSA 1978;

(3) the name and the business address of each general partner;

(4) the latest date upon which the limited partnership is to dissolve; and

(5) any other matters the general partners determine to include therein.

B. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

C. Certificates of limited partnership filed with a county clerk before July 1, 1993 may be refiled with the secretary of state. Such a refiling supersedes the filing in the county clerk's office. Certificates of limited partnership not refiled with the secretary of state shall remain valid until expiration or until cancellation pursuant to a certificate of cancellation filed with the county clerk."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 441

CHAPTER 142

RELATING TO STATE FACILITIES; PROVIDING FOR THE CREATION OF THE STATE RECORDS AND ARCHIVES BUILDING STUDY COMMITTEE; DECLARING AN EMERGENCY.

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

Section 1

Section 1. TEMPORARY PROVISION--COMMITTEE CREATED.--

A. The "state records and archives building study committee" is created.

B. The state records and archives building study committee shall consist of the following five members:

(1) the secretary of general services;

(2) the state librarian;

(3) the chairman of the state commission of public records; and

(4) two members of the public appointed by the governor.

C. Additionally, the state records and archives building study committee shall have the following two advisory members:

(1) a member of the house of representatives appointed by the speaker of the house of representatives; and

(2) a member of the senate appointed by the president pro tempore.

Section 2

Section 2. TEMPORARY PROVISION--POWERS AND DUTIES.--The state records and archives building study committee shall:

A. study and develop a plan for the construction and equipping of a new state records center and archives facility to be located at a site that is owned by the state of New Mexico, including:

(1) recommendations on the utilization of state-of-the-art archival storage design; and

(2) recommendations on the safest, long-term, most economical and durable storage facilities, after exploring the options for aboveground and underground storage facilities;

B. study and develop a plan for the construction of a state library in conjunction with the state records center and archives facility; and

C. submit a report of its work to the governor no later than September 1, 1993 that includes any recommendations on present and future plans for the construction and equipping of the state records center and archives facility.

Section 3

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.HB 617

CHAPTER 143

RELATING TO COURTS; INCREASING THE POPULATION REQUIREMENT FROM FIVE HUNDRED TO ONE THOUSAND FIVE HUNDRED FOR MUNICIPALITIES TO DESIGNATE A MAGISTRATE COURT.

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

Section 1

Section 1. Section 35-14-1 NMSA 1978 (being Laws 1961, Chapter 208, Section 1, as amended) is amended to read:

"35-14-1. MUNICIPAL COURT--CREATION.--

A. Except for municipalities with a population of less than two thousand five hundred or more than five thousand persons in the 1980 federal decennial census lying within the boundaries of a class A county with a population of more than two hundred thousand persons in the last federal decennial census and municipalities which have adopted an effective ordinance pursuant to Subsection B of this section, there is established a municipal court in each incorporated municipality. The municipal courts shall be presided over by municipal judges. As used in Chapter 35, Articles 14 and 15 NMSA 1978, "municipality" includes H class counties.

B. The governing body of a municipality with a population of one thousand five hundred persons or less in the last federal decennial census may designate the magistrate court of the county in which the municipality is located as the court having jurisdiction over municipal ordinances. The designation shall be by adopted ordinance which shall not be effective until the expiration of the term of any incumbent municipal judge. Within five days after the effective date of the ordinance, the governing body of the municipality shall:

(1) forward a copy of the ordinance to the magistrate court and to the administrative office of the courts; and

(2) provide to the magistrate court copies of all municipal ordinances over which the magistrate court will have jurisdiction.

C. A magistrate court designated pursuant to Subsection B of this section shall, with respect to ordinances of the municipality:

(1) follow the rules of procedure for the municipal courts and the procedures provided by Chapter 35, Article 15 NMSA 1978;

(2) impose no fine or sentence greater than that permitted for municipalities; and

(3) remit monthly to the state all funds collected as a result of enforcement of municipal ordinances." _____HB 637

CHAPTER 144

RELATING TO DOMESTIC AFFAIRS; AMENDING A SECTION OF THE NMSA 1978 TO CLARIFY PROVISIONS CONCERNING SPOUSAL AND CHILD SUPPORT.

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

Section 1

Section 1. Section 40-4-7 NMSA 1978 (being Laws 1901, Chapter 62, Section 27, as amended) is amended to read:

"40-4-7. PROCEEDINGS--SPOUSAL SUPPORT--SUPPORT OF CHILDREN--DIVISION OF PROPERTY.--

A. In any proceeding for the dissolution of marriage, division of property, disposition of children or spousal support, the court may make and enforce by attachment or otherwise an order to restrain the use or disposition of the property of either party, or for the control of the children, or to provide for the support of either party during the pendency of the proceeding, as in its discretion may seem just and proper. The court may make an order, relative to the expenses of the proceeding, as will ensure either party an efficient preparation and presentation of his case.

B. On final hearing, the court:

(1) may allow either party such a reasonable portion of the spouse's property or such a reasonable sum of money to be paid by either spouse either in a single sum or in installments, as spousal support as under the circumstances of the case may seem just and proper, including a court award of:

(a) rehabilitative spousal support that provides the receiving spouse with education, training, work experience or other forms of rehabilitation that increases the receiving spouse's ability to earn income and become self-supporting. The court may include a specific rehabilitation plan with its award of rehabilitative spousal support and may condition continuation of the support upon compliance with that plan;

(b) transitional spousal support to supplement the income of the receiving spouse for a limited period of time; provided that the period shall be clearly stated in the court's final order;

(c) spousal support for an indefinite duration;

(d) a single sum to be paid in one or more installments that specifies definite amounts, subject only to the death of the receiving spouse; or

(e) a single sum to be paid in one or more installments that specifies definite amounts, not subject to any contingencies, including the death of the receiving spouse;

(2) may:

(a) modify and change any order in respect to spousal support awarded pursuant to the provisions of Subparagraph (a), (b) or (c) of Paragraph (1) of this subsection whenever the circumstances render such change proper; or

(b) designate spousal support awarded pursuant to the provisions of Subparagraph (a) or (b) of Paragraph (1) of this subsection as nonmodifiable with respect to the amount or duration of the support payments;

(3) may set apart out of the property of the respective parties such portion for the maintenance and education of the minor children as may seem just and proper; and

(4) may make such an order for the guardianship, care, custody, maintenance and education of the minor children, or with reference to the control of the property of the respective parties to the proceeding, or with reference to the control of the property decreed or fund created by the court for the maintenance and education of the minor children, as may seem just and proper.

C. An award of spousal support made pursuant to the provisions of Subparagraph (a), (b), (c) or (d) of Paragraph (1) of Subsection B of this section shall terminate upon the death of the receiving spouse, unless the court order of spousal support provides otherwise.

D. When making determinations concerning spousal support to be awarded pursuant to the provisions of Paragraph (1) or (2) of Subsection B of this section, the court shall consider:

(1) the age and health of and the means of support for the respective souses;

(2) the current and future earnings and the earning capacity of the respective spouses;

(3) the good-faith efforts of the respective spouses to maintain employment or to become self-supporting;

(4) the reasonable needs of the respective spouses, including:

(a) the standard of living of the respective spouses during the term of the marriage;

(b) the maintenance of medical insurance for the respective spouses; and

(c) the appropriateness of life insurance, including its availability and cost, insuring the life of the person who is to pay support to secure the payments, with any life insurance proceeds paid on the death of the paying spouse to be in lieu of further support;

(5) the duration of the marriage;

(6) the amount of the property awarded or confirmed to the respective spouses;

(7) the type and nature of the respective spouses' assets; provided that potential proceeds from the sale of property by either spouse shall not be considered by the court, unless required by exceptional circumstances and the need to be fair to the parties;

(8) the type and nature of the respective spouses' liabilities;

(9) income produced by property owned by the respective spouses; and

(10) agreements entered into by the spouses in contemplation of the dissolution of marriage or legal separation.

E. The court shall retain jurisdiction over proceedings involving periodic spousal support payments when the parties have been married for twenty years or more

prior to the dissolution of the marriage, unless the court order or decree specifically provides that no spousal support shall be awarded.

F. The court may modify and change any order in respect to the guardianship, care, custody, maintenance or education of the children whenever circumstances render such change proper. The district court shall have exclusive jurisdiction of all matters pertaining to the guardianship, care, custody, maintenance and education of the children so long as the children remain minors. The district court shall also have exclusive, continuing jurisdiction with reference to the property decreed or funds created for the children's maintenance and education."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. _____SB 289

CHAPTER 145

RELATING TO PROPERTY; ADDRESSING FINANCING OF LOW-INCOME HOUSING; AMENDING THE DEED OF TRUST ACT.

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

Section 1

Section 1. Section 48-10-2 NMSA 1978 (being Laws 1987, Chapter 61, Section 2) is amended to read:

"48-10-2. PURPOSE OF ACT.--The purpose of the Deed of Trust Act is to provide for relatively inexpensive and expeditious foreclosure proceedings with respect to loans in the amount of five hundred thousand dollars ($500,000) or more, or loans to benefit low-income households, secured by trust real estate where the loan borrower, as trustor, agrees in writing to subject the trust real estate to the terms of the Deed of Trust Act."

Section 2

Section 2. Section 48-10-3 NMSA 1978 (being Laws 1987, Chapter 61, Section 3) is amended to read:

"48-10-3. DEFINITIONS.--As used in the Deed of Trust Act, unless the context otherwise requires:

A. "beneficiary" means the person named or otherwise designated in a deed of trust as the person for whose benefit a deed of trust is given or his successor in interest;

B. "qualified construction project" means a low-income housing project of a regional, county or municipal housing authority or a qualified nonprofit organization;

C. "qualified nonprofit organization" means an organization that is certified by the state housing authority as having been granted exemption from federal income tax pursuant to Section 501(c)(3) or (4) of the Internal Revenue Code of 1986, as amended, and that includes as one of its exempt purposes the fostering of low-income housing;

D. "contract" means an agreement between or among two or more persons, including, without limitation, a note, promissory note, guarantee or the terms of any deed of trust;

E. "credit bid" means a bid made by the beneficiary in full or partial satisfaction of the contract that is secured by the deed of trust. A credit bid may only include an amount owing on a contract with interest secured by liens, mortgages, deeds of trust or encumbrances that are superior in priority to the deed of trust and which liens, mortgages or encumbrances, whether recourse or nonrecourse, are outstanding as provided in the contract or as provided in the deed of trust, together with the amount of other obligations provided in or secured by the deed of trust and the costs of exercising the power of sale and the trustee's sale, including the fees of the trustee and reasonable attorneys' fees actually incurred by the trustee and the beneficiary;

F. "parent corporation" means a corporation that owns eighty percent or more of each class of the issued and outstanding stock of another corporation or, in the case of a savings and loan association, eighty percent or more of the issued and outstanding guaranty capital of the savings and loan association;

G. "person" means an individual or organization;

H. "deed of trust" means a document by way of mortgage in substance executed in conformity with the Deed of Trust Act and in conformity with Section 47-1-39 NMSA 1978 granting or mortgaging trust real estate to a trustee qualified under the Deed of Trust Act to secure the performance of a contract, but does not include a deed of trust that encumbers in whole or in part trust real estate located in New Mexico and in one or more other states;

I. "junior encumbrancer" means a person holding a lien, mortgage or other encumbrance of record evidencing an interest in the trust real estate that is subordinate in priority to the deed of trust and includes a lienholder, a mortgagee, a seller and a purchaser as provided in a real estate contract and, where the context is applicable, escrow agents as provided in a real estate contract;

J. "low-income household" means a household that the state housing authority certifies is a household with income at or below eighty percent of the state's median household income;

K. "low-income housing project" means a housing project that the state housing authority certifies is housing for low-income households;

L. "trust real estate" means any legal, equitable, leasehold or other interest in real estate, including the
term "real estate" as defined in Section 47-1-1 NMSA 1978, which is capable of being transferred whether or not the interest is subject to any prior mortgages, deeds of trust, contracts for conveyance of real estate, real estate contracts or other liens or encumbrances; provided, however, trust real estate shall not include:

(1) any dwelling and the underlying real estate designed for occupancy by one to four families, including mobile homes and condominiums except when occupancy is designed for low-income households;

(2) any real estate used by the trustor for farming operations, including farming; tillage of the soil; dairy farming; ranching; production or raising of crops; poultry or livestock; and production of poultry or livestock products in an unmanufactured state; or

(3) oil and other liquid hydrocarbons, or gas, including casinghead gas, condensates and other gaseous petroleum substances, or coal or other minerals in, on or under real estate, including patented and unpatented mining claims, unless such minerals have not been severed from and are included with the surface estate.

The character of trust real estate shall be determined as of the date of the deed of trust covering the trust real estate;

M. "trustee" means a person qualified as provided in the Deed of Trust Act. The obligations of a trustee to the trustor, beneficiary and other persons are as provided in the Deed of Trust Act, together with any other obligations specified in the deed of trust. Both the beneficiary and the trustee have all the powers of a mortgagee as provided by law; and

N. "trustor" means the person or his successor in interest granting or mortgaging trust real estate by a deed of trust as security for the performance of a contract and is the same as a mortgagor granting or mortgaging real estate by way of mortgage as provided by law."

Section 3

Section 3. Section 48-10-4 NMSA 1978 (being Laws 1987, Chapter 61, Section 4) is amended to read:

"48-10-4. EXPRESS CONSENT REQUIRED.--In the case of business or commercial loans in the amount of five hundred thousand dollars ($500,000) or more, or loans made to persons
with low-income households for the acquisition or improvement of real estate where the real estate is an ingredient or component part of a qualified construction project or the loan is made by a qualified nonprofit organization to acquire or improve real estate that is not part of a qualified construction project, involving the granting or mortgaging of trust real estate by a deed of trust as security for the performance of a contract, a trustor may agree by express language in the deed of trust to subject the trust real estate to the terms of the Deed of Trust Act. Only if the trustor so agrees by express language in the deed of trust and in no other event shall the terms of the Deed of Trust Act be applicable to real estate in New Mexico."

Section 4

Section 4. Section 48-10-10 NMSA 1978 (being Laws 1987, Chapter 61, Section 10) is amended to read:

"48-10-10. SALE OF TRUST REAL ESTATE--POWER OF TRUSTEE--FORECLOSURE OF DEED OF TRUST.--

A. By virtue of his position, a power of sale is conferred upon the trustee of a deed of trust under which the trust real estate may be sold as provided in the Deed of Trust Act after a breach or default in performance of the contract for which the trust real estate is granted or mortgaged as security or a breach or default in performance of the deed of trust. Except as specifically provided in the Deed of Trust Act, the trustee shall not delegate the duties of the trustee as provided in the Deed of Trust Act. At the option of the beneficiary, a deed of trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real estate. Either the beneficiary or the trustee shall constitute the proper and complete party plaintiff in any action to foreclose a deed of trust.

B. The trustee or beneficiary may commence an action to foreclose a deed of trust at any time before the trust real estate has been sold as provided in the power of sale. A sale of trust real estate as provided in a power of sale in a deed of trust shall not be held after an action to foreclose the deed of trust has been commenced unless the foreclosure action has been dismissed.

C. The power of sale of trust real estate conferred upon the trustee as to trust real estate for commercial or business loans shall not be exercised before the expiration of one hundred eighty days from the recording of the notice of the sale. The power of sale of trust real estate conferred upon the trustee as to low-income household loans shall not be exercised before the expiration of forty-five days from the recording of the notice of the sale.

D. The trustee need only be joined as a party in separate civil actions pertaining to a breach of an obligation of a trustee as provided in the Deed of Trust Act or as provided in the deed of trust. Any order of the court entered against the beneficiary is binding upon the trustee with respect to any actions that the trustee is authorized to take by the deed of trust or by the Deed of Trust Act. If the trustee is joined as a party in any other separate civil action, other than an action in which the trustee is an indispensableor necessary party, the trustee is entitled to be immediately dismissed and to recover the costs and reasonable attorneys' fees actually incurred by the trustee from the person joining the trustee and from the beneficiary, jointly and severally."

Section 5

Section 5. Section 48-10-17 NMSA 1978 (being Laws 1987, Chapter 61, Section 17) is amended to read:

"48-10-17. ACTION TO RECOVER BALANCE AFTER SALE OR FORECLOSURE ON TRUST REAL ESTATE AS PROVIDED IN DEED OF TRUST--ACTION TO RECOVER BALANCE PROHIBITED ON LOANS SECURED BY LOW-INCOME HOUSEHOLDS.--

A. Except as provided in Subsections D and E of this section, within twelve months after the date of sale of trust real estate under a deed of trust as provided in the Deed of Trust Act, a separate civil action may be commenced to recover a deficiency judgment for the balance due on the contract for which the deed of trust was given as security. The deficiency judgment shall be for an amount equal to the sum of the total amount owing the beneficiary as of the date of the sale, as determined by the court, and, if applicable, the amount owing on all prior mortgages, deeds of trust, liens and encumbrances and real estate contracts with interest less the sale price at the sale by the trustee of the trust real estate. Any deficiency judgment recovered shall include interest on the amount of the deficiency from the date of the sale at the rate provided in the deed of trust or contract, together with any costs of the action.

B. If no action is commenced for a deficiency judgment as provided in Subsection A of this section, the proceeds of the sale, regardless of amount, shall be deemed to be in full satisfaction of the debt and no right to recover a deficiency in any separate civil action shall exist.

C. Except as provided in Subsections D and E of this section, the Deed of Trust Act does not preclude a beneficiary or a trustee from foreclosing a deed of trust in the same manner provided by law for the foreclosure of mortgages on real estate.

D. A deed of trust not encumbering real estate occupied by a low-income household may, by express language, validly prohibit the recovery of any balance due after the trust real estate is sold or after the deed of trust is foreclosed in the manner provided by law for the foreclosure of mortgages on real estate.

E. No deficiency judgment shall be sought or obtained under any deed of trust encumbering real estate occupied by a low-income household. A deed of trust encumbering real estate occupied by a low-income household shall expressly prohibit the recovery of any balance due after the trust real estate is sold or after the deed of trust is foreclosed in the manner provided by law for the foreclosure of mortgages on real estate.

F. No deficiency in recovery of any balance due after the sale of trust real estate encumbering real estate occupied by a low-income household shall be reported to any credit reporting agencies or disclosed to any person, other than the trustor, unless the disclosure is required by law or regulation."
_____SB 405

CHAPTER 146

RELATING TO MAGISTRATE COURTS; AMENDING A CERTAIN SECTION OF THE NMSA 1978 PERTAINING TO THE CIBOLA MAGISTRATE DISTRICT.

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

Section 1

Section 1. Section 35-1-6.1 NMSA 1978 (being Laws 1982, Chapter 101, Section 2) is amended to read:

"35-l-6.l. MAGISTRATE COURT--CIBOLA DISTRICT.--There shall be two magistrates in Cibola magistrate district, divisions 1 and 2 operating as a single court in Grants." SB 414

CHAPTER 147

RELATING TO PROPERTY; REQUIRING WRITTEN DISCLOSURE OF RENT INCREASES, COSTS OF UTILITY SERVICES AND CERTAIN FEES TO RESIDENTS OF MOBILE HOME PARKS; PROVIDING CIVIL PENALTIES; AMENDING AND ENACTING SECTIONS OF THE MOBILE HOME PARK ACT.

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

Section 1

Section 1. Section 47-10-1 NMSA 1978 (being Laws 1983, Chapter 122, Section 1) is amended to read:

"47-10-1. SHORT TITLE.--Chapter 47, Article 10 NMSA 1978 may be cited as the "Mobile Home Park Act"."

Section 2

Section 2. Section 47-10-2 NMSA 1978 (being Laws 1983, Chapter 122, Section 2) is amended to read:

"47-10-2. DEFINITIONS.--As used in the Mobile Home Park Act:

A. "landlord" or "management" means the owner or any person responsible for operating and managing a mobile home park or an agent, employee or representative authorized to act on the management's behalf in connection with matters relating to tenancy in the park;

B. "mobile home" means a single-family dwelling built on a permanent chassis designed for long-term residential occupancy and containing complete electrical, plumbing and sanitary facilities designed to be installed in a permanent or semipermanent manner with or without a permanent foundation, which dwelling is capable of being drawn over public highways as a unit or in sections by special permit. "Mobile home" does not include a recreational travel trailer or a recreational vehicle, as those terms are defined in Section 66-1-4.15 NMSA 1978;

C. "mobile home park", "trailer park" or "park" means a parcel of land used for the continuous accommodation of twelve or more occupied mobile homes and operated for the pecuniary benefit of the owner of the parcel of land, his agents, lessees or assignees. Mobile home park does not include mobile home subdivisions or property zoned for manufactured home subdivisions;

D. "mobile home space", "space", "mobile home lot" or "lot" means a parcel of land within a mobile home park designated by the management to accommodate one mobile home and its accessory buildings and to which the required sewer and utility connections are provided by the mobile home park;

E. "premises" means a mobile home park and existing facilities and appurtenances therein, including furniture and utilities where applicable, and grounds, areas and existing facilities held out for the use of the residents generally or the use of which is promised to the resident;

F. "rent" means any money or other consideration to be paid to the management for the right of use, possession and occupation of the premises;

G. "rental agreement" means a written agreement, including those conditions implied by law, between the management and the resident establishing the terms and conditions of a tenancy, including reasonable rules and regulations promulgated by the park management. A lease is a rental agreement;

H. "resident" means any person or family of such person owning a mobile home that is subject to a tenancy in a mobile home park under a rental agreement;

I. "tenancy" means the right of a resident to use a space or lot within a park on which to locate, maintain and occupy a mobile home, lot improvements and accessory structures for human habitation, including the use of services and facilities of the park; and

J. "utility services" means electric, gas, water or sewer services, but does not include refuse services."

Section 3

Section 3. Section 47-10-6 NMSA 1978 (being Laws 1983, Chapter 122, Section 6) is amended to read:

"47-10-6. NONPAYMENT OF RENT.--Any tenancy or other estate at will or lease in a mobile home park may be terminated upon the landlord's written notice to the tenant requiring, in the alternative, payment of rent and utility charges or the removal of the tenant's unit from the premises, within a period of not less than three days after the date notice is served or posted, for failure to pay rent when due. Rent shall not be increased without sixty days' written notice to the tenant."

Section 4

Section 4. Section 47-10-14 NMSA 1978 (being Laws 1983, Chapter 122, Section 14) is amended to read:
"47-10-14. RENTAL AGREEMENT--DISCLOSURE OF TERMS IN WRITING.--

A. The terms and conditions of a tenancy shall be adequately disclosed in writing in a rental agreement by the management to any prospective resident prior to the rental or occupancy of a mobile home space or lot. The disclosures shall include:

(1) the term of the tenancy and the amount of the rent;

(2) the day the rental payment is due;

(3) the day when unpaid rent shall be considered in default;

(4) the rules and regulations of the park then in effect;

(5) the name and mailing address where a manager's decision may be appealed;

(6) the name and mailing address of the owner of the park; and

(7) all charges to the tenant other than rent.

B. The rental agreement shall be signed by both the management and the resident, and each party shall receive a copy of it.

C. The management and the resident may include in a rental agreement terms and conditions not prohibited under the provisions of the Mobile Home Park Act.

D. If an owner deliberately uses a rental agreement containing provisions known by him to be prohibited by law or by the provisions of Section 47-10-11, 47-10-12 or 47-10-13 NMSA 1978, the resident may recover damages sustained by him resulting from application of the illegal provision and reasonable attorney's fees."

Section 5

Section 5. A new section of the Mobile Home Park Act, Section 47-10-19 NMSA 1978, is enacted to read:

"47-10-19. RENT INCREASE--DISCLOSURE REQUIREMENT.--

A. A landlord shall fully and accurately disclose in writing to a resident an increase in rent. The disclosure shall be provided to a resident at least sixty days prior to implementation of an increase in rent.

B. Upon receiving a written request from a resident or prospective resident, a landlord shall fully and accurately disclose in writing a current schedule of the range of rental rates in the mobile home park. The landlord shall include the date of preparation on the face of the schedule of rental rates."

Section 6

Section 6. A new section of the Mobile Home Park Act, Section 47-10-20 NMSA 1978, is enacted to read:

"47-10-20. COST OF UTILITY SERVICES--ACCESS TO RECORDS.--

A. When a landlord purchases utility services for residents, the charge for utility services billed to residents shall not exceed the cost per unit amount paid by the landlord to the suppliers of the utility services.

B. A landlord shall provide a resident with reasonable access to records of meter readings, if any, taken at the resident's mobile home space."

Section 7

Section 7. A new section of the Mobile Home Park Act, Section 47-10-21 NMSA 1978, is enacted to read:

"47-10-21. PROVISION OF UTILITY SERVICES--ADMINISTRATIVE FEE--DISCLOSURE REQUIREMENT.--

A. A landlord may charge residents a reasonable fee to offset the cost of administration incurred by a landlord when he provides utility services to residents.

B. The amount of the administrative fee for utility services shall be fully and accurately disclosed in writing in a rental agreement, pursuant to the provisions of Paragraph (6) of Subsection A of Section 47-10-14 NMSA 1978.

C. A landlord shall fully and accurately disclose in writing to a resident any increase in the administrative fee. The disclosure shall be provided to a resident at leastsixty days prior to implementation of an increase in the administrative fee."

Section 8

Section 8. A new section of the Mobile Home Park Act, Section 47-10-22 NMSA 1978, is enacted to read:

"47-10-22. ITEMIZED BILL--UTILITY SERVICES--ADMINISTRATIVE FEES.--When a landlord purchases utility services for residents, he shall provide residents with a monthly itemized bill that includes:

A. a separate listing of charges for each utility service;

B. the amount consumed and the cost per unit for each utility service; provided, that when individual cost per unit figures for utility services are not available, the landlord shall provide residents with the total cost of utility services and the formula used to determine the individual charges for utility services; and

C. if applicable, the amount of the administrative fee for providing utility services to residents."

Section 9

Section 9. A new section of the Mobile Home Park Act, Section 47-10-23 NMSA 1978, is enacted to read:

"47-10-23. CIVIL PENALTIES.--

A. For each violation by a landlord of the provisions of Sections 47-10-19 through 47-10-22 NMSA 1978 a landlord may be charged a civil penalty not to exceed five hundred dollars ($500).

B. The remedies provided in this section are not exclusive and do not limit the rights or remedies that are otherwise available to a resident under any other law."

Section 10

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. _____SB 493

CHAPTER 148

RELATING TO CHILD SUPPORT; PROVIDING FOR THE RELEASE OF INFORMATION REGARDING CHILD SUPPORT OBLIGATIONS; AMENDING AND ENACTING SECTIONS OF THE SUPPORT ENFORCEMENT ACT.

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

Section 1

Section 1. Section 40-4A-10 NMSA 1978 (being Laws 1985, Chapter 105, Section 10, as amended) is amended to read:

"40-4A-10. ADDITIONAL DUTIES.--

A. An obligee who is receiving income withholding payments under the Support Enforcement Act shall notify the public office forwarding such payments of any change of address within seven days of such change.

B. Within seven days of change of payor or residence, an obligor whose income is being withheld or who has been served with a notice of delinquency pursuant to the Support Enforcement Act shall notify the obligee and the public office of the new payor or new residence address.

C. Any public office that collects, disburses or receives payments pursuant to a notice to withhold income shall maintain complete, accurate and clear records of all payments and their disbursements.

D. The department shall take all actions necessary to institute income withholding upon the request of an obligor.

E. All new orders for support or modifications of orders for support shall provide notice that if an obligor accrues a delinquency in an amount equal to at least one month's support obligation, his income shall be subject to withholding in an amount sufficient to satisfy the order for support and that an additional amount shall be withheld to reduce and retire any delinquency.

F. In addition to any other materials provided to an obligee at the time the obligee applies to the department for assistance, the department shall make available to

the obligee a list of the types of services available, and a copy of federal time frames concerning child support enforcement."

Section 2

Section 2. A new section of the Support Enforcement Act is enacted to read:

"PUBLICATION OF NAMES OF OBLIGORS--AMOUNT OWED.--The department shall publish, once every three months in a newspaper with statewide circulation, the names and last known addresses of at least twenty-five delinquent obligors. In addition to publication of the obligors' names and last known addresses, the department shall publish the respective amounts of delinquency accrued by the individual obligors as of the date of publication."

Section 3

Section 3. A new section of the Support Enforcement Act is enacted to read:

"INFORMATION REGARDING DELINQUENCY PAYMENTS.--Upon a request from an obligee, the department shall make available a written statement of:

A. payments made to the obligee by the obligor pursuant to an order for support; and

B. the amount of any delinquency still owed to the obligee by the obligor."

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. _____SB 540

CHAPTER 149

RELATING TO TAXATION; REDEFINING AN AFFILIATED CORPORATION'S ELIGIBILITY FOR THE GROSS RECEIPTS TAX DEDUCTION FOR CERTAIN ADMINISTRATIVE SERVICES; AMENDING A CERTAIN SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-9-69 NMSA 1978 (being Laws 1969, Chapter 144, Section 61, as amended) is amended to read:

"7-9-69. DEDUCTION--GROSS RECEIPTS TAX--ADMINISTRATIVE AND ACCOUNTING SERVICES.--

A. Receipts of a corporation for administrative, managerial and accounting services performed by it for an affiliated corporation upon a nonprofit or cost basis and receipts from an affiliated corporation for the joint use or sharing of office machines and facilities upon a nonprofit or cost basis may be deducted from gross receipts.

B. For the purposes of this section, "affiliated corporation" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation. For the purposes of this subsection, "control" means ownership of stock in a corporation which:

(1) represents at least fifty percent of the total voting power of that corporation; and

(2) has a value equal to at least fifty per- cent of the total value of the stock of that corporation." _____SB 635

CHAPTER 150

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSES; AMENDING SECTIONS OF THE RESPIRATORY CARE ACT.

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

Section 1

Section 1. Section 61-12B-3 NMSA 1978 (being Laws 1984, Chapter 103, Section 3 as amended by Laws 1987, Chapter 329, Section 1 and also by Laws 1987, Chapter 346, Section 1) is amended to read:

"61-12B-3. DEFINITIONS.--As used in the Respiratory Care Act:

A. "board" means the advisory board of respiratory care practitioners;

B. "department" means the regulation and licensing department or that division of the department designated to administer the provisions of the Respiratory Care Act;

C. "respiratory care" means a health care profession, under medical direction, employed in the therapy, management, rehabilitation, diagnostic evaluation and care of patients with deficiencies and abnormalities which affect the cardiopulmonary system and associated aspects of other system functions, and the terms "respiratory therapy" and "inhalation therapy" where such terms mean respiratory care;

D. "practice of respiratory care" includes, but is not limited to:

(1) direct and indirect cardiopulmonary care services that are of comfort, safe, aseptic, preventative and restorative to the patient;

(2) cardiopulmonary care services, including but not limited to the administration of pharmacological, diagnostic and therapeutic agents related to cardiopulmonary care necessary to implement treatment, disease prevention, cardiopulmonary rehabilitation or a diagnostic regimen, including paramedical therapy and baromedical therapy;

(3) specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of cardiopulmonary abnormalities, including but not limited to pulmonary function testing, hemodynamic and physiologic monitoring of cardiac function and collection of arterial and venous blood for analysis;

(4) observation, assessment and monitoring of signs and symptoms, general behavior, general physical response to cardiopulmonary care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions behavior or general response exhibit abnormal characteristics;

(5) implementation based on observed abnormalities, appropriate reporting, referral, respiratory care protocols or changes in treatment, pursuant to a prescription by a physician authorized to practice medicine or the initiation of emergency procedures, or as otherwise permitted in the Respiratory Care Act;

(6) establishing and maintaining the natural airways, insertion and maintenance of artificial airways, bronchopulmonary hygiene and cardiopulmonary resuscitation, along with cardiac and ventilatory life support diagnosis; and

(7) the practice of respiratory care performed in any clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate or necessary by the board;

E. "expanded practice" means the practice of respiratory care by a respiratory care practitioner who has completed a recognized program of study to function beyond the scope of practice of respiratory care;

F. "respiratory care practitioner" means a person who is licensed to practice respiratory care in New Mexico. The respiratory care practitioner may transcribe and implement a physician's written and verbal orders pertaining to the practice of respiratory care and "respiratory care protocols", meaning a predetermined, written medical care plan, which can include standing orders;

G. "respiratory therapy training program" means a program accredited or recognized by the American medical association's committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education; and

H. "superintendent" means the superintendent of regulation and licensing."

Section 2

Section 2. Section 61-12B-4 NMSA 1978 (being Laws 1984, Chapter 103, Section 4, as amended) is amended to read:

"61-12B-4. LICENSE REQUIRED--EXCEPTIONS.--

A. No person shall practice respiratory care or represent himself to be a respiratory care practitioner unless he is licensed under the Respiratory Care Act, except as otherwise provided by that act.

B. Nothing in the Respiratory Care Act is intended to limit, preclude or otherwise interfere with the practices of other persons and health providers licensed by appropriate agencies of New Mexico, self-care by a patient or gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner or respiratory care services in case of an emergency.

C. An individual who has demonstrated competency in one or more areas covered by the Respiratory Care Act may perform only those functions that he is qualified by examination to perform, so long as the testing body offering the examination is certified by thenational commission for health certifying agencies.

D. The Respiratory Care Act does not prohibit qualified clinical laboratory personnel who work in facilities licensed by the federal Clinical Laboratories Improvement Act of 1967 as amended, or accredited by the college of American pathologists or the joint commission on accreditation of hospitals from performing recognized functions and duties of medical laboratory personnel for which they are appropriately trained and certified."

Section 3

Section 3. Section 61-12B-6 NMSA 1978 (being Laws 1984, Chapter 103, Section 6) is amended to read:

"61-12B-6. DEPARTMENT--DUTIES.--

A. The department, in consultation with the board, shall:

(1) evaluate the qualifications of applicants and review any required examination results of applicants and may recognize the entry level examination written by the national board for respiratory care, inc. or any successor board;

(2) collect and review data and statistics with respect to respiratory care, treatment, services or facilities for the purpose of granting, suspending or revoking respiratory care licenses;

(3) issue licenses and temporary permits to applicants who meet the requirements of the Respiratory Care Act;

(4) administer, coordinate and enforce the provisions of the Respiratory Care Act and investigate persons engaging in practices that may violate the provisions of that act; and

(5) adopt rules and regulations to allow the interstate transport of patients.

B. The department, in consultation with the board, may:

(1) conduct any required examinations of respiratory care practitioner applicants; and

(2) deny, suspend or revoke temporary permits or licenses to practice respiratory care as provided in the Respiratory Care Act in accordance with the provisions of the Uniform Licensing Act."

Section 4

Section 4. Section 61-12B-7 NMSA 1978 (being Laws 1984, Chapter 103, Section 7) is amended to read:

"61-12B-7. LICENSING BY TRAINING AND EXAMINATION.--

A. Any person desiring to become licensed as a respiratory care practitioner shall make application to the department on a written form and in such manner as the department prescribes, pay all required application fees and certify and furnish evidence to the department that the applicant:

(1) has successfully completed a training program as defined in the Respiratory Care Act;

(2) has passed an entry level examination, as specified by rules and regulations of the department, for respiratory care practitioners administered by the national board of respiratory care, incorporated, or any successor board;

(3) is of good moral character; and

(4) has successfully completed any other training or education programs and passed any other examinations as required by rules and regulations of the department.

B. The department, in consultation with the board, shall develop rules and regulations that describe the scope and qualifications for expanded practice roles of respiratory care practitioners."

Section 5

Section 5. Section 61-12B-8 NMSA 1978 (being Laws 1984, Chapter 103, Section 8) is amended to read:

"61-12B-8. LICENSING WITHOUT TRAINING AND EXAMINATION.--The department shall waive the education and examination requirements for applicants who present proof of current licensure in a state which has standards at least equal to those for licensure in New Mexico as required by the Respiratory Care Act."

Section 6

Section 6. Section 61-12B-9 NMSA 1978 (being Laws 1984, Chapter 103, Section 9, as amended) is amended to read:

"61-12B-9. OTHER LICENSING PROVISIONS.--

A. The department, in consultation with the board, shall adopt rules and regulations for mandatory continuing education requirements which shall be completed as a condition for renewal of any license issued under the Respiratory Care Act.

B. The department, in consultation with the board, may adopt rules and regulations for issuance of temporary permits for students and graduates of approved training programs to practice limited respiratory care under the direct supervision of a licensed respiratory care practitioner or physician. Rules and regulations shall be adopted defining, for the purposes of the Respiratory Care Act, the terms "students" and "direct supervision".

C. The license issued by the department shall describe the licensed person as a "respiratory care practitioner licensed by the New Mexico regulation and licensing department".

D. Unless licensed as a respiratory care practitioner under the Respiratory Care Act, no person shall
use the title "respiratory care practitioner", the abbreviation "R.C.P." or any other title or abbreviation to indicate that the person is a licensed respiratory care practitioner.

E. A copy of the valid license or temporary permit issued pursuant to the Respiratory Care Act shall be kept on file at the respiratory care practitioner's place of employment.

F. Licenses, including initial licenses, shall be issued for a period of two years."

Section 7

Section 7. Section 61-12B-12 NMSA 1978 (being Laws 1984, Chapter 103, Section 12, as amended) is amended to read:

"61-12B-12. DENIAL, SUSPENSION, REVOCATION AND REINSTATEMENT OF LICENSES.--

A. The superintendent may refuse to issue or may suspend or revoke any license in accordance with the procedures set forth in the Uniform Licensing Act for any of the following causes:

(1) fraud in the procurement of any license under that act;

(2) imposition of any disciplinary action upon a person by an agency of another state which regulates respiratory care, but not to exceed the period or extent of such action;

(3) conviction of a crime which substantially relates to the qualifications, functions or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction;

(4) impersonating or acting as a proxy for an applicant in any examination given under that act;

(5) habitual or excessive use of intoxicants or drugs;

(6) gross negligence in practice as a respiratory care practitioner;

(7) violating any of the provisions of the Respiratory Care Act or any rules or regulations duly adopted under that act or aiding or abetting any person to violate the provisions of or any rules or regulations adopted under that act;

(8) engaging in unprofessional conduct; or

(9) committing any fraudulent, dishonest or corrupt act which is substantially related to the qualifications, functions or duties of a respiratory care practitioner.

B. One year from the date of revocation of a license under the Respiratory Care Act, application may be made to the superintendent for reinstatement, restoration or modification of probation. The superintendent, in consultation with the board, shall have the discretion to accept or reject an application and may require an examination for such reinstatement, restoration or modification of probation when it is deemed appropriate.

C. The department, in consultation with the board, shall write rules and regulations to establish guidelines for the reinstatement or restoration of a license suspended or revoked due to the abuse of intoxicants or drugs."

_____SB 661

CHAPTER 151

RELATING TO DAY-CARE; AMENDING A SECTION OF THE NMSA 1978 TO TRANSFER THE INCOME-ELIGIBLE DAY-CARE PROGRAM TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT.

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

Section 1

Section 1. Section 24-14-29.1 NMSA 1978 (being Laws 1988, Chapter 114, Section 2, as amended) is amended to read:

"24-14-29.1. DAY-CARE FUND CREATED--USE--APPROPRIATION.--There is created in the state treasury a fund to be known as the "day-care fund". The fund shall be invested by the state treasurer as other state funds are invested. The fund shall consist of distributions of revenue collected since July 1, 1987 and future revenues collected pursuant to Section 24-14-29 NMSA 1978. All balances in the day-care fund are appropriated to the children, youth and families department for use in implementing the income-eligible day-care program under the Social Services Block Grant Act Title XX."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. SB 692

CHAPTER 152

RELATING TO LOCAL SCHOOL BOARDS; REPEALING THE LOCAL SCHOOL BOARD MEMBER RECALL ACT.

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

Section 1

Section 1. REPEAL.--Sections 22-7-1 through 22-7-16 NMSA 1978 (being Laws 1977, Chapter 308, Sections 1 through 9, Laws 1987, Chapter 142, Section 2 and Laws 1977, Chapter 308, Sections 10 through 16, as amended) are repealed.

Section 2

Section 2. EFFECTIVE DATE.--Section 1 of this act is effective on the date that the results of an election are canvassed and certified that a majority of the people voting approved an amendment repealing Section 14 of Article 12 of the constitution of New Mexico that eliminated the recall of local school board members. SB 694

CHAPTER 153

RELATING TO TAXATION; REPEALING AND ENACTING A SECTION OF THE UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT RELATING TO APPORTIONMENT OF BUSINESS INCOME.

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

Section 1

Section 1. Section 7-4-10 NMSA 1978 (being Laws 1965, Chapter 203, Section 10) is repealed and a new Section 7-4-10 NMSA 1978 is enacted to read:

"7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

A. To encourage investment and employment in this state by manufacturers who do not anticipate substantial sales revenue within this state, each taxpayer whose principal business activity is manufacturing may elect to have business income apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor and the denominator of which is four. To elect the method of apportionment provided by this subsection, the taxpayer shall notify the department of the election, in writing, no later than the date on which the taxpayer files the return for the first taxable year to which the election will apply. The election will apply to that taxable year and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by this subsection has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months. Notwithstanding any prvisions of this subsection to the contrary, the taxpayer shall use the method of apportionment provided by Subsection B of this section for the taxable year unless:

(1) the taxpayer's corporate income tax liability for the taxable year, computed by the same method of apportionment used in the preceding taxable year, exceeds the corporate income tax liability for the taxpayer's immediately preceding taxable year; or

(2) the sum of the taxpayer's payroll factor and property factor for the taxable year exceeds the sum of the taxpayer's payroll factor and property factor for the taxpayer's base year. For purposes of this paragraph, "base year" means the taxpayer's first taxable year beginning on or after January 1, 1991.

B. Each taxpayer whose principal business activity is not manufacturing and each taxpayer whose principal business activity is manufacturing but who has not made the election provided in Subsection A of this section or has terminated such an election in accordance with the provisions of Subsection A of this section shall apportion business income to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

C. For purposes of this section, "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

(1) construction;

(2) farming;

(3) power generation; or

(4) processing natural resources, including hydrocarbons."

Section 2

Section 2. Effective January 1, 2000, Section 7-4-10 NMSA 1978 (being Section 1 of this act, if enacted into law) is repealed and a new Section 7-4-10 NMSA 1978 is enacted to read:

"7-4-10. APPORTIONMENT OF BUSINESS INCOME.--All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three."

Section 3

Section 3. APPLICABILITY.--The provisions of this act are applicable to taxable years beginning on and after January 1, 1995.

CHAPTER 154

RELATING TO COURTS; AMENDING A SECTION OF THE NMSA 1978 CONCERNING THE AUTHORITY OF THE SUPREME COURT TO ANSWER QUESTIONS OF LAW CERTIFIED TO IT BY FEDERAL COURTS.

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

Section 1

Section 1. Section 34-2-8 NMSA 1978 (being Laws 1975, Chapter 72, Section 1) is amended to read:

"34-2-8. CERTIFICATION--FEDERAL COURTS.--The supreme court may answer by written opinion questions certified to it by the supreme court of the United States, any circuit court of appeals of the United States, the court of appeals of the District of Columbia, any district court of the United States, the district court of the District of Columbia, the United States court of international trade, the judicial panel on multidistrict litigation, the United States claims court, the United States court of military appeals or the United States tax court if:

A. the questions involve propositions of New Mexico law that are determinative of the cause before the federal courts; and

B. there are no controlling precedents in decisions of the New Mexico supreme court or the New Mexico court of appeals.

The supreme court may promulgate rules to govern the process of such certification that are not inconsistent with law."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 507

CHAPTER 155

RELATING TO CRIMINAL LAW; AMENDING A SECTION OF THE NMSA 1978 REGARDING REQUIREMENTS FOR COMMUNITY SERVICE.

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

Section 1

Section 1. Section 31-12-3 NMSA 1978 (being Laws 1971, Chapter 236, Section 1, as amended) is amended to read:

"31-12-3. PAYING FINES, FEES OR COSTS IN INSTALLMENTS--COMMUNITY SERVICE OPTION.--

A. Any person sentenced to pay a fine or to pay fees and costs in any criminal proceeding against him, either in addition to or without a term of imprisonment, may in the discretion of the court be allowed to pay such fine, fees or costs in installments of such amounts, at such times and upon such conditions as the court may fix. The defendant may also be required to serve a period of time in labor to be known as "community service" in lieu of all or part of the fine. If unable to pay the fees or costs, he may be granted permission to perform community service in lieu of them as well. The labor shall be meaningful, shall not be suspended or deferred and shall be of a type that benefits the public at large or any public, charitable or educational entity or institution and is consistent with Article 9, Section 14 of the constitution of New Mexico. Any person performing community service pursuant to court order shall be immune from civil liability arising out of the community service other than for gross negligence, shall not be entitled to wages or considered an employee for any purpose and shall not be entitled to workers' compensation, unemployment or any other benefits otherwise provided by law. Instead, a person who performs community service shall receive credit toward the fine, fees or costs at the rate of the prevailing federal hourly minimum wage. Unless otherwise provided, however, the total fine, fees and costs shall be payable forthwith.

B. The court may at any time revise, modify, reduce or enlarge the amount of the installment or the time and conditions fixed for payment of it.

C. When a defendant sentenced to pay a fine in installments or ordered to pay fees or costs defaults in payment, the court, upon motion of the prosecutor or upon its own motion, may require the defendant to show cause why his default should not be treated as contumacious and may issue a
summons or a warrant of arrest for his appearance. It shall be a defense that the defendant did not willfully refuse to obey the order of the court or that he made a good faith effort to obtain the funds required for the payment. If the defendant's default was contumacious, the court may order him committed until the fine or a specified part of it or the fees or costs are paid. The maximum term of imprisonment for such contumacious nonpayment shall be specified in the order of commitment.

D. If it appears that a defendant's default in the payment of a fine, fees or costs is not contumacious, the court may allow the defendant additional time for payment, reduce the amount of the fine or of each installment, revoke the fine or the unpaid portion in whole or in part or require the defendant to perform community service in lieu of the fine, fees or costs."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 550

CHAPTER 156

RELATING TO PUBLIC SCHOOLS; PROVIDING PROGRAMS FOR BRAILLE LITERACY FOR STUDENTS WITH VISUAL IMPAIRMENT; PROVIDING FOR AN INDIVIDUALIZED ASSESSMENT OF BRAILLE NEED; PROVIDING FOR ACCESSIBILITY OF INSTRUCTIONAL MATERIALS.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Braille Literacy Act".

Section 2

Section 2. DEFINITIONS.--As used in the Braille Literacy Act:

A. "braille" means the system of reading and writing through touch;

B. "department" means the state department of public education;

C. "individualized education program" means a written statement for each child with a disability that is developed and implemented in accordance with standards set forth by the state board;

D. "literacy" means the mastery of school-based reading and writing skills that provide the foundation for continued learning and expanded literacy skills; and

E. "state board" means the state board of education.

Section 3

Section 3. BRAILLE INSTRUCTION.--The reading and writing of braille shall be taught to any student with visual impairment as defined by the state board when deemed appropriate by the individualized education program committee created pursuant to the provisions of the federal Individuals with Disabilities Education Act.

Section 4

Section 4. INDIVIDUALIZED PLANNING AND ASSESSMENT.--Each assessment and individualized education program for a student with visual impairment shall meet the standards set forth by the state board.

Section 5

Section 5. PERSONNEL QUALIFICATIONS.--Personnel who provide educational services to students with visual impairment shall meet the qualifications set forth by the
state board.

Section 6

Section 6. Section 22-15-13 NMSA 1978 (being Laws 1967, Chapter 16, Section 217, as amended) is amended to read:

"22-15-13. CONTRACTS WITH PUBLISHERS.--

A. The state board may enter into a contract with a publisher or a publisher's representative for the purchase and delivery of instructional material selected from the multiple list adopted by the state board.

B. Payment for instructional material purchased by the state board shall be made only upon performance of the contract and the delivery and receipt of the instructional material.

C. Each publisher or publisher's representative contracting with the state for the sale of instructional material shall agree:

(1) to file a copy of each item of instructional material to be furnished under the contract with the state board with a certificate attached identifying it as an exact copy of the item of instructional material to be furnished under the contract;

(2) that the instructional material furnished pursuant to the contract shall be of the same quality in regard to paper, binding, printing, illustrations, subject matter and authorship as the copy filed with the state board; and

(3) that if instructional material under the contract is sold elsewhere in the United States for a price less than that agreed upon in the contract with the state, the price to the state shall be reduced to the same amount.

D. Each contract executed for the acquisition of instructional materials shall include the right of the department of education to transcribe and reproduce instructional material in media appropriate for the use of students with visual impairment who are unable to use instructional materials in conventional print and form. Publishers of adopted textbooks also shall be required to provide those materials to the department

of education or its designated agent in an electronic format specified by the division that is readily translatable into braille and also can be used for large print or speech access within a time period specified by the department of education."HB 670

CHAPTER 157

RELATING TO MINING; EXTENDING THE LIFE AND CHANGING THE COMPOSITION OF THE COAL SURFACE MINING COMMISSION; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 69-25A-4 NMSA 1978 (being Laws 1979, Chapter 291, Section 4) is amended to read:

"69-25A-4. COAL SURFACE MINING COMMISSION--DUTIES.--

A. The "coal surface mining commission" is created. The commission shall consist of:

(1) the director of the bureau of mines and mineral resources or his designee;

(2) the director of the department of game and fish or his designee;

(3) the secretary of environment or his designee;

(4) the chairman of the soil and water conservation commission or his designee;

(5) the director of the agricultural experiment station of New Mexico state university or his designee;

(6) the state engineer or his designee;

(7) the commissioner of public lands or his designee; and

(8) two public members who shall be appointed by the governor with the advice and consent of the senate. The public members shall have, by education, training or experience, expertise related to mining or mine reclamation.

B. The commission shall elect a chairman and other necessary officers and keep records of its proceedings.

C. The commission shall convene upon the call of the chairman or a majority of its members.

D. A majority of the commission is a quorum for the transaction of business. However, no action of the commission is valid unless concurred in by at least three of the members present.

E. The commission shall perform those duties as specified in the Surface Mining Act relating to the promulgation of regulations and as specified in Section 69-25A-29 NMSA 1978 relating to appeals from the decisions of the director.

F. No member of the commission who performs a function or duty under the Surface Mining Act may have a direct or indirect financial interest in any activity undertaken by the commission.

G. The public members shall receive per diem and mileage pursuant to the Per Diem and Mileage Act.

Section 2

Section 2. Section 69-25A-36 NMSA 1978 (being Laws 1987, Chapter 333, Section 14) is amended to read:

"69-25A-36. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The coal surface mining commission is terminated on July 1, 1999 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 69, Article 25A NMSA 1978 until July 1, 2000. Effective July 1, 2000, Chapter 69, Article 25A NMSA 1978 is repealed."HB 690

CHAPTER 158

RELATING TO HEALTH CARE; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978 CONCERNING ACUPUNCTURE AND ORIENTAL MEDICINE; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 27-2-12 NMSA 1978 (being Laws 1973, Chapter 376, Section 16, as amended) is amended to read:

"27-2-12. MEDICAL ASSISTANCE PROGRAMS.--Consistent with the federal act and subject to the appropriation and availability of federal and state funds, the medical assistance division of the human services department may by regulation provide

medical assistance, including the services of licensed doctors of oriental medicine and licensed chiropractors, to persons eligible for public assistance programs under the federal act."

Section 2

Section 2. Section 52-4-1 NMSA 1978 (being Laws 1983, Chapter 116, Section 1, as amended) is amended to read:

"52-4-l. DEFINITION--HEALTH CARE PROVIDER.--As used in Chapter 52 NMSA 1978, "health care provider" means:

A. a hospital maintained by the state or a political subdivision of the state or any place currently licensed as a hospital by the department of health that has:

(l) accommodations for resident bed patients;

(2) a licensed professional registered nurse always on duty or call;

(3) a laboratory; and

(4) an operating room where surgical operations are performed;

B. an optometrist licensed pursuant to the provisions of Chapter 61, Article 2 NMSA 1978;

C. a chiropractor licensed pursuant to the provisions of Chapter 61, Article 4 NMSA 1978;

D. a dentist licensed pursuant to the provisions of Chapter 61, Article 5 NMSA 1978;

E. a physician licensed pursuant to the provisions of Chapter 61, Article 6 NMSA 1978;

F. a podiatrist licensed pursuant to the provisions of Chapter 61, Article 8 NMSA 1978;

G. an osteopathic physician licensed pursuant to the provisions of Chapter 61, Article 10 NMSA 1978;

H. a physician assistant registered pursuant to the provisions of Section 61-6-7 NMSA 1978;

I. a certified nurse practitioner licensed pursuant to Section 61-3-23.2 NMSA 1978;

J. a physical therapist licensed pursuant to the provisions of Chapter 61, Article 12 NMSA 1978;

K. an occupational therapist licensed pursuant to the provisions of Chapter 61, Article 12A NMSA 1978;

L. a doctor of oriental medicine licensed pursuant to the provisions of Chapter 61, Article 14A NMSA 1978;

M. a psychologist who is duly licensed or certified in the state where the service is rendered, holding a doctorate degree in psychology and having at least two years clinical experience in a recognized health setting, or who has met the standards of the national register of health services providers in psychology;

N. a certified nurse-midwife licensed by the board of nursing as a registered nurse and registered with the behavioral health services division of the department of health as a certified nurse-midwife; or

O. any person or facility that provides health-related services in the health care industry, as approved by the director."

Section 3

Section 3. Section 59A-15-16 NMSA 1978 (being Laws 1991, Chapter 125, Section 22) is amended to read:

"59A-15-16. JURISDICTION OVER HEALTH CARE BENEFITS PROVIDERS PRESUMED.--Notwithstanding any other provision of law and except as provided in the Health Care Benefits Jurisdiction Act, any person who provides coverage in this state for health benefits, including coverage for medical, surgical, hospital, osteopathic, acupuncture and oriental medicine, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental or optometric expenses, whether such coverage is by direct payment, reimbursement or otherwise, shall be presumed to be subject to the provisions of the Insurance Code and the jurisdiction of the superintendent unless the person provides evidence satisfactory to the superintendent that he is subject exclusively to the jurisdiction of another agency of this state or the federal government."

Section 4

Section 4. Section 59A-46-32.1 NMSA 1978 (being Laws 1989, Chapter 96, Section 2) is compiled as a new section of the Health Maintenance Organization Act and amended to read:

"59A-46-32.1. DOCTOR OF ORIENTAL MEDICINE--DISCRIMINATION PROHIBITED.--Doctors of oriental medicine as a class of licensed providers willing to

meet the terms and conditions offered by a health maintenance organization shall not be excluded from a health maintenance organization."

Section 5

Section 5. Section 59A-47-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.1, as amended) is amended to read:

"59A-47-3. DEFINITIONS.--As used in Chapter 59A, Article 47 NMSA 1978:

A. "health care" means the treatment of persons for the prevention, cure or correction of any illness or physical or mental condition, including optometric services;

B. "item of health care" includes any services or materials used in health care;

C. "health care expense payment" means a payment for health care to a purveyor on behalf of a subscriber, or such a payment to the subscriber;

D. "purveyor" means a person who furnishes any item of health care and charges for that item;

E. "service benefit" means a payment that the purveyor has agreed to accept as payment in full for health care furnished the subscriber;

F. "indemnity benefit" means a payment that the purveyor has not agreed to accept as payment in full for health care furnished the subscriber;

G. "subscriber" means any individual who, because of a contract with a health care plan entered into by or for him, is entitled to have health care expense payments made on his behalf or to him by the health care plan;

H. "underwriting manual" means the health care plan's written criteria, approved by the superintendent, that defines the terms and conditions under which subscribers may be selected. The underwriting manual may be amended from time to time, but amendment will not be effective until approved by the superintendent. The superintendent shall notify the health care plan filing the underwriting manual or the amendment thereto of his approval or disapproval thereof in writing within thirty days after filing or within sixty days after filing if he shall so extend the time. If the superintendent fails to act within such period, the filing shall be deemed to be approved;

I. "acquisition expenses" includes all expenses incurred in connection with the solicitation and enrollment of subscribers;

J. "administration expenses" means all expenses of the health care plan other than the cost of health care expense payments and acquisition expenses;

K. "health care plan" means a nonprofit corporation authorized by the superintendent to enter into contracts with subscribers and to make health care expense payments;

L. "agent" means a person appointed by a health care plan authorized to transact business in this state to act as its representative in any given locality for soliciting health care policies and other related duties as may be authorized;

M. "solicitor" means a person employed by the licensed agent of a health care plan for the purpose of soliciting health care policies and other related duties in connection with the handling of the business of the agent as may be authorized and paid for his services either on a commission basis or salary basis or part by commission and part by salary;

N. "chiropractor" means any person holding a license provided for in the Chiropractic Practice Act; and

O. "doctor of oriental medicine" means any person licensed as a doctor of oriental medicine under the Acupuncture and Oriental Medicine Practice Act."

Section 6

Section 6. Section 59A-47-28.2 NMSA 1978 (being Laws 1991, Chapter 145, Section 1) is amended to read:

"59A-47-28.2. DOCTOR OF ORIENTAL MEDICINE DISCRIMINATION PROHIBITED.--All individual and group ubscriber contracts delivered or issued for delivery in New Mexico by a nonprofit health care plan that, on a service or indemnity basis, or both, provide for treatment of persons for the prevention, cure or correction of any illness or physical or mental condition shall not contain any provisions that exclude a licensed doctor of oriental medicine as a provider of oriental medical services and shall not discriminate in the reimbursement levels for such services between types of licensed health care providers."

Section 7

Section 7. Section 61-6-17 NMSA 1978 (being Laws 1973, Chapter 361, Section 8, as amended by Laws 1991, Chapter 148, Section 4 and also by Laws 1991, Chapter 164, Section 1) is amended to read:

"61-6-17. EXCEPTIONS TO ACT.--The Medical Practice Act shall not apply to or affect:

A. gratuitous services rendered in cases of emergency;

B. the domestic administration of family remedies;

C. the practice of midwifery as regulated in this state;

D. commissioned medical officers of the armed forces of the United States and medical officers of the United States public health service or the veterans administration of the United States in the discharge of their official duties or within federally controlled facilities, provided that such persons who hold medical licenses in New Mexico shall be subject to the provisions of the Medical Practice Act and provided that all such persons shall be fully licensed to practice medicine in one or more jurisdictions of the United States;

E. the practice of medicine by a physician, unlicensed in New Mexico, who performs emergency medical procedures in air or ground transportation of a patient from inside of New Mexico to another state or back, provided that the physician is duly licensed in that state;

F. the practice, as defined and limited under their respective licensing laws, of:

(1) osteopathy;

(2) dentistry;

(3) podiatry;

(4) nursing;

(5) optometry;

(6) psychology;

(7) chiropractic;

(8) pharmacy;

(9) acupuncture and oriental medicine; or

(10) physical therapy;

G. any act, task or function performed by a physician assistant at the direction of and under the supervision of a licensed physician, when:

(1) the assistant is registered and has annually renewed his registration with the board as one qualified by training or experience to function as an assistant to a physician;

(2) the act, task or function is performed at the direction of and under the supervision of a licensed physician in accordance with rules and regulations promulgated by the board; and

(3) the acts of the physician assistant are within the scope of duties assigned or delegated by the supervising physician and the acts are within the scope of the assistant's training;

H. any act, task or function of laboratory technicians or technologists, x-ray technicians, nurse practitioners, medical or surgical assistants or other technicians or qualified persons permitted by law or established by custom as part of the duties delegated to them by:

(1) a licensed physician or a hospital, clinic or institution licensed or approved by the public health division of the department of health or an agency of the federal government; or

(2) a health care program operated or financed by an agency of the state or federal government;

I. a properly trained medical or surgical assistant or technician or professional licensee performing under the physician's direct supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly and safely performed in its customary manner, not in violation of any other statute, and if the person does not hold himself out to the public as being authorized to practice medicine. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts; and

J. the practice of the religious tenets of any church in the ministration to the sick or suffering by mental or spiritual means as provided by law; provided that the Medical Practice Act shall not be construed to exempt any person from the operation or enforcement of the sanitary and quarantine laws of the state."

Section 8

Section 8. Section 61-12C-4 NMSA 1978 (being Laws 1991, Chapter 147, Section 4) is amended to read:

"61-12C-4. MASSAGE THERAPY--THERAPY--DEFINED.--

A. Massage therapy is the treatment of soft tissues for therapeutic purposes, primarily comfort and relief of pain. Massage therapy is a health care service. Massage therapy includes but is not limited to effleurage, petrissage, tapotement, compression, vibration, friction, nerve strokes and Swedish gymnastics. Massage therapy may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Synonymous terms for massage therapy include massage, therapeutic massage, body massage, myomassage, body work, body rub or any derivation of those terms.

B. The terms "therapy" and "therapeutic massage" do not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, occupational therapy, acupuncture and oriental medicine or podiatry is required by law."

Section 9

Section 9. Section 61-14A-1 NMSA 1978 (being Laws 1981, Chapter 62, Section 1) is repealed and a new Section 61-14A-1 NMSA 1978 is enacted to read:

"61-14A-1. SHORT TITLE.--Sections 61-14A-1 through 61-14A-21 NMSA 1978 may be cited as the "Acupuncture and Oriental Medicine Practice Act"."

Section 10

Section 10. Section 61-14A-2 NMSA 1978 (being Laws 1981, Chapter 62, Section 2, as amended) is repealed and a new Section 61-14A-2 NMSA 1978 is enacted to read:

"61-14A-2. PURPOSE.--In the interest of the public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of acupuncture and oriental medicine, it is necessary to provide laws and regulations to govern the practice of acupuncture and oriental medicine. The primary responsibility and obligation of the board of acupuncture and oriental medicine is to protect the public."

Section 11

Section 11. Section 61-14A-3 NMSA 1978 (being Laws 1981, Chapter 62, Section 3) is repealed and a new Section 61-14A-3 NMSA 1978 is enacted to read:

"61-14A-3. DEFINITIONS.--As used in the Acupuncture and Oriental Medicine Practice Act:

A. "acupuncture" means the use of needles inserted into the human body and the use of other modalities and procedures at specific locations on the body for the prevention, cure or correction of any disease, illness, injury, pain or other condition by

controlling and regulating the flow and balance of energy and functioning of the person to restore and maintain health;

B. "board" means the board of acupuncture and oriental medicine;

C. "department" means the regulation and licensing department;

D. "doctor of oriental medicine" means a physician licensed to practice acupuncture and oriental medicine and includes the terms "oriental medical physician", "doctor of acupuncture", "acupuncture physician", "acupuncture practitioner" and "acupuncturist";

E. "moxibustion" means the use of heat on or above specific locations or on acupuncture needles at specific locations on the body for the prevention, cure or correction of any disease, illness, injury, pain or other condition;

F. "oriental medicine" means the distinct system of primary health care that uses all allied techniques of oriental medicine, both traditional and modern, to diagnose, treat and prescribe, as defined in Subsection G of this section, for the prevention, cure or correction of any disease, illness, injury, pain or other physical or mental condition by controlling and regulating the flow and balance of energy and functioning of the person to restore and maintain health; and

G. "techniques of oriental medicine" means the diagnostic and treatment techniques utilized in oriental medicine that include but are not limited to diagnostic procedures; acupuncture; moxibustion; manual therapy, also known as tui na; breathing and exercise techniques, dietary, nutritional and lifestyle counseling; and the prescription or administration of any herbal medicine, homeopathic medicine, vitamin, mineral, enzyme, glandular or nutritional supplement."

Section 12

Section 12. Section 61-14A-4 NMSA 1978 (being Laws 1981, Chapter 62, Section 4, as amended) is repealed and a new Section 61-14A-4 NMSA 1978 is enacted to read:

"61-14A-4. LICENSE REQUIRED.--Unless licensed as a doctor of oriental medicine pursuant to the Acupuncture and Oriental Medicine Practice Act, no person shall:

A. practice acupuncture or oriental medicine;

B. use the title or represent himself as a licensed doctor of oriental medicine or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as a doctor of oriental medicine; or

C. advertise, hold out to the public or represent in any manner that he is authorized to practice acupuncture and oriental medicine."

Section 13

Section 13. Section 61-14A-5 NMSA 1978 (being Laws 1981, Chapter 62, Section 5) is repealed and a new Section 61-14A-5 NMSA 1978 is enacted to read:

"61-14A-5. TITLE.--Any person licensed under the Acupuncture and Oriental Medicine Practice Act, in advertising his services to the public, shall use the title "doctor of oriental medicine" or "D.O.M.". Effective July 1, 1994, the title "doctor of oriental medicine" or "D.O.M." shall supersede the use of all titles that include the words "medical doctor" or the initials "M.D." unless the person is a medical doctor licensed pursuant to the Medical Practice Act."

Section 14

Section 14. Section 61-14A-6 NMSA 1978 (being Laws 1981, Chapter 62, Section 6, as amended) is repealed and a new Section 61-14A-6 NMSA 1978 is enacted to read:

"61-14A-6. EXEMPTIONS.--

A. Nothing in the Acupuncture and Oriental Medicine Practice Act is intended to limit, interfere with or prevent any other class of licensed health care professionals from practicing within the scope of their license as defined by each profession's New Mexico licensing statutes, but they shall not hold themselves out to the public or any private group or business by using any title or description of services that includes the terms acupuncture, acupuncturist or oriental medicine unless they are licensed under the Acupuncture and Oriental Medicine Practice Act.

B. Students enrolled in an educational program in acupuncture and oriental medicine may practice acupuncture and oriental medicine under the direct supervision of a teacher at an institute or with a private tutor as part of the educational program in which they are enrolled.

C. The Acupuncture and Oriental Medicine Practice Act shall not apply to or affect the folloing practices, provided that the individual does not hold himself out as a doctor of oriental medicine or as practicing acupuncture or oriental medicine:

(1) the administering of gratuitous services in cases of emergency;

(2) the domestic administering of family remedies;

(3) the counseling about or the teaching and demonstration of breathing and exercise techniques;

(4) the counseling or teaching about diet and nutrition;

(5) the spiritual or lifestyle counseling of any individual or spiritual group, or the practice of the religious tenets of any church; or

(6) the providing of information about the general usage of herbal medicines, homeopathic medicines, vitamins, minerals, enzymes or glandular or nutritional supplements."

Section 15

Section 15. Section 61-14A-7 NMSA 1978 (being Laws 1981, Chapter 62, Section 7) is repealed and a new Section 61-14A-7 NMSA 1978 is enacted to read:

"61-14A-7. BOARD CREATED--APPOINTMENT--OFFICERS--COMPENSATION.--

A. There is created the "board of acupuncture and oriental medicine".

B. The board shall be administratively attached to the department.

C. The board shall consist of seven members appointed by the governor for terms of three years each. Four members of the board shall be doctors of oriental medicine who have been licensed to practice acupuncture and oriental medicine in New Mexico for at least five years and have practiced in New Mexico for at least two years preceding the date of their appointment. Three members shall be appointed to represent the public and shall not have practiced acupuncture and oriental medicine in this or any other jurisdiction or have any financial interest in the profession regulated. No more than two board members shall be:

(1) owners of institutes offering educational programs in acupuncture and oriental medicine;

(2) faculty members at institutes offering educational programs in acupuncture and oriental medicine;

(3) private tutors offering educational programs in acupuncture and oriental medicine; or

(4) officers in a professional association of acupuncture and oriental medicine.

D. Members of the board shall be appointed by the governor for staggered terms of three years that shall be made in such a manner that the terms of board members will expire on July 1. When a board member's term has expired, he shall

serve until his successor has been appointed. Vacancies from an unexpired term shall be filled for the remainder of the term in the same manner as the original appointment.

E. No board member shall serve more than two consecutive full terms, and any member failing to attend, after he has received proper notice, three consecutive meetings, shall be recommended for removal as a board member unless excused for reasons set forth by rule.

F. The board shall elect annually from its membership a chairman and other officers as necessary to carry out its duties.

G. The board shall meet at least once each year and at other times deemed necessary. Other meetings may be called by the chairman, a majority of board members or the governor. A simple majority of the board members serving constitutes a quorum of the board.

H. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Section 16

Section 16. Section 61-14A-8 NMSA 1978 (being Laws 1981, Chapter 62, Section 8, as amended) is repealed and a new Section 61-14A-8 NMSA 1978 is enacted to read:

"61-14A-8. BOARD--POWERS.--In addition to any authority provided by law, the board shall have the power to:

A. enforce the provisions of the Acupuncture and Oriental Medicine Practice Act;

B. adopt, publish and file, in accordance with the Uniform Licensing Act and the State Rules Act, all rules and regulations necessary for the implementation and enforcement of the provisions of the Acupuncture and Oriental Medicine Practice Act;

C. adopt a code of ethics;

D. adopt and use a seal;

E. inspect institutes, tutorships and the offices of licensees;

F. adopt rules implementing continuing education requirements for the purpose of protecting the health and well-being of the citizens of this state and maintaining and continuing informed professional knowledge and awareness;

G. employ agents or attorneys;

H. issue investigative subpoenas for the purpose of investigating complaints against licensees prior to the issuance of a notice of contemplated action;

I. administer oaths and take testimony on any matters within the board's jurisdiction;

J. conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license in accordance with the Uniform Licensing Act; and

K. grant, deny, renew, suspend or revoke licenses to practice acupuncture and oriental medicine in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Acupuncture and Oriental Medicine Practice Act or the rules and regulations of the board."

Section 17

Section 17. Section 61-14A-9 NMSA 1978 (being Laws 1981, Chapter 62, Section 9, as amended) is repealed and a new Section 61-14A-9 NMSA 1978 is enacted to read:

"61-14A-9. BOARD--DUTIES.--The board shall:

A. establish fees;

B. provide for the examination of applicants for licensing as doctors of oriental medicine as provided in the Acupuncture and Oriental Medicine Practice Act;

C. keep a record of all examinations held, together with the names and addresses of all persons taking the examinations, and the examination results;

D. notify each applicant, in writing, of the results of his examinations within twenty-one days after the results of an examination are available to the board;

E. keep a licensee record in which the names, addresses and license numbers of all licensees shall be recorded together with a record of all license renewals, suspensions and revocations;

F. provide for the granting and renewal of licenses and approval of educational programs; and

G. keep an accurate record of all its meetings, receipts and disbursements."

Section 18

Section 18. Section 61-14A-10 NMSA 1978 (being Laws 1981, Chapter 62, Section 10, as amended) is repealed and a new Section 61-14A-10 NMSA 1978 is enacted to read:

"61-14A-10. REQUIREMENTS FOR LICENSING.--The board shall grant a license to practice acupuncture and oriental medicine to any person who has submitted to the board:

A. the completed application for licensing on the form provided by the board;

B. the required documentation as determined by the board;

C. the required fees;

D. an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency;

E. proof, as determined by the board, that the applicant has completed an educational program in acupuncture and oriental medicine as provided for in the Acupuncture and Oriental Medicine Practice Act and the rules and regulations of the board; and

F. proof that he has passed an examination approved by the board."

Section 19

Section 19. Section 61-14A-11 NMSA 1978 (being Laws 1981, Chapter 62, Section 11, as amended) is repealed and a new Section 61-14A-11 NMSA 1978 is enacted to read:

"61-14A-11. EXAMINATIONS.--

A. The board shall establish procedures to ensure that examinations for licensing are offered at least once a year.

B. The board shall establish by rule the deadline for receipt of the application for licensing examination and other rules relating to the taking and retaking of licensing examinations.

C. The board shall establish by rule the passing grades for its approved examinations.

D. The board may approve by rule examinations that are used for national certification or other examinations.

E. The board shall require each qualified applicant to pass a written examination that includes, as a minimum, the following subjects:

(1) anatomy and physiology;

(2) pathology;

(3) diagnosis; and

(4) principles, practices and treatment techniques of acupuncture and oriental medicine.

F. The board shall require each qualified applicant to pass a practical examination that demonstrates his knowledge of and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine.

G. The board shall require each qualified applicant to pass a written or a practical examination or both in the following subjects:

(1) hygiene, sanitation and clean-needle technique; and

(2) needle and instrument sterilization techniques.

H. The board may require each qualified applicant to pass a written examination on the state laws and regulations that pertain to the practice of acupuncture and oriental medicine."

Section 20

Section 20. Section 61-14A-12 NMSA 1978 (being Laws 1981, Chapter 62, Section 12, as amended) is repealed and a new Section 61-14A-12 NMSA 1978 is enacted to read:

"61-14A-12. REQUIREMENTS FOR TEMPORARY LICENSING.--

A. The board shall establish by rule the criteria for temporary licensing of out-of-state doctors of oriental medicine.

B. The board may grant a temporary license to any person who:

(1) is licensed, certified, registered or legally recognized to practice acupuncture and oriental medicine in another state, district or territory of the United States or a foreign country;

(2) is under the sponsorship of and in association with licensed New Mexico doctor of oriental medicine or New Mexico institute offering an educational program approved by the board;

(3) submits the completed application for temporary licensing on the form provided by the board;

(4) submits the required documentation, including proof of adequate education and training, as determined by the board;

(5) submits the required fee for application for temporary licensing;

(6) submits an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency; and

(7) submits an affidavit from the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico institute attesting to the qualifications of the applicant and the activities the applicant will perform.

C. The board may grant a temporary license to allow the temporary licensee to:

(1) teach acupuncture and oriental medicine;

(2) consult, in association with the sponsoring doctor of oriental medicine, regarding the sponsoring doctor's patients;

(3) perform specialized diagnostic or treatment techniques in association with the sponsoring doctor of oriental medicine regarding the sponsoring doctor's patients;

(4) assist in the conducting of research in acupuncture and oriental medicine; and

(5) assist in the implementation of new techniques and technology related to acupuncture and oriental medicine.

D. Temporary licensees may engage in only those activities authorized on the temporary license.

E. The temporary license shall identify the sponsoring and associating New Mexico doctor of oriental medicine or institute.

F. The temporary license shall be issued for a period of time established by rule; provided that temporary licenses may not be issued for a period of time to exceed eighteen months, including renewals.

G. The temporary license may be renewed upon submission of:

(1) the completed application for temporary license renewal on the form provided by the board; and

(2) the required fee for temporary license renewal.

H. In the interim between regular board meetings, whenever a qualified applicant has filed his application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary license that will suffice until the next regular licensing meeting of the board."

Section 21

Section 21. Section 61-14A-13 NMSA 1978 (being Laws 1981, Chapter 62, Section 13) is repealed and a new Section 61-14A-13 NMSA 1978 is enacted to read:

"61-14A-13. REQUIREMENTS FOR RECIPROCAL LICENSING.--The board may grant a license to practice acupuncture and oriental medicine to a person who has been licensed, certified, registered or legally recognized as a doctor of oriental medicine in another state, district or territory of the United States or foreign country if the applicant:

A. submits the completed application for reciprocal licensing on the form provided by the board;

B. submits the required documentation as determined by the board;

C. submits the required fee for application for reciprocal licensing;

D. submits an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency;

E. has passed a practical examination that demonstrates his knowledge of and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine or within the last six years has five years of clinical experience, as defined by rule, in the practice of acupuncture and oriental medicine;

F. is licensed, certified, registered or legally recognized as a doctor of oriental medicine in another state, district or territory of the United States or foreign country, in which the requirements for practice are similar to those of this state; and

G. is licensed, certified, registered or legally recognized as a doctor of oriental medicine in a state, district or territory of the United States or foreign country that permits a doctor of oriental medicine licensed under the provisions of the

Acupuncture and Oriental Medicine Practice Act to practice acupuncture and oriental medicine in that jurisdiction by reciprocal credentials review."

Section 22

Section 22. Section 61-14A-14 NMSA 1978 (being Laws 1981, Chapter 62, Section 14) is repealed and a new Section 61-14A-14 NMSA 1978 is enacted to read:

"61-14A-14. APPROVAL OF EDUCATIONAL PROGRAMS.--

A. The board shall establish by rule the criteria for board approval of educational programs in acupuncture and oriental medicine. For the educational program in acupuncture and oriental medicine to meet board approval, proof shall be submitted to the board demonstrating that the educational program:

(1) was for a period of not less than four academic years;

(2) included a minimum of seven hundred fifty hours of supervised clinical practice;

(3) was taught by qualified teachers or a qualified private tutor;

(4) required as a prerequisite to graduation personal attendance in all classes and clinics and, as a minimum, the completion of the following subjects:

(a) anatomy and physiology;

(b) pathology;

(c) diagnosis;

(d) oriental principles of life therapy, including diet, nutrition and counseling;

(e) theory and techniques of traditional and modern acupuncture and oriental medicine;

(f) precautions and contra-indications for acupuncture treatment;

(g) theory and application of meridian pulse evaluation and meridian point location;

(h) traditional and modern methods of life-energy evaluation;

(i) the prescription of herbal medicine and precautions and contra-indications for its use;

(j) hygiene, sanitation and clean-needle technique;

(k) care and management of needling devices; and

(l) needle and instrument sterilization techniques; and

(5) resulted in the presentation of a certificate or diploma after completion of all the educational program requirements.

B. All institutes and private tutors in New Mexico that offer educational programs in acupuncture and oriental medicine with the intent to graduate students qualified to be applicants for licensing examination by the board shall have their educational programs annually approved by the board. For the educational program in acupuncture and oriental medicine to be approved by the board, the institute or private tutor shall submit:

(1) the completed application for approval of an educational program;

(2) the required documentation as determined by the board;

(3) proof, as determined by the board, that the educational requirements referred to in Subsection A of this section are being met; and

(4) the required fee for application for approval of an educational program.

C. Institutes and private tutors outside New Mexico that offer educational programs in acupuncture and oriental medicine with the intent to graduate students qualified to be applicants for licensing examination by the board may have their educational programs annually approved by the board. For the educational program in acupuncture and oriental medicine to be approved by the board, the institute or private tutor shall submit:

(1) the completed application for approval of an educational program;

(2) the required documentation as determined by the board;

(3) proof, as determined by the board, that the educational requirements referred to in Subsection A of this section are being met; and

(4) the required fee for application for approval of an educational program.

D. Each institute and private tutor in New Mexico that offers an approved educational program in acupuncture and oriental medicine as referred to in Subsection B of this section shall renew their approval annually by submitting:

(1) the completed application for renewal of approval of an educational program on the form provided by the board;

(2) proof, as determined by the board, that the educational requirements referred to in Subsection A of this section are being met; and

(3) the required fee for application for renewal of approval of an educational program.

E. Each institute and private tutor outside New Mexico that offers an approved educational program in acupuncture and oriental medicine as referred to in Subsection C of this section may renew their approval annually by submitting:

(1) the completed application for renewal of approval of an educational program on the form provided by the board;

(2) proof, as determined by the board, that the educational requirements referred to in Subsection A of this section are being met; and

(3) the required fee for application for renewal of approval of an educational program.

F. A sixty-day grace period shall be allowed each institute or private tutor after the end of the approval period, during which time the approval may be renewed by submitting:

(1) the completed application for renewal of approval of an educational program on the form provided by the board;

(2) proof, as determined by the board, that the educational requirements referred to in Subsection A of this section are being met;

(3) the required fee for application for renewal of approval of an educational program; and

(4) the required fee for late renewal of approval.

G. Any approval not renewed at the end of the grace period shall be considered expired. For renewal of an expired approval the board shall establish by rule

any requirements or fees that are in addition to the fee for annual renewal of approval and may require the institute or private tutor to reapply as a new applicant."

Section 23

Section 23. Section 61-14A-15 NMSA 1978 (being Laws 1981, Chapter 62, Section 15) is repealed and a new Section 61-14A-15 NMSA 1978 is enacted to read:

"61-14A-15. LICENSE RENEWAL.--

A. Each licensee shall renew his license biennially by submitting:

(1) the completed application for license renewal on the form provided by the board; and

(2) the required fee for biennial license renewal.

B. The board may require proof of continuing education or other proof of competency as a requirement for renewal.

C. A sixty-day grace period shall be allowed each licensee after the end of the licensing period, during which time the license may be renewed by submitting:

(1) the completed application for license renewal on the form provided by the board;

(2) the required fee for biennial license renewal; and

(3) the required fee for late license renewal.

D. Any license not renewed at the end of the grace period shall be considered expired and the licensee shall not be eligible to practice within the state. For renewal of an expired license the board shall establish by rule any requirements or fees that are in addition to the fee for biennial license renewal and may require the former licensee to reapply as a new applicant."

Section 24

Section 24. Section 61-14A-16 NMSA 1978 (being Laws 1987, Chapter 124, Section 5) is repealed and a new Section 61-14A-16 NMSA 1978 is enacted to read:

"61-14A-16. FEES.--The board shall establish a schedule of reasonable nonrefundable fees not to exceed the following amounts:

A. application for licensing $500;

B. application for reciprocal licensing $750;

C. application for temporary licensing $300;

D. examination, not including the cost of any nationally recognized examination $350;

E. biennial license renewal $400;

F. late license renewal $200;

G. expired license renewal $400;

H. temporary license renewal $100;

I. application for approval or renewal of approval of an educational program $400;

J. late renewal of approval of an educational program..... $200;

K. expired renewal of approval of an educational program $400;

L. annual continuing education provider registration..... $200;

and

M. any and all fees to cover reasonable and necessary administrative expenses."

Section 25

Section 25. A new section of the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-17 NMSA 1978, is enacted to read:

"61-14A-17. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW--APPLICATION OF UNIFORM LICENSING ACT.--

A. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any permanent or temporary license held or applied for under the Acupuncture and Oriental Medicine Practice Act, upon findings by the board that the licensee or applicant:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license;

(2) has been convicted of a felony. A certified copy of the record of conviction shall be conclusive evidence of such conviction;

(3) is guilty of incompetence;

(4) is habitually intemperate, is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice as a doctor of oriental medicine;

(5) is guilty of unprofessional conduct, as defined by rule;

(6) is guilty of any violation of the Controlled Substances Act;

(7) has violated any provision of the Acupuncture and Oriental Medicine Practice Act or rules and regulations adopted by the board;

(8) is guilty of failing to furnish the board, its investigators or representatives with information requested by the board;

(9) is guilty of willfully or negligently practicing beyond the scope of acupuncture and oriental medicine as defined in the Acupuncture and Oriental Medicine Practice Act;

(10) is guilty of failing to adequately supervise a sponsored temporary licensee;

(11) is guilty of aiding or abetting the practice of acupuncture and oriental medicine by a person not licensed by the board;

(12) is guilty of practicing or attempting to practice under an assumed name;

(13) advertises by means of knowingly false statements;

(14) advertises or attempts to attract patronage in any unethical manner prohibited by the Acupuncture and Oriental Medicine Practice Act or the rules and regulations of the board;

(15) has been declared mentally incompetent by regularly constituted authorities; or

(16) has had a license, certificate or registration to practice as a doctor of oriental medicine revoked, suspended or denied in any jurisdiction of the

United States or a foreign country for actions of the licensee similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking such disciplinary action will be conclusive evidence thereof.

B. Disciplinary proceedings may be instituted by any person, shall be by sworn complaint and shall conform with the provisions of the Uniform Licensing Act. Any party to the hearing may obtain a copy of the hearing record upon payment of the costs of the copy.

C. Any person filing a sworn complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice."

Section 26

Section 26. A new section of the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-18 NMSA 1978, is enacted to read:

"61-14A-18. FUND CREATED.--

A. There is created in the state treasury the "board of acupuncture and oriental medicine fund".

B. All money received by the board pursuant to the Acupuncture and Oriental Medicine Practice Act shall be deposited with the state treasurer for credit to the board of acupuncture and oriental medicine fund. The state treasurer shall invest the fund as other state funds are invested. All balances in the fund shall remain in the fund and shall not revert to the general fund.

C. Money in the board of acupuncture and oriental medicine fund is appropriated to the board and shall be used only for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Acupuncture and Oriental Medicine Practice Act."

Section 27

Section 27. A new section of the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-19 NMSA 1978, is enacted to read:

"61-14A-19. PENALTIES.--Any person who violates any provision of the Acupuncture and Oriental Medicine Practice Act is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 31-19-1 NMSA 1978."

Section 28

Section 28. A new section of the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-20 NMSA 1978, is enacted to read:

"61-14A-20. CRIMINAL OFFENDER EMPLOYMENT ACT.--The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted by the Acupuncture and Oriental Medicine Practice Act."

Section 29

Section 29. A new section of the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-21 NMSA 1978, is enacted to read:

"61-14A-21. LICENSED ACUPUNCTURE PRACTITIONER--LICENSE VALID UNDER NEW ACT.--Any person validly licensed as an acupuncture practitioner under prior law of this state shall be deemed licensed under the provisions of the Acupuncture and Oriental Medicine Practice Act."

Section 30

Section 30. A new section of the Acupuncture and Oriental Medicine Practice Act, Section 61-14A-22 NMSA 1978, is enacted to read:

"61-14A-22. TERMINATION OF AGENCY LIFE-- DELAYED REPEAL.--The board of acupuncture and oriental medicine is terminated on July 1, 1999 pursuant to the Sunset Act. The board shall continue to operate according to Sections 61-14A-1 through 61-14A-21 NMSA 1978 until July 1, 2000. Effective July 1, 2000, Sections 61-14A-1 through 61-14A-21 NMSA 1978 are repealed."

Section 31

Section 31. TEMPORARY PROVISION.--On the effective date of this act, all money in the acpuncture board fund shall be transferred to the credit of the board of acupuncture and oriental medicine fund. _____ SB 178

CHAPTER 159

RELATING TO CRIMINAL PROCEDURE; ESTABLISHING A PROCEDURE FOR FORFEITURE OF BAIL BONDS; AMENDING SECTION 31-3-2 NMSA 1978 (BEING LAWS 1972,

CHAPTER 71, SECTION 9, AS AMENDED).

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

Section 1

Section 1. Section 31-3-2 NMSA 1978 (being Laws 1972, Chapter 71, Section 9, as amended) is amended to read:

"31-3-2. FAILURE TO APPEAR--FORFEITURE OF BAIL BONDS.--

A. Whenever any person fails to appear at the time and place fixed by the terms of recognizance, the court may issue a warrant for his arrest.

B. Whenever a person fails to appear at the time and place fixed by the terms of his bail bond, the court:

(1) may issue a warrant for his arrest; and

(2) may declare a forfeiture of the bail. If the court declares a forfeiture, it shall:

(a) declare such forfeiture at the time of nonappearance;

(b) give written notice thereof to the surety within four working days of declaration; and

(c) issue a bench warrant for the person's arrest.

C. The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

D. When a forfeiture has not been set aside, the court shall on motion enter a judgment of default, and execution may issue thereon. By entering into a bail bond, the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom papers affecting their liability may be served. Liability of the surety may be enforced on motion without the necessity of an independent action.

E. Notice of the motion to enter a judgment of default may be served pursuant to the rules of criminal procedure or may be served on the clerk of the court, who shall forthwith mail copies to the obligors at their last known address. The notice shall require the sureties to appear on or before a given date and show cause why judgment shall not be entered against them for the amount of the bail bond or recognizance. If good cause is not shown, the court may then enter judgment against the obligors on the recognizance, for such sum as it sees fit, not exceeding the penalty fixed by the bail bond or recognizance.

F. When a judgment has been rendered against the defendant or surety for the whole or part of the penalty of a forfeited recognizance, the court rendering such judgment shall remit the amount thereof when, after such rendition, the accused has been arrested and surrendered to the proper court to be tried on such charge or to answer the judgment of the court, provided that the apprehension of the accused in some way was aided by the surety's efforts or by information supplied by the surety.

G. If any amount remains unpaid ten days after entry of judgment, the court may issue execution for satisfaction of judgment.

H. In the event that an obligor does not possess property in this state sufficient to satisfy a judgment against it for the whole or part of the penalty of a forfeited recognizance, the court entering judgment against the obligor on the recognizance shall send written notification to the superintendent of insurance. Immediately upon receipt of such written notification and pursuant to Section 46-6-4 NMSA 1978, the superintendent of insurance shall inform the obligor that unless the judgment is paid or an appeal, writ of error or supersedeas is taken within thirty days of the rendition of the judgment or decree, such obligor shall forfeit all right to do business in this state. If timely appeal, writ of error or supersedeas is not taken, the superintendent of insurance shall immediately take whatever steps necessary to revoke the right of the obligor to do business in this state." SB 310

CHAPTER 160

RELATING TO PUBLIC EMPLOYEES RETIREMENT; PROVIDING FOR DISABILITY RETIREMENT BENEFITS AND SURVIVOR PENSIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE PUBLIC EMPLOYEES RETIREMENT ACT.

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

Section 1

Section 1. Section 10-11-2 NMSA 1978 (being Laws 1987, Chapter 253, Section 2, as amended) is amended to read:

"10-11-2. DEFINITIONS.--As used in the Public Employees Retirement Act:

A. "accumulated member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account, together with interest, if any, credited to that account;

B. "affiliated public employer" means the state and any public employer affiliated with the association as provided in the Public Employees Retirement Act, but does not include an employer pursuant to the Magistrate Retirement Act, the Judicial Retirement Act or the Educational Retirement Act;

C. "association" means the public employees retirement association established under the Public Employees Retirement Act;

D. "disability retired member" means a retired member who is receiving a pension pursuant to the disability retirement provisions of the Public Employees Retirement Act;

E. "disability retirement pension" means the pension paid pursuant to the disability retirement provisions of the Public Employees Retirement Act;

F. "educational retirement system" means that retirement system provided for in the Educational Retirement Act;

G. "employee" means any employee of an affiliated public employer;

H. "federal social security program" means that program or those programs created and administered pursuant to the act of congress approved August 14, 1935, Chapter 531, 49 Stat. 620, as that act may be amended;

I. "final average salary" means the final average salary calculated in accordance with the provisions of the applicable coverage plan;

J. "form of payment" means the applicable form of payment of a pension provided for in Section 10-11-117 NMSA 1978;

K. "former member" means a person who was previously employed by an affiliated public employer, who has terminated that employment and who has received a refund of member contributions;

L. "member" means a currently employed, contributing employee of an affiliated public employer, or a person who has been but is not currently employed by an affiliated public employer, who has not retired and who has not received a refund of member contributions; "member" also includes the following:

(1) "hazardous duty member" means a state policeman who is a member and who is a juvenile or adult correctional officer employed by a corrections facility of the corrections department or its successor agency;

(2) "municipal fire member" means any member who is employed as a full-time nonvolunteer firefighter by an affiliated public employer and who has taken the oath prescribed for firefighters;

(3) "municipal police member" means any member who is employed as a police officer by an affiliated public employer, other than the state, and who has taken the oath prescribed for police officers; and

(4) "state police member" means any member who is an officer of the New Mexico state police and who has taken the oath prescribed for such officers;

M. "membership" means membership in the association;

N. "pension" means a series of monthly payments to a retired member or survivor beneficiary as provided in the Public Employees Retirement Act;

O. "public employer" means the state, any municipality, city, county, metropolitan arroyo flood control authority, economic development district, any regional housing authority, any soil and water conservation district, any entity created pursuant to a joint powers agreement, council of government, conservancy district, water and sanitation district, water district and metropolitan water board, including the boards, departments, bureaus and agencies of a public employer;

P. "refund beneficiary" means a person designated by the member, in writing, in the form prescribed by the association, as the person who would be refunded the member's accumulated member contributions payable if the member dies and no survivor pension is payable or who would receive the difference between pension paid and accumulated member contributions if the retired member dies before receiving in pension payments the amount of the accumulated member contributions;

Q. "retire" means to:

(1) terminate employment with all employers covered by any state system or the educational retirement system; and

(2) receive a pension from a state system or the educational retirement system;

R. "retired member" means a person who has met all requirements for retirement and who is receiving a pension from the fund;

S. "retirement board" means the retirement board provided for in the Public Employees Retirement Act;

T. "salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered an affiliated public employer. "Salary" shall not include overtime pay, allowances for housing, clothing, equipment or travel, payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment, and any other form of remuneration not specifically designated by law as included in salary for Public Employees Retirement Act purposes;

U. "state system" means the retirement programs provided for in the Public Employees Retirement Act, the Magistrate Retirement Act and the Judicial Retirement Act;

V. "state retirement system acts" means collectively the Public Employees Retirement Act, the Magistrate Retirement Act, the Judicial Retirement Act and the Volunteer Firefighters Retirement Act; and

W. "survivor beneficiary" means a person who receives a pension or who has been designated to be paid a pension as a result of the death of a member or retired member."

Section 2

Section 2. Section 10-11-3 NMSA 1978 (being Laws 1987, Chapter 253, Section 3, as amended) is amended to read:

"10-11-3. MEMBERSHIP--REQUIREMENTS--EXCLUSIONS--TERMINATION.--

A. Except as may be provided for in the Volunteer Firefighters Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act, the Educational Retirement Act and the provisions of Sections 29-4-1 through 29-4-11 NMSA 1978 governing the state police pension fund, each employee and elected official of every affiliated public employer shall be a member of the association, unless excluded from membership in accordance with Subsection B of this section.

B. The following employees and elected officials are excluded from membership in the association:

(1) elected officials who file with the association a written application for exemption from membership within thirty days of taking office;

(2) elected officials who file with the association a written application for exemption from membership within thirty days of the date the elected official's public employer becomes an affiliated public employer;

(3) employees designated by the affiliated public employer as seasonal or student employees;

(4) employees who file with the association a written application for exemption from membership within thirty days of the date the employee's public employer becomes an affiliated public employer; and

(5) employees of an affiliated public employer that is making contributions to a private retirement program on behalf of the employee as part of a compensation arrangement who file with the association a written application for exemption within thirty days of employment, unless the employee has previously retired under the provisions of the Public Employees Retirement Act.

C. Employees designated as seasonal and student employees shall be notified in writing by their affiliated public employer of the designation and the consequences of the designation with respect to membership, service credit and

benefits. A copy of the notification shall be filed with the association within thirty days of the date of employment.

D. An exemption from membership by an elected official shall expire at the end of the term of office for which filed.

E. Employees and elected officials who have exempted themselves from membership may subsequently withdraw the exemption by filing a membership application. Membership shall commence the first day of the first pay period following the date the aplication is filed.

F. The membership of an employee or elected official shall cease if the employee terminates employment with an affiliated public employer or the elected official leaves office, and the employee or elected official requests and receives a refund of member contributions."

Section 3

Section 3. A new section of the Public Employees Retirement Act is enacted to read:

"DISABILITY RETIREMENT.--

A. There is created a disability review committee of the retirement board. The disability review committee shall consist of at least three but not more than five retirement board members and at least one physician licensed in New Mexico appointed by the retirement board. The disability review committee shall review all applications for disability retirement, review reports required under this section and approve or deny applications for disability retirement.

B. The disability review committee may retire a member on account of disability before the time the member would otherwise be eligible for retirement if the following requirements are satisfied:

(1) the member applying for disability retirement was a member at the time the disability was incurred;

(2) a written application for disability retirement, in the form and containing the information prescribed by the association, has been filed with the association by the member or by the member's affiliated public employer;

(3) employment is terminated within forty-five days of the date of approval of the application for disability retirement;

(4) if:

(a) the member has five or more years of service credit; or

(b) the disability review committee finds the disability to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer;

(5) the member submits to all medical examinations and tests and furnishes copies of all medical reports requested by the association or disability review committee provided that if the disability review committee requires independent medical or other examinations, those examinations shall be performed at the association's expense; and

(6) the disability review committee makes the determination required under Subsection C of this section.

C. The disability review committee shall review applications for disability retirement to determine whether:

(1) if the member is a currently employed, contributing employee of an affiliated public employer:

(a) the member is mentally or physically totally incapacitated for continued employment with an affiliated public employer; and

(b) the incapacity is likely to be permanent; or

(2) if the member is not a currently employed, contributing employee of an affiliated public employer:

(a) the member is mentally or physically totally incapacitated for any gainful employment; and

(b) the incapacity is likely to be permanent.

D. The disability retirement pension shall be paid for a period of one year after approval of the initial application unless the disability review committee for good cause shown grants disability retirement for a longer period of time. After approval, payment shall be effective commencing the first of the month following submission of the initial application and termination of employment.

E. At the end of the first year that a disability retirement pension is paid, the disability retired member's condition shall be reevaluated to determine eligibility for continuation of payment of a disability retirement pension. If the disability retired member has applied for disability benefits under the federal social security program, he shall submit copies of his application. The association shall continue payment of the state disability retirement pension if the disability retired member presents a written final

determination from the federal social security administration that the disability retired member qualifies, based on the same condition or conditions as presented in the application for a state disability retirement pension, for federal disability benefits.

F. If the disability retired member applied for federal disability benefits within thirty days of receiving approval for a state disability retirement pension but the federal social security administration has not made a written final determination of entitlement by the end of the first year that the disability retired member has received a state disability retirement pension, eligibility for continued payment of the state disability retirement pension shall be determined by the disability review committee. The state disability retirement pension shall be discontinued if the disability review committee finds that the disability retired member is capable of any gainful employment.

G. The disability retired member shall notify the association of the federal social security administration's final determination within fifteen working days of the date of issuance of the final written determination. If the federal social security administration denies federal disability benefits, the state disability retirement pension shall be discontinued effective the first of the month following the month in which the written final determination of the federal social security administration was issued. If the federal social security administration grants federal disability benefits, the state disability retirement pension shall be continued, so long as the disability retired member provides annually, on or before the anniversary date of commencement of payment of the state disability retirement pension, written evidence of continuation of payment of federal disability benefits. If the disability review committee has denied continuation of payment of a state disability retirement pension, and the disability retired member is later granted federal disability benefits, the state disability retirement pension shall be reinstated effective the first of the month following the month in which the state disability retirement pension was discontinued.

H. If, at the time of reevaluation under Subsection E of this section, the disability retired member has applied for and has qualified for federal disability benefits, but for a different condition than was reviewed by the disability review committee, the disability review committee shall review the disability retired member's condition as described by the application for federal disability benefits. The process set forth in Subsection I of this section shall be followed to determine whether payment of a state disability retirement pension should be continued.

I. If the disability retired member is not eligible to apply for federal disability benefits or is not a member of the federal social security program, the disability review committee annually shall determine eligibility for continuation of payment of a state disability retirement pension. To make its determination of continued entitlement, the disability review committee shall use the guidelines established by the federal social security administration for determination of eligibility for federal disability benefits. The determination shall be based on:

(1) the medical and all other information provided by the disability retired member;

(2) at least one independent medical or other examination performed at the association's expense if required by the disability review committee; and

(3) any and all medical, vocational or other information related to the disability compiled during the period of disability by any medical or other practitioner consulted by the disability retired member regarding the disability which was not paid for by the association.

J. Each disability retired member annually shall submit to the association, prior to July 1, a statement of earnings from gainful employment during the preceding calendar year. The statement of earnings shall be in the form prescribed by the association. Payment of the state disability retirement pension shall be discontinued if the amount of earnings from gainful employment is one hundred percent or more of the amount which causes a decrease or suspension of an old age benefit under the federal social security program, or fifteen thousand dollars ($15,000), whichever is less. Payment of the state disability retirement pension shall be discontinued starting with the month of July if the statement of earnings is not received by the association prior to July 1.

K. Upon prior approval by the association, a disability retired member may return to employment with an affiliated public employer or other employer for a trial period not to exceed one hundred twenty calendar days without becoming a member or causing suspension or discontinuation of payment of a state disability retirement pension. If the trial period of employment is successfully completed, payment of the disability retirement pension shall be discontinued beginning the first of the month following the one hundred twentieth day of the trial period of employment. Trial periods of employment shall be limited to two in any five-year period following disability retirement.

L. If the disability retired member meets the minimum age and service credit requirements for normal retirement while receiving a disability retirement pension, the disability retirement pension shall be reclassified by the association as a normal retirement pension, and no further determinations of eligibility for continuation of payment of the disability retirement pension shall be made. Upon reclassification as a normal retirement pension, all the provisions of this act regarding normal retirement shall be applicable.

M. If the disability review committee found the disability to be the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's employment with an affiliated public employer, service credit shall continue to accrue during the disability retirement period as though the disability retired member was actively employed.

N. The amount of a disability retirement pension shall be calculated according to the provisions of the coverage plan applicable to the member at the time of application, except that the service credit requirement shall be waived and the actual amount of service credit shall be used instead. If the disability is the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty for an affiliated public employer, the amount of disability retirement pension shall be calculated according to the provisions of the coverage plan applicable to the member, imputing the amount of service credit necessary to meet the minimum service credit requirements for normal retirement.

O. For the purposes of this section, the following definitions apply:

(1) "continued employment with the affiliated public employer" means the ability of the member to fulfill the required duties of the position in which the member was last employed by his affiliated public employer;

(2) "gainful employment" means remunerative employment or self-employment that is commensurate with the applicant's background, age, education, experience and any new skills or training the applicant may have acquired after terminating public employment or incurring the disability;

(3) "state disability retirement pension" means the pension paid pursuant to the provisions of this section; and

(4) "federal disability benefits" means those benefits paid by the federal social security program."

Section 4

Section 4. A new section of the Public Employees Retirement Act is enacted to read:

"DEATH BEFORE RETIREMENT--SURVIVOR PENSIONS.--

A. A survivor pension shall be paid to certain persons related to or designated by a member who dies before normal or disability retirement if a written application for the pension, in the form prescribed by the association, is filed with the association by the potential survivor beneficiary or beneficiaries. Applications may be filed on behalf of the potential survivor beneficiary or beneficiaries by a person legally authorized to represent them.

B. If the retirement board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated pubic employer, a survivor pension shall be payable to the eligible surviving spouse. The amount of the survivor pension shall be the greater of:

(1) eighty percent of the amount of pension calculated in the same manner as a normal retirement pension under form of payment A using the actual amount of service credit attributable to the deceased member at the time of death; or

(2) fifty percent of the deceased member's final average salary.

C. A survivor pension shall also be payable to eligible surviving children, if the retirement board finds the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer. The total amount of survivor pension payable for all eligible surviving children shall be either:

(1) fifty percent of the deceased member's final average salary if an eligible surviving spouse is not paid a pension; or

(2) twenty-five percent of the deceased member's final average salary if an eligible surviving spouse is paid a pension.

The total amount of survivor pension shall be divided equally between all eligible surviving children. If there is only one eligible child, the amount of pension shall be twenty-five percent of the deceased member's final average salary.

D. If the member had five or more years of service credit, but the retirement board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer, a survivor pension shall be payable to the eligible
surviving spouse. The amount of the survivor pension shall be the greater of:

(1) eighty percent of the amount of pension calculated in the same manner as a normal retirement pension under form of payment A using the total amount of actual service credit attributable to the deceased member at the time of death; or

(2) thirty percent of the deceased member's final average salary.

E. If the member had five or more years of service credit, but the retirement board did not find the death to have been the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer, and if there is not an eligible surviving spouse or the eligible surviving spouse subsequently dies, a survivor pension shall be payable to and divided equally between all eligible surviving children, if any. The total amount of survivor pension payable for all eligible surviving children shall be the greater of:

(1) fifty percent of an amount calculated in the same manner as a normal retirement pension under form of payment A using the total amount of actual service credit attributable to the deceased member at the time of death; or

(2) twenty-five percent of the deceased member's final average salary.

F. An eligible surviving spouse is the spouse to whom the deceased member was married at the time of death. An eligible surviving child is a child under the age of eighteen years and who is an unmarried, natural or adopted child of the deceased member.

G. An eligible surviving spouse's pension shall terminate upon death. An eligible surviving child's pension shall terminate upon death or marriage or reaching age eighteen years, whichever comes first.

H. If there is no eligible surviving child, the eligible surviving spouse may elect to be refunded the deceased member's accumulated member contributions instead of receiving a survivor pension.

I. A member who has five or more years of service credit may designate one or more survivor beneficiaries to receive a survivor pension, subject to the following conditions:

(1) a written designation, in the form prescribed by the association, is filed by the member with the association;

(2) if the member is married at the time of designation, the designation shall only be made with the consent of the member's spouse, in the form prescribed by the association;

(3) if the member is married subsequent to the time of designation, any prior designations shall automatically be revoked upon the date of the marriage;

(4) if the member is divorced subsequent to the time of designation, any prior designation of the former spouse as survivor beneficiary shall automatically be revoked upon the date of divorce;

(5) a designation of survivor beneficiary may be changed, with the member's spouse's consent if the member is married, by the member at any time prior to the member's death;

(6) if more than one survivor beneficiary is designated, only those designated survivor beneficiaries who are under the age of twenty-five years at the time of the deceased member's death shall be eligible to receive a survivor pension;

(7) each designated survivor beneficiary who is under the age of twenty-five years shall be paid a pension until reaching the age of twenty-five years or until death before the age of twenty-five years;

(8) if there is more than one designated survivor beneficiary, the amount of pension to be paid each designated survivor beneficiary for a month is equal to the amount as calculated under the coverage plan applicable to the deceased member at the time of death as though the deceased member had retired the day preceding death under form of payment B with the oldest designated survivor beneficiary as the survivor beneficiary, divided by the number of designated survivor beneficiaries who will be paid for the month; and

(9) if there is only one designated survivor beneficiary, the amount of pension shall be calculated under the coverage plan applicable to the member at the time of death as though the deceased member had retired the day preceding death under form of payment B with the designated survivor beneficiary as survivor beneficiary.

J. A member who has less than five years of service credit may designate one or more survivor beneficiaries to receive a survivor pension if the member dies prior to the retirement and the retirement board finds the member's death to be the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer. If more than one survivor beneficiary is designated, the survivor pension shall be calculated according to the provisions of Subsection C of this section, subject to the same conditions listed in Subsection I of this section. If one survivor beneficiary is designated, the survivor pension shall be calculated according to the provisions of Subsection B of this section, subject to the same conditions listed in Paragraphs (1) through (5) of Subsection I of this section.

K. Designation of one or more survivor beneficiaries pursuant to the provisions of Subsection I or J of this section shall preclude payment of a survivor beneficiary pursuant to the provisions of Subsections B through E of this section.

L. If all pension payments permanently terminate before there is paid an aggregate amount equal to the deceased member's accumulated member contributions at time of death, the difference between the amount of accumulated member contributions and the aggregate amount of pension paid shall be paid to the deceased member's refund beneficiary. If no refund beneficiary survives the survivor beneficiary, the difference shall be paid to the estate of the deceased member."

Section 5

Section 5. Section 10-11-118.1 NMSA 1978 (being Laws 1992, Chapter 116, Section 9) is amended to read:

"10-11-118.1. ADJUSTMENT OF BENEFITS.--

A. If payment of a pension or other retirement benefit causes a decrease in the amount of monetary payments or other needs-based benefits due to a payee from any other governmental agency, the pension or other retirement benefit shall be reduced for the period during which the pension or other retirement benefit prevents payment of another needs-based benefit to result in payment of the maximum amount possible by the association and the other governmental agency to the payee. Any amounts which would otherwise be paid out which are not paid in accordance with the provisions of this section shall not be recoverable by a payee at any later date.

B. If there is a change in the effect of a pension or other retirement benefit on any monetary payments or other needs-based benefits due to a payee from any other governmental agency, the pension or other retirement benefits shall be adjusted to result in the maximum total benefit to the payee. In no event shall any pension be increased in an amount greater than that authorized by the Public Employees Retirement Act.

C. The provisions of this section are mandatory and may not be waived or declined by a payee. Each payee shall provide the association with all information necessary for the association to carry out the requirements imposed by this section.

D. If the payee fails to provide all the facts necessary to comply with the requirements imposed by this section, and payment of a pension or other retirement benefit is made without making the adjustment required by this section, neither the retirement board, the executive secretary nor any officer or employee of the association or the retirement board shall be liable to any third party because the adjustment was not made as required.

E. As used in this section:

(1) "pension" means a normal retirement, survivor or disability retirement pension payable to a retired member or survivor beneficiary pursuant to the Public Employees Retirement Act;

(2) "governmental agency" means the federal government, any department or agency of the federal government, any state and any department, agency or political subdivision of a state;

(3) "total benefits" means pensions plus any other monetary payments or other needs-based benefits due to the payee from any governmental agency;

(4) "needs-based benefit" means monetary or other benefits for which a determination of eligibility is based upon the recipient's level of income and resources; and

(5) "payee" means a retired member or the refund beneficiary or survivor beneficiary of a retired member."

Section 6

Section 6. Section 10-11-124 NMSA 1978 (being Laws 1987, Chapter 253, Section 124) is amended to read:

"10-11-124. MEMBER CONTRIBUTION FUND.--

A. The member contribution fund is the accounting fund in which shall be accumulated contributions of members and from which shall be made refunds and transfers of accumulated member contributions as provided in the Public Employees Retirement Act. Each affiliated public employer shall cause the member contributions specified by the coverage plan applicable to each of that affiliated public employer's members to be deducted from the salary of each member. Each affiliated public employer shall remit the deducted member contributions to the association in accordance with the procedures and schedules established by the association. The association may assess an interest charge and a penalty charge on any remittance not made by its due date. Each member shall be deemed to consent and agree to the deductions made and provided for in this section by continuing employment with the affiliated public employer. Contributions by members shall be credited to the members' individual accounts in the member contribution fund.

B. A member's accumulated contributions shall be transferred to the retirement reserve fund if a pension becomes payable upon the retirement or death of the member. If a disability retirement pension is terminated for a reason other than the death of the disability retired member before an amount equal to the disability retired member's accumulated member contributions has been paid, the unexpended balance of the accumulated member contributions shall be transferred from the retirement reserve fund to the former disability retired member's individual account in the member contribution fund.

C. If a member terminates affiliated public employment or is on leave of absence frm an affiliated public employer as a consequence of the entry into active duty with the armed forces of the United States, the member may, with the written consent of the member's spouse, if any, withdraw the member's accumulated member contributions, upon making written request in a form prescribed by the association. Upon written request of the member in the form prescribed by the association, a refund of member contributions may be made by a trustee-to-trustee transfer of the contributions from the member contribution fund directly to another qualified plan as allowed by the Internal Revenue Code. Withdrawal of member contributions shall result in forfeiture of the service credit accrued for the period during which the contributions were made.

D. A member shall, upon commencement of membership, designate a refund beneficiary who shall receive the refund of the member contributions, plus interest if any, if the member dies and no survivor pension is payable. If the member is married at the time of designation, written spousal consent shall be required if the designated refund beneficiary is other than the spouse. Marriage subsequent to the designation shall automatically revoke a previous designation, and the spouse shall become the refund beneficiary unless or until another designation is filed with the association. Divorce subsequent to the designation shall automatically revoke designation of the former spouse as refund beneficiary, or the right of the former spouse to be refund beneficiary if no designation has been filed, and the refund shall be paid to the deceased member's estate unless the member filed a designation of refund beneficiary subsequent to the divorce. The refund shall be paid to the refund beneficiary named in the most recent designation of refund beneficiary on file with the association unless that beneficiary is deceased. If there is not a living refund beneficiary named in the most recent designation of refund beneficiary on file with the association, the deceased member's accumulated member contributions shall be paid to the estate of the deceased member."

Section 7

Section 7. Section 10-11-136 NMSA 1978 (being Laws 1987, Chapter 253, Section 136, as amended) is amended to read:

"10-11-136. DIVISION OF FUNDS AS COMMUNITY PROPERTY.--A court of competent jurisdiction, solely for the purposes of effecting a division of community property in a divorce or legal separation proceeding, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the Public Employees Retirement Act. In so doing, the court shall fix the manner in which warrants shall be issued, may order direct payments to a person with a community interest in the
pensions or other benefits, may require the election of a specific form of payment and designation of a specific survivor pension beneficiary, refund beneficiary or survivor pension beneficiary designated in accordance with Section 10-11-14 NMSA 1978 and may restrain the refund of accumulated member contributions. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the association or cause any increase in the actuarial present value of the pensions or other benefits to be paid by the association."

Section 8

Section 8. Section 10-11-136.1 NMSA 1978 (being Laws 1989, Chapter 125, Section 2) is amended to read:

"10-11-136.1. LEGAL PROCESS TO SATISFY CHILD SUPPORT OBLIGATIONS.--A court of competent jurisdiction, solely for the purposes of enforcing current or delinquent child support obligations, may provide by appropriate order for

withholding amounts due in satisfaction of current or delinquent child support obligations from the pensions or other benefits provided for in the Public Employees Retirement Act and for payment of such amounts to third parties. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the association. The court shall not cause any increase in the actuarial present value of the pensions or other benefits to be paid by the association. Payments made pursuant to such orders shall only be made when member contributions are refunded or a pension is payable in accordance with the provisions of the Public Employees Retirement Act; in no case shall more money be paid out, either in a lump sum or in monthly benefits, of association funds in enforcement of current or delinquent child support obligations than would otherwise be payable at that time."

Section 9

Section 9. REPEAL.--Sections 10-11-9 through 10-11-11, 10-11-13 and 10-11-14 NMSA 1978 (being Laws 1987, Chapter 253, Sections 9 through 11, 13 and 14, as amended) are repealed.SB 322

CHAPTER 161

RELATING TO EMERGENCY MEDICAL SERVICES; EXPANDING THE SCOPE OF THE EMERGENCY MEDICAL SERVICES ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE EMERGENCY MEDICAL SERVICES ACT.

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

Section 1

Section 1. Section 24-10B-2 NMSA 1978 (being Laws 1983, Chapter 190, Section 2) is amended to read:

"24-10B-2. PURPOSE.--The purpose of the Emergency Medical Services Act is to enhance and regulate a comprehensive emergency medical services system in the state, including providing pre-hospital and interfacility care, establishing standards for and designating trauma care facilities, training and licensing of emergency medical technicians, and establishing standards for medical direction and air ambulance services. Nothing in the Emergency Medical Services Act shall be construed to preclude a local emergency medical services system from adopting standards that are more stringent than those authorized by the Emergency Medical Services Act."

Section 2

Section 2. Section 24-10B-3 NMSA 1978 (being Laws 1983, Chapter 190, Section 3) is repealed and a new Section 24-10B-3 NMSA 1978 is enacted to read:

"24-10B-3. DEFINITIONS.--As used in the Emergency Medical Services Act:

A. "academy" means a separately funded emergency medical services training program administered through the department of emergency medicine of the university of New Mexico school of medicine;

B. "advance directive" means a written instruction, such as a living will or durable power of attorney for health care, recognizable under state law and relating to the provision of health care when an individual is incapacitated;

C. "advanced life support" means advanced pre-hospital and interfacility care and treatment, including basic and intermediate life support, as prescribed by regulation, which may be performed only by an individual licensed as a paramedic by the bureau and operating under medical direction;

D. "air ambulance service" means any governmental or private service that provides air transportation specifically designed to accommodate the medical needs of a person who is ill, injured or otherwise mentally or physically incapacitated and who requires in-flight medical supervision;

E. "approved emergency medical services training program" means an emergency medical services training program that is sponsored by a post-secondary educational institution, is accredited by the joint review committee on educational programs or active in the accreditation process, as verified by the chair of the joint review committee on educational programs, or is approved by the joint organization on education and participates in the joint organization on education;

F. "basic life support" means pre-hospital and interfacility care and treatment, as prescribed by regulation, which can be performed by all licensed emergency medical technicians;

G. "bureau" means the primary care and emergency medical services bureau of the public health division of the department of health;

H. "certified emergency medical services first responder" means a person who is certified by the bureau and who functions within the emergency medical services system to provide initial emergency aid, but not basic, intermediate or advanced life support to a person in need of medical assistance;

I. "critical incident stress debriefing program" means a program of preventive education and crisis intervention intended to reduce the negative effects of critical stress on emergency responders;

J. "curricula" means programs of study, the minimum content of which has been developed by the joint organization on education, for the initial and mandatory

refresher training of emergency medical technicians and certified emergency medical services first responders;

K. "department" means the department of health;

L. "emergency medical dispatcher" means a person who is trained and certified pursuant to Subsection F of Section 24-10B-4 NMSA 1978 to receive calls for emergency medical assistance, provide pre-arrival medical instructions, dispatch emergency medical assistance and coordinate its response;

M. "emergency medical services" means the services rendered by emergency medical technicians, certified emergency medical services first responders or emergency medical dispatchers in response to an individual's need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury;

N. "emergency medical services system" means a coordinated system of health care delivery that includes community education and prevention programs, centralized access and emergency medical dispatch, trained first responders, medical-rescue services, ambulance services, hospital emergency departments and specialty care hospitals that respond to the needs of the acutely sick and injured;

O. "emergency medical technician" means a health care provider who has been licensed to practice by the bureau;

P. "intermediate life support" means certain advanced pre-hospital and interfacility care and treatment, including basic life support, as prescribed by regulation, which may be performed only by an individual licensed by the bureau and operating under medical direction;

Q. "joint review committee" means the joint review committee on educational programs for the emergency medical technician-paramedic, a nonprofit organization incorporated in the state of Massachusetts;

R. "medical control" means supervision provided by or under the direction of physicians to providers by written protocol or direct communications;

S. "medical direction" means guidance or supervision provided by a physician to a provider or emergency medical services system and which includes authority over and responsibility for emergency medical dispatch, direct patient care and transport of patients, arrangements for medical control and all other aspects of patient care delivered by a provider;

T. "medical-rescue service" means a provider that is part of the emergency medical services system but not subject to the authority of the state corporation commission

under the Ambulance Standards Act and which may be dispatched to the scene of an emergency to provide rescue or medical care;

U. "physician" means a doctor of medicine or doctor of osteopathy who is licensed or otherwise authorized to practice medicine or osteopathic medicine in New Mexico;

V. "protocol" means a predetermined, written medical care plan and includes standing orders;

W. "provider" means a person or entity delivering emergency medical services;

X. "regional office" means a regional emergency medical services planning and development agency formally recognized and supported by the bureau;

Y. "secretary" means the secretary of health;

Z. "special skills" means a set of procedures or therapies that are beyond the usual scope of practice of a given level of life support and that have been approved by the medical direction committee for use by a specified provider; and

AA. "state emergency medical services medical director" means a physician employed by the bureau to provide overall medical direction to the statewide emergency medical services program, whose duties include serving as a liaison to the medical community and chairing the medical direction committee."

Section 3

Section 3. Section 24-10B-4 NMSA 1978 (being Laws 1983, Chapter 190, Section 4) is amended to read:

"24-10B-4. BUREAU--DUTIES.--The bureau is designated as the lead agency or the emergency medical services system and shall establish and maintain a program for regional planning and development, improvement, expansion and direction of emergency medical services throughout the state, including:

A. design, development, implementation and coordination of communications systems to join the personnel, facilities and equipment of a given region or system that will allow for medical control of pre-hospital or interfacility care;

B. provision of technical assistance to the state corporation commission for further development and implementation of standards for certification of ambulance services, vehicles and equipment;

C. development of requirements for the collection of data and statistics to evaluate the availability, operation and quality of providers in the state;

D. adoption of regulations for medical direction of a provider or emergency medical services system upon the recommendation of the medical direction committee, including:

(1) development of model guidelines for medical direction of all components of an emergency medical services system;

(2) a process for notifying the bureau of the withdrawal of medical control by a physician from a provider; and

(3) specific requirements for medical direction of intermediate and advanced life support personnel and basic life support personnel with special skills approval;

E. maintenance of a list of approved emergency medical services training programs, the graduates of which shall be the only New Mexico emergency medical services students eligible to apply for emergency medical technician licensure or certified emergency medical services first responder certification;

F. approval of continuing education programs for emergency medical services personnel;

G. adoption of regulations pertaining to the training and certification of emergency medical dispatchers and their instructors;

H. adoption of regulations, based upon the recommendations of the trauma advisory committee, for implementation and monitoring of a statewide, comprehensive trauma care system, including:

(1) minimum standards for designation or retention of designation as a trauma center or a participating trauma facility;

(2) pre-hospital care management guidelines for the triage and transportation of traumatized persons;

(3) establishment for interfacility transfer criteria and transfer agreements;

(4) standards for collection of data relating to trauma system operation, patient outcome and trauma prevention; and

(5) creation of a state trauma care plan;

I. adoption of regulations, based upon the recommendations of the air transport advisory committee, for the certification of air ambulance services;

J. adoption of regulations pertaining to authorization of providers to honor advance directives to withhold or terminate care in certain pre-hospital or interfacility circumstances, as guided by local medical protocols;

K. development of guidelines, with consultation from the state fire marshal, pertaining to the operation of medical-rescue services within the emergency medical services system; and

L. operation of a critical incident stress debriefing program for emergency responders utilizing specifically trained volunteers who shall be considered public employees for the purposes of the Tort Claims Act when called upon to perform a debriefing."

Section 4

Section 4. Section 24-10B-5 NMSA 1978 (being Laws 1983, Chapter 190, Section 5) is amended to read:

"24-10B-5. PERSONNEL LICENSURE REQUIRED.--

A. The department shall by regulation adopt and enforce licensure and certification requirements, including minimum standards for training, continuing education and disciplinary actions consistent with the Uniform Licensing Act for all persons who provide emergency medical services within the state, irrespective of whether the services are remunerated. Such regulation shall include authorization for the bureau to issue at least annually an updated list of skills, techniques and medications approved for use at each level of life support. When setting requirements for licensure of persons also subject to the Ambulance Standards Act, the bureau shall consult with the state corporation
commission.

B. In addition to the requirements specified in Subsection A of this section, the department may:

(1) prohibit the use of "emergency medical dispatcher", "emergency medical technician", "certified emergency medical services first responder", "paramedic" or similar terms connoting expertise in providing emergency medical services by any person not licensed or certified under the Emergency Medical Services Act;

(2) deny, suspend or revoke licensure or certification in accordance with the provisions of the Uniform Licensing Act; and

(3) establish a schedule of reasonable fees for application, examination, licensure or certification and regular renewal thereof."

Section 5

Section 5. A new section of the Emergency Medical Services Act is enacted to read:

"LICENSING COMMISSION ESTABLISHED.--

A. The secretary shall appoint an "emergency medical services licensing commission", which shall be staffed by the bureau and composed of one lay person, three emergency medical technicians, one from each level of life support and three physicians, at least two of whom shall have expertise in emergency medicine and who are appointed from a list proposed by the New Mexico chapter of the American college of emergency physicians.

B. The composition of the emergency medical services licensing commission shall reflect geographic diversity and both public and private interests. The members shall serve for three-year staggered terms. The duties of and procedures for the emergency medical services licensing commission shall be delineated in regulations promulgated pursuant to Subsection A of Section 24-10B-5 NMSA 1978. Such duties include:

(1) providing a forum for the receipt of public comment regarding emergency medical services licensing matters;

(2) oversight of the bureau's licensure functions;

(3) receiving complaints, directing investigations and authorizing the initiation of actions by the bureau regarding contemplated refusal to grant initial licensure and for disciplinary actions against licensees; and

(4) the granting of waivers, for good cause shown, of regulations pertaining to licensure renewal.

C. The emergency medical services licensing commission shall meet as needed, but not less frequently than semiannually. The emergency medical services licensing commission shall be subject to the provisions of the Per Diem and Mileage Act."

Section 6

Section 6. Section 24-10B-6 NMSA 1978 (being Laws 1983, Chapter 190, Section 6) is amended to read:

"24-10B-6. TREATMENT AUTHORIZED.--

A. Notwithstanding the provisions of Sections 61-6-1 through 61-6-31 NMSA 1978, Sections 61-10-1 through 61-10-22 NMSA 1978 or the Nursing Practice Act, any person licensed or certified by the bureau may render emergency medical services commensurate with his level of licensure or certification, as medically indicated.

B. Individuals licensed or certified under Sections 61-6-1 through 61-6-31 NMSA 1978, Sections 61-10-1 through 61-10-22 NMSA 1978 or the Nursing Practice Act are not required to be licensed or certified under the Emergency Medical Services Act."

Section 7

Section 7. A new section of the Emergency Medical Services Act is enacted to read:

"ACADEMY--DUTIES.--The academy is designated as the lead training agency for providers. Its duties include:

A. administering all basic life support training conducted in New Mexico, other than classes administered by other approved emergency medical services training programs;

B. furthering the knowledge base of emergency medical services education; and

C. securing a physician as its medical director to advise it in medical matters and to serve as liaison to the state emergency medical services medical director and the medical community as a whole."

Section 8. Section 24-10B-7 NMSA 1978 (being Laws 1983, Chapter 190, Section 7) is amended to read:

"24-10B-7. COMMITTEES ESTABLISHED.--

A. The secretary shall appoint a statewide emergency medical services advisory committee to advise the bureau in carrying out the provisions of the Emergency Medical Services Act. The advisory committee shall include representatives from the state medical society, the state emergency medical technicians' association, the state firefighters' association, emergency medical service regional offices and other interested provider and consumer groups. The advisory committee shall establish appropriate subcommittees, including a trauma advisory committee and an air transport advisory committee.

B. The joint organization on education in emergency medical services shall be composed of the directors and medical directors of the academy and each approved emergency medical services training program, the state emergency medical services medical director and the bureau chief or his designee, who shall serve without vote, and three persons who instruct emergency medical technicians, one at each level of life support, who are appointed by the secretary from a list proposed by the statewide emergency medical services advisory committee. The duties of the joint organization on education include:

(1) developing minimum curricula content for approved emergency medical services training programs;

(2) establishing minimum standards for approved emergency medical services training programs;

(3) reviewing and approving the applications of organizations seeking to become approved emergency medical services training programs; and

(4) developing minimum qualifications for and maintaining a list of instructors for each of the approved emergency medical services training programs.

C. The secretary shall appoint a medical direction committee to advise the bureau on matters relating to medical control and medical direction. The state emergency medical services medical director shall be a member of the committee and shall act as its chairman. The medical direction committee shall include a physician representative
experienced in pre-hospital medical care selected from a list proposed by the New Mexico chapter of the American college of emergency physicians, a physician representative from the academy, one physician from each of the emergency medical services geographic regions and one emergency medical technician at each level of life support. Members shall be selected to represent both public and private interests. The duties of the medical direction committee include:

(1) reviewing the medical appropriateness of all regulations proposed by the bureau;

(2) reviewing and approving the applications of providers for special skills authorizations;

(3) assisting in the development of regulations pertaining to medical direction; and

(4) updating at least annually a list of skills, techniques and medications approved for use at each level of life support that will be approved by the secretary and that will be issud by the bureau.

D. The committees created in this section shall be subject to the provisions of the Per Diem and Mileage Act, to the extent that funds are available for that purpose.

E. Any decision that the bureau proposes to make contrary to the recommendation of any committee created in this section shall be communicated in writing to that committee. Upon the request of that committee, the decision shall be submitted for reconsideration to the director of the public health division of the department and subsequently to the secretary. Any decision made pursuant to a request for reconsideration shall be communicated in writing by the department to the appropriate committee."

Section 9

Section 9. Section 24-10B-8 NMSA 1978 (being Laws 1983, Chapter 190, Section 8) is amended to read:

"24-10B-8. LIABILITY.--In any claim for civil damages arising out of the provision of emergency medical services by personnel described in Section 24-10B-5 NMSA 1978, those personnel shall be considered health care providers for purposes of the Tort Claims Act if the claim is against a governmental entity or a public employee as defined by that act."

Section 10

Section 10. Section 24-10B-9 NMSA 1978 (being Laws 1983, Chapter 190, Section 9) is amended to read:

"24-10B-9. EMERGENCY FIRST AID.--Nothing in the Emergency Medical Services Act shall prevent fire and rescue services, public safety organizations and other trained units or individuals from rendering emergency first aid to the public commensurate with their training. Nothing in the Emergency Medical Services Act shall be construed to supersede other statutory authority permitting the rendering of first aid."

Section 11

Section 11. A new section of the Emergency Medical Services Act is enacted to read:

"EMERGENCY TRANSPORTATION.--Any person may be transported to an appropriate health care facility by an emergency medical technician, under medical control, when the emergency medical technician makes a good faith judgment that the person is incapable of making an informed decision about his own safety or need for medical attention and is reasonably likely to suffer disability or death without the medical intervention available at such a facility."

Section 12

Section 12. Section 41-9-2 NMSA 1978 (being Laws 1979, Chapter 169, Section 2) is amended to read:

"41-9-2. DEFINITIONS.--As used in the Review Organization Immunity Act:

A. "person" means any individual, corporation, partnership, firm or other entity;

B. "health care provider" means any person licensed by the state or permitted by law to provide health care services;

C. "health care services" means services rendered by a health care provider of the type the health care provider is licensed or permitted to provide;

D. "staff" means the members of the governing board, officers and employees of a health care provider which is not an individual; and

E. "review organization" means an organization whose membership is limited to health care providers and staff, except where otherwise provided for by state or federal law, and which is established by a health care provider which is a hospital, by one or more state or local associations of health care providers, by a nonprofit health care plan, by a health maintenance organization, by an emergency medical services system or provider as defined in the Emergency Medical Services Act, or by a professional standards review organization established pursuant to 42 U.S.C., Section 1320c-1 et seq. to gather and review information relating to the care and treatment of patients for the purposes of:

(1) evaluating and improving the quality of health care services rendered in the area or by a health care provider;

(2) reducing morbidity or mortality;

(3) obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illnesses and injuries;

(4) developing and publishing guidelines showing the norms of health care services in the area or by health care providers;

(5) developing and publishing guidelines designed to keep within reasonable bounds the cost of health care services;

(6) reviewing the nature, quality or cost of health care services provided to enrollees of health maintenance organizations and nonprofit health care plans;

(7) acting as a professional standards review organization pursuant to 42 U.S.C., Section 1320c-1, et seq.; or

(8) determining whether a health care provider shall be granted authority to provide health care services using the health care provider's facilities or whether a health care provider's privileges should be limited, suspended or revoked." SB 324

CHAPTER 162

RELATING TO EMPLOYMENT; ENACTING THE EMPLOYEE LEASING ACT AND PROVIDING FOR ITS ADMINISTRATION; REGULATING EMPLOYEE LEASING CONTRACTORS; PROVIDING FOR REGISTRATION AND LICENSING OF EMPLOYEE LEASING CONTRACTORS; IMPOSING FEES; PROVIDING CRIMINAL AND CIVIL PENALTIES AND CIVIL REMEDIES.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Employee Leasing Act".

Section 2

Section 2. DEFINITIONS.--As used in the Employee Leasing Act:

A. "applicant" means a person applying for registration as an employee leasing contractor;

B. "client" means a person who obtains workers through an employee leasing arrangement;

C. "department" means the regulation and licensing department;

D. "employee leasing arrangement" means any arrangement in which a client contracts with an employee leasing contractor for the contractor to provide leased workers to the client; provided, "employee leasing arrangements" does not include temporary workers;

E. "employee leasing contractor" means any person who provides leased workers to a client in New Mexico through an employee leasing arrangement;

F. "leased worker" means a worker provided to a client through an employee leasing arrangement; provided that if a worker has been previously employed by the client prior to working for an employee leasing contractor, it shall be presumed

that the worker is a leased worker and not a temporary worker; and further provided that if a worker works and should be classified in any construction class, or in any oil and gas well service or drilling class pursuant to provisions of or regulations adopted under the New Mexico Insurance Code, the worker shall be presumed to be a leased worker;

G. "person" means an individual or any other legal entity; and

H. "temporary worker" means a worker hired and employed by an employer to support or supplement another's work force in special work situations, such as employee absences, temporary skill shortages, temporary provision of specialized professional skills, seasonal workloads and special temporary assignments, including but not limited to the production of motion pictures, television programs and other commercial media projects.

Section 3

Section 3. REGISTRATION AS AN EMPLOYEE LEASING CONTRACTOR REQUIRED AS CONDITION TO DO BUSINESS IN THE STATE.--

A. No person shall do business in the state as an employee leasing contractor unless the person is registered with the department.

B. Registration shall be renewed annually. The renewal date shall be the first day of the month one year after the month in which the initial registration occurred.

C. Applications for initial registration and renewals of registration shall be made on forms supplied by the department and shall contain the information required by Section 6 of the Employee Leasing Act. The department may by regulation require additional information for initial registration and renewal of registration.

D. Upon initial registration an employee leasing contractor shall pay a fee to the department of one thousand dollars ($1,000). On the annual renewal date the employee leasing contractor shall pay an annual renewal fee of one thousand dollars ($1,000).

E. Neither the initial registration fee nor the renewal fee is refundable.

F. If a registered employee leasing contractor does not submit a completed renewal application within thirty days after the annual renewal date, the department shall mail a notice to the contractor by certified mail, return receipt requested, which notice shall inform the contractor that unless the renewal fee is paid within thirty days of the receipt of the notice by the contractor, together with a delinquency charge of five hundred dollars ($500), the contractor's registration shall be canceled. The department shall cancel the registration of any contractor who does not comply with the requirements for payment of a renewal fee and a delinquency charge.

Section 4

Section 4. LICENSURE REQUIREMENTS FOR CERTAIN EMPLOYEE LEASING CONTRACTORS.--

A. No employee leasing contractor shall furnish employees to a client that is licensed as a contractor pursuant to the Construction Industries Licensing Act unless that employee leasing contractor is licensed under that act as a contractor. An existing employee leasing contractor domiciled in New Mexico as of March 15, 1993 shall be issued an employee leasing contractor's license upon application.

B. Any employee leasing contractor required to be licensed as a contractor under the provisions of this section who fails to maintain such licensure may be enjoined from doing business in the state during the time he is unlicensed.

Section 5

Section 5. COMPLIANCE WITH WORKERS' COMPENSATION LAWS.--Every employee leasing contractor shall comply with the provisions of Section 52-1-4 NMSA 1978, and that compliance shall be a condition precedent to initial registration. Failure to maintain compliance with the cited law shall result in the immediate revocation of any registration or license held by the noncomplying contractor in addition to any other sanctions that may be imposed under applicable laws or regulations.

Section 6

Section 6. REGISTRATION APPLICATION--CONTENTS.--

A. An application for registration as an employee leasing contractor shall be signed by an individual for the applicant and verified by him under oath before a notary public. It shall contain:

(1) the applicant's full name, the title of his position with the employee leasing contractor and a statement that he is authorized to act on behalf of the employee leasing contractor in connection with the application;

(2) the business name, if any, of the applicant;

(3) the applicant's legal entity status;

(4) if the applicant is an individual, his age, date and place of birth and social security number;

(5) the applicant's state and federal tax identification numbers and employer identification number;

(6) the current residence street or location address of the principal office of the applicant and a current mailing address, if different from the residency address;

(7) a signature by:

(a) an individual sole proprietor if the applicant is a proprietorship;

(b) each of the general partners if the applicant is a partnership; or

(c) a corporate officer having authority to make the application if the applicant is a corporation;

(8) for a corporate applicant, the name and residence street address of the corporation's agent for the service of process; and

(9) proof of compliance with Section 5 of the Employee Leasing Act.

B. Any changes in information required to be included in the application for registration as an employee leasing contractor shall be reported to the department by the contractor within thirty days of the date the change occurs. Failure by the contractor to comply with this requirement constitutes cause for the department to cancel the contractor's registration.

Section 7

Section 7. SURETY REQUIREMENTS FOR EMPLOYEE LEASING CONTRACTORS.--

A. An employee leasing contractor shall file and maintain with the department a surety bond issued by an insurance company authorized to do business in this state. The amount of the bond shall be one hundred thousand dollars ($100,000). The bond shall be conditioned upon the prompt payment of wages, benefits, interest and penalties for which the leasing contractor becomes liable. The leasing contractor's liability for these benefits shall terminate six months after the leasing contractor terminates his employee leasing business.

B. In lieu of the surety bond required under Subsection A of this section, the employee leasing contractor may deposit with a depository designated by the department liquid securities with a market value equal to the amount required for a surety bond. The deposit contract shall authorize the department to liquidate the securities to the extent necessary to pay any obligations that the contractor fails to pay promptly when due.

Section 8

Section 8. DEPARTMENT TO ADOPT REGULATIONS TO IMPLEMENT ACT.--The department shall adopt regulations to implement the provisions of the Employee Leasing Act.

Section 9

Section 9. AGREEMENT REQUIRED.--The employment relationship between the client and the leased workers shall be established by written agreement between the employee leasing contractor and the client. Written notice of the employment relationship and of compliance with the requirements of Section 52-1-4 NMSA 1978 shall be given by the contractor to each leased worker.

Section 10

Section 10. EMPLOYMENT CONTRIBUTIONS--BENEFITS--TAX WITHHOLDING.--An employee leasing contractor shall provide any benefits required by law to be provided employees by employers. The contractor shall provide to the department proof of any required insurance benefits prior to registration or renewal of registration.

Section 11

Section 11. REVOCATION OF REGISTRATION--DISCIPLINARY PROCEEDINGS.--

A. In accordance with the procedures contained in the Uniform Licensing Act, the department may revoke the registration of any employee leasing contractor upon grounds that the contractor:

(1) is guilty of fraud, deception or misrepresentation in procuring registration under the Employee Leasing Act;

(2) has willfully or negligently violated any provision of the Employee Leasing Act or any of the rules or regulations of the department pursuant to that act; or

(3) has not maintained the surety bond or complied with the deposit requirements pursuant to Section 7 of the Employee Leasing Act.

B. Disciplinary proceedings may be instituted by sworn complaint of any person and shall conform with the provisions of the Uniform Licensing Act.

C. An employee leasing contractor whose registration has been revoked may reapply for registration after a period of two years from the date the revocation is effective.

Section 12

Section 12. CRIMINAL PENALTY.--Any person doing business in this state as an employee leasing contractor without being registered as required under the Employee Leasing Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

Section 13

Section 13. CIVIL PENALTIES AND REMEDIES.--

A. Any employee leasing contractor who violates any provision of the Employee Leasing Act may be fined by the department for the violation in the amount of one thousand dollars ($1,000) and, if it is a continuing violation, the department may impose a fine of one thousand dollars ($1,000) for each day during which the violation continues.

B. The department may bring an action in a court of competent jurisdiction to enjoin any person from violating any provisions of the Employee Leasing Act.

C. A client, a leased employee or other person who suffers damages proximately caused by the failure of an employee leasing contractor to comply with the Employee Leasing Act may bring an action in any court of competent jurisdiction to recover the damages incurred.

D. If a person is determined to have violated the provisions of the Employee Leasing Act by the department or a court of competent jurisdiction, that person shall be liable for the expenses incurred by the department in investigating and enforcing the provisions of that act and also for reasonable attorneys' fees and costs incurred by the department in a court action.

Section 14

Section 14. DISCLOSURE TO CLIENTS REQUIRED.--An employee leasing contractor shall disclose to a client the services to be rendered by the contractor, the costs of those services and a description of the respective rights and obligations of the parties prior to entering into an employee leasing arrangement with the client.

Section 15

Section 15. SEVERABILITY.--If any part or application of the Employee Leasing Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 16

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is September 1, 1993.SB 397

CHAPTER 163

RELATING TO LICENSING; AMENDING THE VETERINARY PRACTICE ACT; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 61-14-2 NMSA 1978 (being Laws 1967, Chapter 62, Section 2, as amended) is amended to read:

"61-14-2. DEFINITIONS.--As used in the Veterinary Practice Act:

A. "animal" means any animal other than man;

B. "practice of veterinary medicine" means:

(1) the diagnosis, treatment, correction, change, relief or prevention of animal disease, deformity, defect, injury or other physical or mental condition, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic or other therapeutic or diagnostic substance or technique and the use of any procedure for artificial insemination, testing for pregnancy, diagnosing and treating sterility or infertility or rendering advice with regard to any of these;

(2) the representation, directly or indirectly, publicly or privately, of an ability and willingness to do any act mentioned in Paragraph (1) of this subsection; or

(3) the use of any title, words, abbreviation or letters in a manner or under circumstances that induce the belief that the person using them is qualified to do any act mentioned in Paragraph (1) of this subsection;

C. "veterinarian" means a person having the degree of doctor of veterinary medicine or its equivalent from a veterinary school or a person who has received a medical education in veterinary medicine in a foreign country and has thereafter entered

the United States and fulfilled the requirements and standards set forth by the American veterinary medical association and has passed all examinations required by the board prior to being issued any license to practice veterinary medicine in this state;

D. "licensed veterinarian" means a person licensed to practice veterinary medicine in this state;

E. "veterinary school" means any veterinary college or any division of a university or college which is approved for accreditation by the American veterinary medical association;

F. "board" means board of veterinary medicine;

G. "veterinary technician" means a skilled person certified by the board as being qualified by academic and practical training to provide veterinary services under the supervision and direction of the licensed veterinarian who is responsible for the performance of that technician;

H. "committee" means the veterinary technician examining committee;

I. "direct supervision" means the treatment of animals on the direction, order or prescription of a licensed veterinarian who is available on the premises and who has established a valid veterinarian-client-patient relationship;

J. "valid veterinarian-client-patient relationship" means:

(1) the veterinarian has assumed responsibility for making medical judgments regarding the health of an animal being treated and the need for and the course of the animal's medical treatment;

(2) the client has agreed to follow the instructions of the veterinarian;

(3) the veterinarian is sufficiently acquainted with an animal being treated, whether through examination of the animal or timely visits to the animal's habitat for purposes of assessing the condition in which the animal is kept, to be capable of making a preliminary or general diagnosis of the medical condition of the animal being treated; and

(4) the veterinarian is reasonably available for follow-up treatment; and

K. "veterinary medicine" means veterinary surgery, obstetrics, dentistry and all other branches or specialties of veterinary medicine."

Section 2

Section 2. Section 61-14-4 NMSA 1978 (being Laws 1967, Chapter 62, Section 3, as amended) is amended to read:

"61-14-4. BOARD CREATED--TERMS--COMPENSATION--FINANCE.--

A. The "board of veterinary medicine" is created. The board shall consist of seven members who are citizens of the United States and residents of the state of New Mexico. Veterinary members must have been licensed to practice veterinary medicine in the state for five years preceding their appointment to the board.

B. Members of the board and their successors shall be appointed by the governor. Five of the members shall be licensed veterinarians in New Mexico, and these appointments may be made from a list of five names for each professional vacancy, submitted to the governor by the New Mexico veterinary medical association. Two members shall represent the public and shall not have been licensed as veterinarians or have any significant financial interest, whether direct or indirect, in the occupation regulated.

C. Members shall be appointed to staggered terms of four years each. Appointments shall be made in such manner that the terms of no more tha two board members expire on July 1 of each year. All board members shall hold office until their successors are appointed and qualified. Appointments to vacancies shall be for the unexpired terms. Board members shall not serve more than two consecutive four-year terms.

D. A majority of the members of the board constitutes a quorum for the transaction of business, except that the vote of four members is required for suspension or revocation of a license. The board shall elect a chairman and other necessary officers prescribed by regulation of the board.

E. Members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance. This reimbursement and all other expenses involved in carrying out the Veterinary Practice Act shall be paid exclusively from fees received under the Veterinary Practice Act. The board shall deposit all fees received under the Veterinary Practice Act with the state treasurer for the exclusive use of the board, and money shall be expended only upon vouchers certified by a majority of the board.

F. Any board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board."

Section 3

Section 3. Section 61-14-5 NMSA 1978 (being Laws 1967, Chapter 62, Section 4, as amended) is amended to read:

"61-14-5. BOARD--DUTIES.--The board shall:

A. examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in New Mexico and issue, renew, deny, suspend or revoke licenses;

B. regulate artificial insemination and pregnancy diagnosis by establishing standards of practice and issuing permits to persons found qualified;

C. establish annually a schedule of license and permit fees based on the board's financial requirements for the ensuing year;

D. conduct investigations necessary to determine violations of the Veterinary Practice Act and discipline persons found in violation;

E. employ personnel necessary to carry out its duties;

F. promulgate and enforce regulations necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of the Veterinary Practice Act. The board shall make available to interested members of the public copies of the Veterinary Practice Act and all regulations promulgated by the board;

G. examine applicants for veterinary technician certification purposes. Such examination shall be held at least once a year at the times and places designated by the board;

H. establish a five-member veterinary technician examining committee; and

I. adopt regulations establishing continuing education requirements as a condition for license renewal."

Section 4

Section 4. Section 61-14-6 NMSA 1978 (being Laws 1975, Chapter 96, Section 4) is amended to read:

"61-14-6. VETERINARY TECHNICIAN EXAMINING COMMITTEE--MEMBERSHIP--TERMS--COMPENSATION.--

A. The "veterinary technician examining committee" shall consist of five members appointed by the board of veterinary medicine. The committee shall consist of two licensed veterinarians, one member of the board and two registered veterinary technicians.

B. Committee members shall serve for terms of four years except the board member on the committee shall be appointed for one year. With the exception of the board member on the committee, the terms of committee members shall be staggered by one year. Committee members shall serve until their successors have been appointed and qualified. Any vacancy shall be filled by appointment by the board of veterinary medicine for the remainder of the unexpired term.

C. Members of the committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Section 5

Section 5. Section 61-14-8 NMSA 1978 (being Laws 1967, Chapter 62, Section 5, as amended) is amended to read:

"61-14-8. APPLICATION FOR LICENSE.--

A. Any person desiring a license to practice veterinary medicine in this state may make written application to the board showing that he:

(1) has reached the age of majority; and

(2) is a person of good moral character. The application shall contain other information and proof as required by regulation of the board and shall be accompanied by an application fee established by the board.

B. If the board finds that the applicant possesses the proper qualifications, it shall admit him to the next examination. If an applicant is found unqualified to take the examination, the board shall immediately notify the applicant in writing of its findings and the grounds for them."

Section 6

Section 6. Section 61-14-10 NMSA 1978 (being Laws 1967, Chapter 62, Section 7, as amended) is amended to read:

"61-14-10. LICENSE BY ENDORSEMENT.--

A. Pursuant to its regulations, the board may issue a license without written examination, except an examination on state laws and other state and federal regulations related to the practice of veterinary medicine, to any qualified applicant who furnishes satisfactory evidence that he is a veterinarian and has for the five years next prior to filing his application, been a practicing veterinarian and licensed in a state, territory or district of the United States having license requirements at the time the

applicant was first licensed that were substantially equivalent to the requirements of the Veterinary Practice Act.

B. Pursuant to its regulations, the board may issue, with examination, a limited practice license in veterinary medicine, which limited practice license shall describe adequately that area of veterinary medicine that the licensee is entitled to practice.

C. At its discretion, the board may examine, orally or practically, any person qualifying for a license under this section.

D. The board may issue without examination the privilege of obtaining a temporary permit to practice veterinary medicine to:

(1) a qualified applicant for a license pending examination, provided the applicant is employed by and working under the direct supervision of a licensed veterinarian provided:

(a) the temporary permit shall expire the day after the notice of results of the first examination given after the permit is issued; and

(b) no additional temporary permit shall be issued to an applicant who has failed the required components of the New Mexico examination in this or any other state or any other territory, district or commonwealth of the United States; or

(2) a nonresident veterinarian validly licensed, and in good standing with the licensing authority in another state, territory, district or commonwealth of the United States, provided that the temporary permit shall be issued for a period lasting no more than sixty days, and that
not more than one permit shall be issued to such a person during each calendar year. No more than two temporary permits shall be issued to any one individual.

E. A temporary permit to practice veterinary medicine may be summarily revoked by a majority vote of the board without a hearing."

Section 7

Section 7. Section 61-14-11 NMSA 1978 (being Laws 1975, Chapter 96, Section 7) is amended to read:

"61-14-11. CERTIFICATION AS VETERINARY TECHNICIAN--ANNUAL REGISTRATION OF EMPLOYMENT--EMPLOYMENT CHANGE--FEES.--

A. No person shall perform or attempt to perform as a veterinary technician without first applying for and obtaining a certificate of qualification from the

board of veterinary medicine as a veterinary technician and having his employment registered in accordance with board regulation.

B. A veterinary technician shall perform only those acts and duties assigned him by a supervising licensed veterinarian that are within the scope of practice of such supervising veterinarian, not to include diagnosis, prescription or surgery.

C. An applicant for a certificate of qualification as a veterinary technician shall complete application forms as supplied by the board of veterinary medicine, successfully complete an examination conducted by the board and pay a fee to defray the cost of processing the application and administering the examination, which fee is not returnable.

D. Each certified veterinary technician shall annually register his employment with the board of veterinary medicine, stating his name and current address, the name and office address of both his employer and supervising licensed veterinarian and such additional information as the board deems necessary. Upon any change of employment as a veterinary technician, such registration shall automatically be void. Each annual registration or registration of new employment shall be accompanied by fees set by the board for use by the board in defraying the cost of administering the Veterinary Practice Act."

Section 8

Section 8. Section 61-14-12 NMSA 1978 (being Laws 1967, Chapter 62, Section 8, as amended) is amended to read:

"61-14-12. LICENSE, PERMIT AND REGISTRATION RENEWAL.--

A. All licenses, permits and registrations may be renewed by payment of the renewal fee and submission of proof of completion of continuing education requirements as established by regulation of the board. Not later than thirty days prior to expiration, the board shall mail a notice to each licensed veterinarian, registered veterinary technician and holder of an artificial insemination or pregnancy diagnosis permit that the license, registration or permit will expire and provide a renewal application form.

B. Any person may reinstate an expired license, registration or permit within five years of its expiration by making application to the board for renewal and paying the current renewal fee along with all delinquent renewal fees. After five years have elapsed since the date of expiration, a license, registration or permit may not be renewed and the holder must apply for a new license, registration or permit and take the required examination.

C. The board may provide by regulation for waiver of payment of any renewal fee of a licensed veterinarian during any period when he is on active duty with

any branch of the armed services of the United States for the duration of a national emergency."

Section 9

Section 9. Section 61-14-13 NMSA 1978 (being Laws 1967, Chapter 62, Section 9, as amended) is amended to read:

"61-14-13. DENIAL, SUSPENSION OR REVOCATION OF LICENSE.--

A. Upon written complaint by any person and after notice and hearing as prescribed in the Uniform Licensing Act, the board may place a licensee on probation; impose on a licensee an administrative penalty in an amount not to exceed two thousand five hundred dollars ($2,500); reprimand, deny, suspend for a definite period or revoke the license, certificate or permit; or take any other reasonable action as established by the board. This applies to any person whose activities are covered by the Veterinary Practice Act for:

(1) fraud, misrepresentation or deception in obtaining a license or permit;

(2) adjudication of insanity or manifest incapacity;

(3) use of advertising or solicitation that is false, misleading or is otherwise deemed unprofessional under regulations promulgated by the board;

(4) conviction o a felony or other crime involving moral turpitude;

(5) dishonesty, incompetence, gross negligence or other malpractice in the practice of veterinary medicine;

(6) having professional association with or employing any person practicing veterinary medicine unlawfully;

(7) fraud or dishonesty in the application or reporting of any test for disease in animals;

(8) failure to maintain professional premises and equipment in a clean and sanitary condition in compliance with regulations promulgated by the board;

(9) habitual or excessive use of intoxicants or drugs;

(10) cruelty to animals;

(11) revocation of a license to practice veterinary medicine by another state, territory or district of the United States on grounds other than nonpayment of license or permit fees;

(12) unprofessional conduct by violation of a regulation promulgated by the board under the Veterinary Practice Act;

(13) failure to perform as a veterinary technician under the direct supervision of a licensed veterinarian;

(14) failure of a licensed veterinarian to reasonably exercise direct supervision with respect to a veterinary technician;

(15) aiding or abetting the practice of veterinary medicine by a person not licensed, certified or permitted by the board;

(16) using any controlled drug or substance on any animal for the purpose of illegally influencing the outcome of a competitive event;

(17) willfully or negligently administering a drug or substance that will adulterate meat, milk, poultry, fish or eggs;

(18) failure to maintain required logs and records;

(19) the use of prescription or sale of any prescription drug or the prescription of extra-label use of any over the counter drug in the absence of a valid veterinarian-client-patient relationship;

(20) failure to report, as required by law, or making false report of any contagious or infectious disease; or

(21) unfair or deceptive practices.

B. Any person whose license, certificate or permit is suspended or revoked by the board under this section may, at the discretion of the board, be relicensed or reinstated by the board at any time without examination upon written application to the board showing cause to justify relicensing or reinstatement."

Section 10

Section 10. Section 61-14-14 NMSA 1978 (being Laws 1967, Chapter 62, Section 10, as amended) is amended to read:

"61-14-14. EXEMPTIONS.--Provisions of the Veterinary Practice Act do not apply to:

A. employees of federal, state or local governments performing official duties;

B. regular students in a veterinary school performing duties or actions assigned by an instructor or working under direct supervision of a licensed veterinarian during a school vacation period;

C. reciprocal aid of neighbors in performing routine accepted livestock management practices;

D. any veterinarian licensed in any foreign jurisdiction consulting with a licensed veterinarian;

E. any merchant or manufacturer selling at his regular place of business any medicine, feed, appliance or other product used in the prevention or treatment of animal disease;

F. the owner of an animal, his consignees and their employees while performing routine accepted livestock management practices in the care of animals belonging to the owner;

G. a member of the faculty of a veterinary school performing his regular functions or a person lecturing or giving instruction or demonstration at a veterinary school or in connection with the continuing education course or seminar for licensed veterinarians, veterinary technicians or persons holding or training for valid permits for artificial insemination or diagnosing pregnancy;

H. a person selling or applying any pesticide, insecticide or herbicide;

I. a person engaging in bona fide scientific research that reasonably requires experimentation involving animals;

J. a person who is artificially inseminating or diagnosing pregnancy with a valid permit issued by the board; or

K. any act, task or function performed by a veterinary technician under the direct supervision of a licensed or license-exempt veterinarian, when:

(1) the veterinary technician is certified by and annually registered with the board as one qualified by training or experience to function as an assistant to a veterinarian;

(2) the act, task or function is performed in accordance with rules and regulations promulgated by the board; and

(3) the services of the veterinary technician are limited to assisting the veterinarian in the particular fields for which the assistant has been trained, certified and registered; provided that this subsection shall not limit or prevent any veterinarian from delegating to a qualified person any acts, tasks or functions that are otherwise permitted by law but that do not include diagnosis, prescription or surgery."

Section 11

Section 11. A new section of the Veterinary Practice Act is enacted to read:

"IMPAIRED VETERINARIAN.--

A. The board may appoint an impaired-veterinarian committee to organize and administer a program that will:

(1) serve as a diversion program to which the board may refer licensees in lieu of or in addition to other disciplinary action under terms set by the board; and

(2) be a confidential source of treatment or referral for veterinarians who, on a voluntary basis and without the knowledge of the board, desire to avail themselves of treatment for emotionally based or chemical-dependence impairments.

B. The impaired-veterinarian committee shall:

(1) provide evaluations for veterinarians who request participation in the diversion program;

(2) review and designate treatment facilities and services to which veterinarians in the diversion program may be referred;

(3) receive and review information concerning the status and progress of participants in the diversion program;

(4) publicize the diversion program in coordination with veterinary professional associations; and

(5) prepare and provide reports at least annually to the board.

C. Each veterinarian referred to the diversion program by the board shall be informed of the procedures applicable to the diversion program, of the rights and responsibilities associated with participation in the diversion program and of the possible consequences of failure to participate in the diversion program. Failure to comply with any treatment requirement of the diversion program may result in termination of diversion program participation; termination of diversion program participation shall be reported to the board by the impaired-veterinarian committee.

Participation in the diversion program shall not be a defense against, but may be considered in mitigating, any disciplinary action taken by the board. The board is not precluded from commencing a disciplinary action against a veterinarian who is participating in the diversion program or has been terminated.

D. No member of the board or the impaired-veterinarian committee shall be liable for civil damages because of acts or omissions that occur in administering the provisions of this section."

Section 12

Section 12. Section 61-14-20 NMSA 1978 (being Laws 1979, Chapter 76, Section 2, as amended) is amended to read:

"61-14-20. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of veterinary medicine is terminated on July 1, 1997 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 14 NMSA 1978 until July 1, 1998. Effective July 1, 1998, Chapter 61, Article 14 NMSA 1978 is repealed."

Section 13

Section 13. REPEAL.--Section 61-14-17 NMSA 1978 (being Laws 1967, Chapter 62, Section 12) is repealed.SB 423

CHAPTER 164

RELATING TO INSURANCE; REQUIRING REPORTS FROM INSURERS PROVIDING GROUP INSURANCE POLICIES TO EMPLOYERS WITH TWENTY-FIVE OR MORE EMPLOYEES.

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

Section 1

Section 1. Section 59A-23-3.1 NMSA 1978 (being Laws 1985, Chapter 167, Section 1, as amended) is amended to read:

"59A-23-3.1. GROUP INSURANCE REPORTS REQUIRED.--At least quarterly, upon request by the employer, each insurer who has delivered or issued for delivery a policy of group insurance covering twenty-six or more employees, all or a portion of the premiums for which is paid by the employer of the insureds, shall submit to the employer a financial summary report by coverage of expenses incurred by or on behalf of the employees of that employer since the last report. The report shall include the number and amount of monthly paid claims, monthly covered lives and an accounting of

reserves and retention costs, together with such other information as the superintendent may require by regulation."
SB 427

CHAPTER 165

RELATING TO PROPERTY; PROVIDING FOR LATER JOINDER BY A SPOUSE; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 40-3-13 NMSA 1978 (being Laws 1973, Chapter 320, Section 8, as amended) is amended to read:

"40-3-13. TRANSFERS, CONVEYANCES, MORTGAGES AND LEASES OF REAL PROPERTY--WHEN JOINDER REQUIRED.--

A. Except for purchase-money mortgages and except as otherwise provided in this subsection, the spouses must join in all transfers, conveyances or mortgages or contracts to transfer, convey or mortgage any interest in community real property and separate real property owned by the spouses as cotenants in joint tenancy or tenancy in common. The spouses must join in all leases of community real property or separate real property owned by the spouses as cotenants in joint tenancy or tenancy in common if the initial term of the lease, together with any option or extension contained in the lease or provided for contemporaneously, exceeds five years or if the lease is for an indefinite term.

Any transfer, conveyance, mortgage or lease or contract to transfer, convey, mortgage or lease any interest in the community real property or in separate real property owned by the spouses as cotenants in joint tenancy or tenancy in common attempted to be made by either spouse alone in violation of the provisions of this section shall be void and of no effect, except that either spouse may transfer, convey, mortgage or lease directly to the other without the other joining therein.

Except as provided in this section, either spouse may transfer, convey, mortgage or lease separate real property without the other's joinder.

B. Nothing in this section shall affect the right of one of the spouses to transfer, convey, mortgage or lease or contract to transfer, convey, mortgage or lease any community real property orseparate real property owned by the spouses as cotenants in joint tenancy or tenancy in common without the joinder of the other spouse, pursuant to a validly executed and recorded power of attorney as provided in Section 47-1-7 NMSA 1978. Nothing in this section shall effect the right of a spouse not joined in

a transfer, conveyance, mortgage, lease or contract to validate an instrument at any time by a ratification in writing." SB 524

CHAPTER 166

RELATING TO EDUCATION; PROHIBITING THE SALE OR USE OF STUDENT, FACULTY AND STAFF LISTS IN DIRECT MARKETING; PROVIDING FOR ENFORCEMENT AND REMEDIES.

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

Section 1

Section 1. A new section of the Public School Code is enacted to read:

"PROHIBITION ON THE SALE OR USE OF STUDENT, FACULTY AND STAFF LISTS IN DIRECT MARKETING--REMEDIES.--

A. No person shall sell or use student, faculty or staff lists with personal identifying information obtained from a public school or a local school district for the purpose of marketing goods or services directly to students, faculty or staff or their families by means of telephone or mail. The provisions of this section shall not apply:

(1) to legitimate educational purposes, which shall be determined by rules and regulations developed by the department of education; or

(2) when a parent of a student authorizes the release of the student's personal identifying information in writing to the public school or local school district. For the purposes of this subsection, "personal identifying information" means the names, addresses, telephone numbers, social security numbers and other similar identifying information about students maintained by a public school or local school district.

B. Any person receiving a solicitation may bring an action against any person who violates Subsection A of this section.

C. If a person is found to have violated Subsection A of this section in an action brought under Subsection B of this section, then the person shall be required to pay actual damages or the sum of five hundred dollars ($500), whichever is greater, and reasonable attorneys' fees to the person receiving the solicitation." SB 610

CHAPTER 167

RELATING TO MOTOR VEHICLES; PROHIBITING CERTAIN PRACTICES BY MANUFACTURERS AND DISTRIBUTORS.

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

Section 1

Section 1. Section 57-16-5 NMSA 1978 (being Laws 1973, Chapter 6, Section 5, as amended) is amended to read:

"57-16-5. UNLAWFUL ACTS--MANUFACTURERS--DISTRIBUTORS--REPRESENTATIVES.--It is unlawful for any manufacturer, distributor or representative to:

A. coerce or attempt to coerce a dealer to order or accept delivery of any motor vehicle, appliances, equipment, parts or accessories therefor or any other commodity that the motor vehicle dealer has not voluntarily ordered;

B. coerce or attempt to coerce a dealer to order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of the motor vehicles as publicly advertised by the manufacturer;

C. coerce or attempt to coerce a dealer to order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever;

D. refuse to deliver, in reasonable quantities and within a reasonable time after receipt of dealer's order, to any motor vehicle dealer having a franchise or contractual arrangement for the retail sale of any motor vehicles sold or distributed by the manufacturer, distributor or representative, any such motor vehicles, parts or accessories as are covered by the franchise or contract specifically publicly advertised by the manufacturer, distributor or representative to be available for immediate delivery; provided, however, the failure to deliver any motor vehicle, parts or accessories shall not be considered a violation of Chapter 57, Article 16 NMSA 1978 if such failure is due to an act of God, work stoppage or delay due to a strike or labor difficulty, shortage of materials, freight embargo or other cause over which the manufacturer, distributor or representative or any agent thereof has no control;

E. coerce or attempt to coerce any motor vehicle dealer to enter into any agreement with the manufacturer, distributor or representative or to do any other act prejudicial to the dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer, distributor or representative and the dealer; provided, however, that notice in good faith to any motor vehicle dealer of the dealer's violation of any terms or provisions of the franchise or contractual agreement shall not constitute a violation of Chapter 57, Article 16 NMSA 1978;

F. terminate or cancel the franchise or selling agreement of any dealer without due cause. The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation regardless of the terms or provisions of the franchise or selling agreement. The manufacturer, distributor or

representative shall notify a motor vehicle dealer in writing by registered mail of the termination or cancellation of the franchise or selling agreement of the dealer at least sixty days before the effective date thereof, stating the specific grounds for termination or cancellation; and the manufacturer, distributor or representative shall notify a motor vehicle dealer in writing by registered mail at least sixty days before the contractual term of his franchise or selling agreement expires that the same will not be renewed, stating the specific grounds for nonrenewal in those cases where there is no intention to renew, and in no event shall the contractual term of any franchise or selling agreement expire without the written consent of the motor vehicle dealer involved prior to the expiration of at least sixty days following the written notice. During the sixty-day period, either party may in appropriate circumstances petition a court to modify the sixty-day stay or to extend it pending a final determination of proceedings on the merits. The court shall have authority to grant preliminary and final injunctive relief;

G. use false, deceptive or misleading advertising in connection with his business;

H. offer to sell or to sell any motor vehicle to any motor vehicle dealer in this or any other state of the United States at a lower actual price than the actual price offered to any other motor vehicle dealer in this state for the same model vehicle similarly equipped or to utilize any device, including, but not limited to, sales promotion plans or programs that result in such lesser actual price; provided, however, the provisions of this subsection shall
not apply to sales to a motor vehicle dealer for resale to any unit of the United States government, the state or any of its political subdivisions; and provided, further, the provisions of this subsection shall not apply to sales to a motor vehicle dealer of any motor vehicle ultimately sold, donated or used by the dealer in a driver education program; and provided, further, that the provisions of this subsection shall not apply so long as a manufacturer, distributor or representative offers to sell or sells new motor vehicles to all motor vehicle dealers at an equal price. For the purposes of this subsection, "actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer, distributor or representative, whether paid to the dealer or the ultimate purchaser of the vehicle. This provision shall not apply to sales by the manufacturer, distributor or representatives to the United States government or any agency thereof. The provisions of this subsection dealing with vehicle prices in any other state and defining actual price shall not apply to any manufacturer or distributor which has no dealer within fifty miles of a state line, which dealer is in a different region from that other state;

I. willfully discriminate, either directly or indirectly, in price between different purchasers of a commodity of like grade or quality where the effect of the discrimination may be to lessen substantially competition or tend to create a monopoly or to injure or destroy the business of a competitor;

J. offer to sell or to sell parts or accessories to any motor vehicle dealer for use in his own business for the purpose of repairing or replacing the same or a

comparable part or accessory at a lower actual price than the actual price charged to any other motor vehicle dealer for similar parts or accessories for use in his own business; provided, however, in those cases where motor vehicle dealers have a franchise to operate and serve as wholesalers of parts and accessories to retail outlets or other dealers, whether or not the dealer is regularly designated as a wholesaler, nothing herein contained shall be construed to prevent a manufacturer, distributor or representative from selling to the motor vehicle dealer who operates and services as a wholesaler of parts and accessories such parts and accessories as may be ordered by the motor vehicle dealer for resale to retail outlets at a lower actual price than the actual price charged a motor vehicle dealer who does not operate or serve as a wholesaler of parts and accessories;

K. prevent or attempt to prevent by contract or otherwise any motor vehicle dealer from changing the capital structure of his dealership or the means by or through which he finances the operation of his dealership, provided the dealer at all times meets any reasonable capital standards agreed to between the dealership and the manufacturer, distributor or representative, and provided such change by the dealer does not result in a change in the executive management control of the dealership;

L. prevent or attempt to prevent by contract or otherwise any motor vehicle dealer or any officer, partner or stockholder of any motor vehicle dealer from selling or transferring any part of the interest of any of them to any other person or party; provided, however, that no dealer, officer, partner or stockholder shall have the right to sell, transfer or assign the franchise or power of management or control thereunder without the consent of the manufacturer, distributor or representative except that consent shall not be unreasonably withheld;

M. obtain money, goods, services, anything of value or any other benefit from any other person with whom the motor vehicle dealer does business on account of or in relation to the transactions between the dealer and the other person, unless such benefit is promptly accounted for and transmitted to the motor vehicle dealer;

N. require a motor vehicle dealer to assent to a release, assignment, novation, waiver or estoppel that would relieve any person from liability imposed by Chapter 57, Article 16 NMSA 1978;

O. require any motor vehicle dealer to provide installment financing with a specified financial institution;

P. establish an additional franchise for the same line-make in a community where the same line-make is presently being served by an existing motor vehicle dealer if such addition would be inequitable to the existing dealer; provided, however, that the sales and service needs of the public shall be given due consideration in determining the equities of the existing dealer. The sole fact that the manufacturer, distributor or representative desires further penetration of the market shall not be grounds for establishing an additional franchise; provided further, that the manufacturer, distributor

or representative shall give a ninety-day written notice by registered mail to all same line-make dealers in a community of its intention to establish an additional franchise;

Q. offer to sell, lease or to sell or lease any new motor vehicle to any person, except a distributor at a lower actual price therefor than the actual price offered and charged to a motor vehicle dealer for the same model vehicle similarly equipped or to utilize any device that results in such lesser actual price;

R. sell, lease or provide motorcycles, parts or accessories to any person not a dealer or distributor for the line-make sold, leased or provided. The provisions of this subsection shall not apply to sales, leases or provisions of motor vehicles, parts or accessories by manufacturer, distributor or representative to the United States government or any agency thereof or the state or any of its political subdivisions; or

S. offer any finance program, either directly or through any affiliate, based on the physical location of the selling dealer or the residence of the buyer. The provisions of this subsection shall not apply to any manufacturer or distributor which has no dealer within fifty miles of a state line, which dealer is in a different region from that other state."

Section 2

Section 2. Section 57-16-7 NMSA 1978 (being Laws 1973, Chapter 6, Section 7, as amended) is amended to read:

"57-167. WARRANTY CLAIMS--PAYMENT.--

A. Every manufacturer, distributor or representative shall properly fulfill any warranty agreement and adequately and fairly compensate each of its motor vehicle dealers for labor, parts and other expenses incurred by the dealer to perform the required warranty repairs. All compensation for labor shall be the same as the dealer would have made to and collected from an individual retail customer for the same repairs if performed in the normal course of business not covered by a warranty. Compensation for parts shall be in an amount not less than the manufacturer's warranty reimbursement rate for parts or the amount received by the motor vehicle dealer from retail customers for parts used in non-warranty work of like kind. All claims made by motor vehicle dealers under this section and under Section 57-16-6 NMSA 1978 shall be paid within thirty days following their approval. All claims shall be either approved or disapproved within thirty days after their receipt, and when any claim is disapproved, the motor vehicle dealer who submits it shall be notified in writing of its disapproval within that period, and each notice shall state the specific grounds upon which the disapproval is based. Any special handling of claims required by the manufacturer, distributor or representative not uniformly required of all dealers of that make may be enforced only after thirty days' notice in writing and upon good and sufficient reason.

B. The provisions of this section shall not apply to recreational travel trailers or to parts of systems, fixtures, appliances, furnishings, accessories and features of motor homes."

Section 3

Section 3. Section 57-16-9.2 NMSA 1978 (being Laws 1991, Chapter 49, Section 2) is amended to read:

"57-16-9.2. MOTOR VEHICLE DEALERS--TERMINATION OF FRANCHISE--RETURN OF INVENTORY.--

A. If on termination of a franchise the dealer delivers to the manufacturer or distributor the inventory that was purchased from the manufacturer or distributor and that is held by the dealer on the date of termination, the manufacturer or distributor shall pay to the dealer:

(1) the dealer cost of the new, unsold and undamaged motorcycles, current model year motor vehicles and motor vehicles purchased from the manufacturer or distributor six months prior to receipt of a notice of termination;

(2) an amount equal to ninety-five percent of the current price of new, unused and undamaged motorcycle attachments and motor vehicle repair parts; and

(3) an amount equal to an additional five percent of the current price of new, unused and undamaged motorcycle attachments and motor vehicle repair parts unless the manufacturer or distributor performs the handling, packing and loading of the parts, in which case no additional amount is required under this paragraph.

B. The manufacturer or distributor may subtract from the sum due under Subsection A of this section the amount of debts owed by the dealer to the manufacturer or distributor. The manufacturer or distributor and the dealer are each responsible for one-half of the cost of delivering the inventory to the manufacturer or distributor.

C. The manufacturer or distributor shall pay the amount due under this section before the sixty-first day after the day that the manufacturer or distributor receives inventory from the dealer.

D. On payment of the amount due under this section, title to the inventory is transferred to the manufacturer or distributor.

E. The provisions of this section shall not apply to recreational travel trailer or motor home manufacturers or dealers."

Section 4

Section 4. Section 57-16-9.3 NMSA 1978 (being Laws 1991, Chapter 49, Section 3) is amended to read:

"57-16-9.3. MOTOR VEHICLE DEALERS--TERMINATION OF FRANCHISE--RETURN OF INVENTORY--EXCEPTIONS.--A manufacturer or distributor is not required to repurchase:

A. inventory that the dealer orders either after the dealer receives notice of the termination of the franchise from the manufacturer or distributor or after any relief, granted by a court to the dealer in the form of temporary restraining orders, temporary injunctions or permanent injunctions, has expired;

B. inventory for which the dealer is unable to furnish evidence of clear title; or

C. motorcycle attachments or motor vehicle repair parts that have a limited storage life, are in a broken or damaged package, are usually sold as part of a set, if the parts are separated from the set, or cannot be sold without reconditioning." SB 625

CHAPTER 168

RELATING TO EDUCATION; REQUIRING THE STATE DEPARTMENT OF PUBLIC EDUCATION TO ESTABLISH A PROGRAM FOR AT-RISK STUDENTS.

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

Section 1

Section 1. LEGISLATIVE FINDINGS.--The legislature finds that a high percentage of students continues to drop out of school prior to earning a high school diploma. The legislature finds that many of these students could be identified as at-risk students, who with additional assistance or through the use of alternative educational programs might be retained in the education system. The legislature also finds that keeping at-risk students in school may result in such students becoming more productive citizens, less likely to eventually rely on state assistance programs.

Section 2

Section 2. PROGRAM DEVELOPMENT.--The department shall develop a program by which to contract for services with the appropriate private, nonprofit entities who apply to the department and who meet guidelines determined by the department for the purpose of providing alternative education opportunities to at-risk students. The department shall consider the involvement and advice of community educational

advancement organizations and geographic diversity in determining the best disbursement of the funds. The department shall also monitor and evaluate the results of these programs. Based on the results obtained, the department may recommend to the legislature possible amendments to the Public School Finance Act to eventually incorporate funding of alternative education opportunities for at-risk students. For the purpose of this appropriation, "at-risk student" means a student who has failed at least three classes in his ninth grade year. SB 710

CHAPTER 169

RELATING TO INSURANCE; PROVIDING FOR COVERAGE OF NEWLY BORN CHILDREN; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 59A-22-34 NMSA 1978 (being Laws 1984, Chapter 127, Section 456) is amended to read:

"59A-22-34. NEWLY BORN CHILDREN COVERAGE.--

A. All individual and group health insurance policies delivered or issued for delivery in this state and which provide coverage on an expense-incurred basis for a family member of the insured shall, as to such family members' coverage, also provide that the health insurance benefits applicable for children shall be payable with respect to a newly born child of the insured from the moment of birth.

B. All individual and group health insurance policies delivered or issued for delivery in this state that do not provide coverage for a family member of the insured shall provide for an option to add to the coverage any newly born child of the insured provided that the requirements of Subsection D of this section have been met.

C. The coverage for newly born children shall consist of coverage of injury or sickness, including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities and, where necessary to protect the life of the infant, transportation, including air transport, to the nearest available tertiary care facility for newly born infants.

D. If payment of a specific premium is required to provide coverage for a child, the policy may require that a notification of birth of a newly born child and payment of the required premium must be furnished to the insurer within thirty-one days after the date of birth in order to have the coverage from birth.

E. As used in this section and in Section 59A-22-35 NMSA 1978, "tertiary care facility" means a hospital unit which provides complete perinatal care and intensive

care of intrapartum and perinatal high-risk patients with responsibilities for coordination of transport, communication, education and data analysis systems for the geographic area served."

Section 2

Section 2. Section 59A-46-27 NMSA 1978 (being Laws 1984, Chapter 127, Section 874) is amended to read:

"59A-46-27. NEWLY BORN CHILDREN COVERAGE.--

A. All individual and group health maintenance organization contracts delivered or issued for delivery in this state shall also provide that the health benefits applicable for children shall be payable with respect to a newly born child of the subscriber or the subscriber's spouse from the moment of birth.

B. All individual and group health maintenance organization contracts delivered or issued for delivery in this state that do not provide health benefits applicable for children shall provide for an option to add to the coverage any newly born child of the insured provided that the requirements of Subsection D of this section have been met.

C. The coverage for newly born children shall consist of coverage of injury or sickness, including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities and, where necessary to protect the life of the infant, transportation, including air transport, to the nearest available tertiary care facility for newly born infants.

D. If a specific payment is required to provide coverage for a child, the contract may require that a notification of birth of a newly born child and payment must be furnished to the health maintenance organization within thirty-one days after the date of birth in order to have the coverage from birth.

E. As used in this section and in Section 59A-46-28 NMSA 1978, "tertiary care facility" means a hospital unit which provides complete perinatal care and intensive care of intrapartum and perinatal high-risk patients with responsibilities for coordination of transport, communication, education and data analysis systems for the geographic area served."

Section 3

Section 3. APPLICABILITY.--The provisions of this act apply to policies, plans, contracts and certificates delivered or issued for delivery or renewed, extended or amended in this state on or after July 1, 1993.SB 728

CHAPTER 170

RELATING TO MANUFACTURED HOUSING; EXTENDING THE TERMINATION DATE OF THE MANUFACTURED HOUSING COMMITTEE AND THE MANUFACTURED HOUSING DIVISION; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 60-14-16 NMSA 1978 (being Laws 1983, Chapter 295, Section 21, as amended) is amended to read:

"60-14-16. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The manufactured housing committee and the manufactured housing division are terminated on July 1, 2000 pursuant to the Sunset Act. The manufactured housing committee and the manufactured housing division shall continue to operate according to the provisions of Chapter 60, Article 14 NMSA 1978 until July 1, 2001. Effective July 1, 2001, Chapter 60, Article 14 NMSA 1978 is repealed." SB 756

CHAPTER 171

RELATING TO OCCUPATIONAL LICENSURE; ESTABLISHING A SYSTEM OF LICENSURE FOR BARBERS AND COSMETOLOGISTS; PROVIDING FOR CERTIFICATION OF MANICURISTS-PEDICURISTS, ESTHETICIANS AND ELECTROLOGISTS; PROVIDING FOR LICENSURE OF ESTABLISHMENTS, ELECTROLOGY CLINICS, SCHOOLS AND INSTRUCTORS; CREATING FUNDS; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. SHORT TITL.--Sections 1 through 24 of this act may be cited as the "Barbers and Cosmetologists Act".

Section 2

Section 2. DEFINITIONS.--As used in the Barbers and Cosmetologists Act:

A. "barber" means a person, other than a student, who for compensation engages in barbering;

B. "board" means the board of barbers and cosmetologists;

C. "cosmetologist" means a person, other than a student, who for compensation engages in cosmetology;

D. "electrologist" means a person who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;

E. "establishment" means an immobile beauty shop, barber shop, electrology clinic, salon or similar place of business in which cosmetology, barbering or electrolysis is performed;

F. "esthetician" means a person who for compensation uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person;

G. "manicurist-pedicurist" means a person who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet; and

H. "school" means a public or private instructional facility approved by the board that teaches cosmetology or barbering.

Section 3

Section 3. BARBERING DEFINED.--Barbering includes any one or any combination of the following practices when done upon the upper part of the human body for cosmetic purposes for the public generally, upon male or female:

A. shaving or trimming the beard or cutting the hair;

B. curling and waving, including permanent waving, the hair;

C. giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances;

D. shampooing, bleaching or dyeing the hair or applying tonics; or

E. applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper part of the body.

Section 4

Section 4. COSMETOLOGY DEFINED.--Cosmetology means the practice of those services that include:

A. arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, straightening or similar work upon the hair of a person, whether by hand or through the use of chemistry or of mechanical or electrical apparatus or appliances;

B. using cosmetic preparations, antiseptics, tonics, lotions or creams or massaging, cleansing, stimulating, manipulating, beautifying or performing similar work on the body of a person;

C. manicuring and pedicuring the nails of a person;

D. caring for and servicing wigs and hair pieces; or

E. removing of unwanted hair except by means of electrology.

Section 5

Section 5. LICENSE REQUIRED--CERTIFICATION REQUIRED.--

A. Unless licensed pursuant to the Barbers and Cosmetologists Act or exempted from the provisions of that act, no person shall practice barbering or cosmetology for compensation either directly or indirectly.

B. Unless licensed pursuant to the Barbers and Cosmetologists Act, no person shall operate a school or establishment for compensation.

C. Unless licensed pursuant to the Barbers and Cosmetologists Act or exempted from the provisions of that act, no person shall teach barbering, cosmetology or electrology for compensation.

D. Unless certified by the board pursuant to the Barbers and Cosmetologists Act, no person shall practice as a manicurist-pedicurist, esthetician or electrologist for compensation.

Section 6

Section 6. BOARD CREATED--MEMBERSHIP.--

A. The "board of barbers and cosmetologists" is created. The board shall be administratively attached to the regulation and licensing department. The board shall consist of nine members appointed by the governor. Members shall serve three-year terms; provided that at the time of initial appointment, the governor shall appoint members to abbreviated terms to allow staggering of subsequent appointments. Vacancies shall be filled in the manner of the original appointment.

B. Of the nine members of the board, five shall be licensed pursuant to the Barbers and Cosmetologists Act and shall have at least five years' practical experience in their respective occupations. Of those five, two members shall be licensed barbers, two members shall be licensed cosmetologists and one member shall represent school owners. The remaining four members shall be public members. Neither the public members nor their spouses shall have ever been licensed or certified pursuant to the provisions of the Barbers and Cosmetologists Act or similar prior legislation, or have a financial interest in a school or establishment.

C. Members of the board shall be reimbursed pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

D. The board shall elect from among its members a chairman and such other officers as it deems necessary. The board shall meet at the call of the chairman, not less than four times each year. A majority of members currently serving shall constitute a quorum for the conduct of business.

E. No board member shall serve more than two full consecutive terms and any member who fails to attend, after proper notice, three meetings shall automatically be recommended for removal unless excused for reasons set forth by board regulation.

Section 7

Section 7. BOARD POWERS AND DUTIES.--

A. The board shall:

(1) adopt and file, in accordance with the State Rules Act, rules and regulations necessary to carry out the provisions of the Barbers and Cosmetologists Act;

(2) establish fees;

(3) provide for the examination, licensure and license renewal of applicants for licensure;

(4) establish standards for and provide for the examination, certification and renewal of certification of manicurists-pedicurists, estheticians and electrologists;

(5) adopt a seal;

(6) furnish copies of rules and regulations and sanitary requirements adopted by the board to each owner or manager of an establishment or school;

(7) keep a record of its proceedings and a register of applicants for certification or licensure;

(8) provide for the licensure of barbers and cosmetologists, the certification of manicurist-pedicurists, estheticians and electrologists and the licensure of instructors, schools and establishments;

(9) establish administrative penalties and fines;

(10) create and establish standards for special licenses; and

(11) hire an executive director and such other staff as is necessary to carry out the provisions of the Barbers and Cosmetologists Act.

B. The board may establish continuing education requirements as requirements for licensure.

C. Any member of the board, its employees or agents may enter and inspect any school or establishment at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act.

Section 8

Section 8. REQUIREMENTS FOR LICENSURE--BARBERS.--

A. A barber license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) has an education equivalent to the completion of the second year of high school;

(2) is at least seventeen years of age;

(3) has completed a course in barbering of at least twelve hundred hours in a school approved by the board; and

(4) has passed an examination approved by the board.

B. The holder of a barber license has the right and privilege to use the title "barber" and to use a barber pole, the traditional striped, vertical emblem of the barbering trade.

Section 9

Section 9. LICENSURE REQUIREMENTS--COSMETOLOGISTS.--

A. A cosmetologist license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is at least seventeen years of age;

(2) has an education equivalent to the completion of the second year of high school;

(3) has completed a course in cosmetology of at least sixteen hundred hours at a school approved by the board; and

(4) has passed an examination approved by the board.

B. The holder of a cosmetologist license has the right and privilege to place the initials "R.C." immediately following his name to indicate his licensure as a cosmetologist.

Section 10

Section 10. CERTIFICATION OF MANICURISTS-PEDICURISTS, ESTHETICIANS AND ELECTROLOGISTS.--

A. The board shall provide for the certification of manicurists-pedicurists. The board shall issue a manicurist-pedicurist certificate to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he complies with all requirements established by the board. Any person holding a manicurist-pedicurist certificate has the right and privilege to place the initials "R.M." immediately following his name.

B. The board shall provide for the certification of estheticians. The board shall issue a esthetician certification to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he complies with all requirements established by the board. Any person holding an esthetician certificate has the right and privilege to place the initials "R.F." immediately following his name.

C. The board shall provide for the certification of electrologists. The board shall issue an electrologist certificate to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he complies with all requirements established by the board. Any person holding an electrologist certificate has the right and priviege to place the initials "R.E." immediately following his name.

Section 11

Section 11. LICENSURE OF INSTRUCTORS.--

A. A cosmetologist instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is a licensed cosmetologist;

(2) has completed at least a four-year high school course of study or its equivalent as approved by the board;

(3) has met all requirements established by the board; and

(4) has passed an examination approved by the board.

B. A barber instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is a licensed barber;

(2) has completed at least a four-year high school course of study or its equivalent as approved by the board;

(3) has met all requirements established by the board; and

(4) has passed an examination approved by the board.

C. An electrologist instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he complies with all requirements established by the board.

D. The holder of an instructor license has the right and privilege to place the initials "R.I." immediately following his name to designate that he is a licensed instructor.

Section 12

Section 12. LICENSURE OF SCHOOLS.--

A. The board shall provide for the licensure of barber schools. The board shall issue a barber school
license to any barber school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it

complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

B. The board shall provide for the licensure of cosmetology schools. The board shall issue a cosmetology school license to any cosmetology school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

C. The board shall provide for the licensure of electrology schools. The board shall issue an electrology school license to any electrology school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

D. The board shall provide for the licensure of specialty schools. The board shall issue a specialty school license to any specialty school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

E. The board shall establish crossover credit standards for training available at either barber schools or cosmetology schools that may be used in meeting licensure requirements in either profession.

F. In providing for licensure of schools, the board shall establish procedures for alternative teaching agreements, or "teach-out" arrangements in the event a school is unable to meet its contracted teaching obligations.

Section 13

Section 13. TUITION RECOVERY FUND CREATED-- ADMINISTRATION-- CLAIMS.--

A. The "tuition recovery fund" is created in the state treasury. Money in the fund is appropriated to the
board for the purpose of paying claims against the tuition recovery fund, including refunds to lending institutions. Money appropriated to the fund or accruing to it shall not be transferred to another fund or encumbered or disbursed in any manner except for the purposes set forth in the Barbers and Cosmetologists Act; provided that money in the fund shall be invested by the state treasurer in the manner of other state funds. The fund shall not revert at the end of the fiscal year. Disbursements from the fund shall only

be made upon warrant drawn by the secretary of finance and administration upon vouchers signed by the executive director of the board.

B. The board shall administer the tuition recovery fund. Money in the fund shall be used to indemnify students damaged as a result of a barber school or cosmetology school ceasing operation or terminating a program prior to students having completed the programs for which they have contracted.

C. Claims against the fund shall be filed with the board on forms approved by the board. Claims shall be filed within twelve months of a licensed school ceasing operation. The board shall by regulation provide for consideration and administration of claims made against the fund. The board is authorized to sue for replenishment of the fund when depletion of the fund is a direct result of a barber school or cosmetology school ceasing operation.

D. The board shall dedicate a portion of the annual licensure fee assessed every barber school and cosmetology school to the tuition recovery fund. When the balance in the fund reaches an amount set by the board, the board shall discontinue dedication of a portion of the fee.

Section 14

Section 14. BARBERS AND COSMETOLOGISTS FUND CREATED.--The "barbers and cosmetologists fund" is created in the state treasury. All license fees, charges and fines imposed by the board shall be deposited in the fund. Money in the fund is appropriated to the board for the purpose of carrying out the provisions of the Barbers and Cosmetologists Act. Any balance remaining in the fund at the end of each fiscal year shall not revert to the general fund.

Section 15

Section 15. LICENSURE OF ALL ESTABLISHMENTS.--The board shall provide for the licensure of all establishments. The board shall issue a license to establishments and clinics that submit a completed application, accompanied by the required fees and documentation, and that submit satisfactory evidence of compliance with all requirements established by the board.

Section 16

Section 16. FEES.--The board may, by regulation, establish initial license and renewal fees not to exceed the following:

establishment license. $125

school license $600

relocation of a school $300

cosmetologist license $25.00

barber license $25.00

specialty certificate. $25.00

instructor license $30.00

duplicate license. $20.00

temporary license. $20.00

administrative fee. $20.00

limited license fee. $100

licensure through reciprocity. $150

transcript $20.00

examinations . . . . . $50.00.

Section 17

Section 17. LICENSURE UNDER PRIOR LAW--ENDORSEMENT.--

A. Any person licensed or certified as a barber or cosmetologist, an electrologist, an instructor of cosmetology or barbering or an instructor of electrology, a manicurist-pedicurist or any person holding an establishment license, clinic license or school owner's license under any prior laws of this state, which license is valid on the effective date of the Barbers and Cosmetologists Act, shall be held to be licensed or certified under the provisions of that act and shall be entitled to the renewal of his license or certificate as provided in that act.

B. The board may grant a license pursuant to the provisions of the Barbers and Cosmetologists Act without an examination, upon payment of the required fee, provided that the applicant submits proof that he:

(1) holds a current license or certification from another state, territory or possession of the United States, or the District of Columbia, that has training hours and qualifications similar to or exceeding those required for licensure in New Mexico; and

(2) meets all other requirements for reciprocity as determined by regulation of the board.

Section 18

Section 18. LICENSE OR CERTIFICATE TO BE DISPLAYED--NOTICE OF CHANGE OF PLACE OF BUSINESS.--Every holder of a license shall notify the executive director of his new place of business, and, upon receipt of the notification, the executive director shall make the necessary change in the books. Every holder of a license or certificate shall display it in a conspicuous place at his workplace.

Section 19

Section 19. LICENSE NONTRANSFERABLE.--Each license shall be issued under the authority of the Barbers and Cosmetologists Act by the board in the name of the licensee. The license may not be the subject of a sale, transfer, assignment, conveyance, lease, bequest, gift or other means of transfer.

Section 20

Section 20. DURATION, RESTORATION AND RENEWAL OF LICENSES AND CERTIFICATES.--

A. The original issuance and renewal of licenses to practice as a barber, cosmetologist or instructor, or the certification as an esthetician, manicurist-pedicurist or electrologist shall be for a period of one year or less from the date of issuance. If the licensee or certificate holder fails to renew the license or certificate for the next year, his license or certificate is void; provided he may restore his license or certificate at any time during the year following expiration upon paying the appropriate fee and a late charge not to exceed one hundred dollars ($100) as set forth by board rules. If the licensee or certificate holder fails to restore his license or certificate within one year following its expiration, his license or certificate may not be restored, and, in order for such licensee or certificate holder to again obtain a license or certificate, he shall pay the fees and furnish the proofs and submit to such examinations as are required of applicants for original licensure or certification.

B. The original issuance and annual renewal of licenses to operate an establishment or school shall be for a period of twelve months or less following the issuance of the license. If the licensee fails to renew his license within thirty days after the date his license expires, his license is void, and, in order to again obtain a license, he shall be required to submit an application, any required documentation, pay the renewal fee and a late fee not to exceed one hundred dollars ($100) as set forth by board rules.

C. The board may establish a staggered system of license expiration and a procedure for proration of fees for licenses issued for less than a full year.

Section 21

Section 21. GROUNDS FOR REFUSAL TO ISSUE, RENEW, SUSPEND OR REVOKE A LICENSE.--

A. The board shall, in accordance with the provisions of the Uniform Licensing Act, issue a fine or penalty, restrict, refuse to issue or renew or shall suspend or revoke a license for any one or more of the following causes:

(1) the commission of any offense described in the Barbers and Cosmetologists Act;

(2) the violation of any sanitary regulation promulgated by the board;

(3) malpractice or incompetency;

(4) advertising by means of knowingly false or deceptive statements;

(5) habitual drunkenness or habitual addiction to the use of habit-forming drugs;

(6) continuing to be employed or practicing in an establishment in which the sanitary regulations of the board, of the department of health or of any other lawfully constituted board, promulgated for the regulation of establishments, schools or electrology clinics, are known by the licensee to be violated;

(7) notification of a licensee's default on a student loan;

(8) gross continued negligence in observing the rules and regulations;

(9) renting, loaning or allowing the use of the license to any unlicensed person under the provisions of the Barbers and Cosmetologists Act;

(10) dishonesty or unfair or deceptive practices;

(11) sexual, racial or religious harassment;

(12) conduct of illegal activities in an establishment or by a licensee;

(13) conviction of a crime involving moral turpitude; or

(14) aiding, abetting or conspiring to evade or violate the provisions of the Barbers and Cosmetologists Act.

B. Any license suspended or revoked shall be delivered to the board or any agent of the board upon demand.

Section 22

Section 22. EXEMPTIONS.--The following persons are exempt from the provisions of the Barbers and Cosmetologists Act while in the discharge of their professional duties:

A. persons licensed by the law of this state to practice medicine and surgery or chiropractic;

B. commissioned medical or surgical officers of the United States army, navy or marine hospital service;

C. registered nurses; and

D. funeral service practitioners.

Section 23

Section 23. PENALTIES.--Each of the following constitutes a misdemeanor punishable upon conviction by a fine of less than one thousand dollars ($1,000) or by imprisonment in the county jail for less than one year, or both, in the discretion of the court:

A. the violation of any of the provisions of the Barbers and Cosmetologists Act or a violation of any regulation promulgated pursuant to that act;

B. obtaining or attempting to obtain a license for money other than the required fee or for any other thing of value or by fraudulent misrepresentations; or

C. practicing or attempting to practice by fraudulent misrepresentations.

Section 24

Section 24. CRIMINAL OFFENDER'S CHARACTER EVALUATION.--The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted by the Barbers and Cosmetologists Act.

Section 25

Section 25. Section 61-1-2 NMSA 1978 (being Laws 1957, Chapter 247, Section 2, as amended) is amended to read:

"61-1-2. DEFINITIONS.--As used in the Uniform Licensing Act:

A. "board" means:

(1) the construction industries commission, the construction industries division and the electrical bureau, mechanical bureau and general construction bureau of the construction industries division of the regulation and licensing department;

(2) the manufactured housing committee and manufactured housing division of the regulation and licensing department;

(3) a board, commission or agency that administers a profession or occupation licensed pursuant to Chapter 61 NMSA 1978; and

(4) any other state agency to which the Uniform Licensing Act is applied by law;

B. "applicant" means a person who has applied for a license;

C. "license" means a certificate, permit or other authorization to engage in each of the professions and occupations regulated by the boards enumerated in Subsection A of this section;

D. "revoke a license" means to prohibit the conduct authorized by the license; and

E. "suspend a license" means to prohibit, for a stated period of time, the conduct authorized by the license. "Suspend a license" also means to allow for a stated period of time the conduct authorized by the license subject to conditions that are reasonably related to the grounds for suspension."

Section 26

Section 26. TEMPORARY PROVISION.--On the effective date of the Barbers and Cosmetologists Act:

A. the property, money, files, records and personnel of the board of barber examiners and the board of cosmetologists shall be transferred to the board of barbers and cosmetologists; and

B. all money in the state board of barber examiners fund shall be transferred to the barbers and cosmetologists fund.

Section 27

Section 27. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of barbers and cosmetologists is terminated on July 1, 1998 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Barbers and Cosmetologists Act until July 1, 1999. Effective July 1, 1999, the Barbers and Cosmetologists Act is repealed.

Section 28

Section 28. REPEAL.--Sections 61-17-1 through 61-17-6, 61-17-8, 61-17-10 through 61-17-25, 61-17-40 through 61-17-42, 61-19A-1 through 61-19A-25 and 61-19A-27 through 61-19A-34 NMSA 1978 (being Laws 1937, Chapter 220, Section 1, Laws 1963, Chapter 103, Section 1, Laws 1937, Chapter 220, Sections 2 and 3, Laws 1963, Chapter 103, Section 2, Laws 1937, Chapter 220, Sections 4, 6 and 8 through 17, Laws 1979, Chapter 372, Section 3, Laws 1937, Chapter 220, Sections 19 through 24, Laws 1974, Chapter 78, Section 21, Laws 1978, Chapter 193, Section 1, Laws 1983, Chapter 262, Section 5, Laws 1979, Chapter 382, Sections 1 through 25 and 27 through 34, as amended) are repealed. SB 757

CHAPTER 172

RELATING TO THE ENVIRONMENT; AMENDING SECTION 74-9-22 NMSA 1978 (BEING LAWS 1990, CHAPTER 99, SECTION 22) TO PROVIDE FOR NOTICE OF APPLICATION FOR PERMITTING OF SOLID WASTE FACILITIES TO BE SENT TO INDIAN TRIBES AND PUEBLOS WHEN THE BOUNDARY OF THE PUEBLO OR RESERVATION IS WITHIN TEN MILES OF THE PROPOSED SITE.

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

Section 1

Section 1. Section 74-9-22 NMSA 1978 (being Laws 1990, Chapter 99, Section 22) is amended to read:

"74-9-22. SOLID WASTE FACILITY PERMIT--NOTICE OF APPLICATION.--Each application filed with the division for a permit under the provisions of Section 74-9-20 NMSA 1978 shall include documentary proof that the applicant has provided notice of the filing of the application to the public and other affected individuals and entities. The board shall adopt a regulation specifying the required content of the notice. The notice shall be:

A. provided by certified mail to the owners of record, as shown by the most recent property tax schedule, of all properties:

(1) within one hundred feet of the property on which the facility is located or proposed to be located if the facility is or will be in a class A or H class county or a municipality with a population of more than two thousand five hundred persons; or

(2) within one-half mile of the property on which the facility is located or proposed to be located if the facility is or will be in a county or municipality other than those specified in Paragraph (1) of this subsection;

B. provided by certified mail to all municipalities and counties in which the facility is or will be located and to the governing body of any county, municipality, Indian tribe or pueblo when the boundary of the territory of the county, municipality, Indian tribe or pueblo is within a ten mile radius of the property on which the facility is proposed to be constructed, operated or closed;

C. published once in a newspaper of general circulation in each county in which the property on which the facility is proposed to be constructed, operated or closed is located. This notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish; and

D. posted in at least four publicly accessible and conspicuous places, including the proposed or existing facility entrance on the property on which the facility is or is proposed to be located." SB 829

CHAPTER 173

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE MASSAGE THERAPY PRACTICE ACT; CLARIFYING LICENSING AND REGISTRATION GUIDELINES; PROVIDING FOR AGENCY TERMINATION.

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

Section 1

Section 1. Section 61-12C-1 NMSA 1978 (being Laws 1991, Chapter 147, Section 1) is amended to read:

"61-12C-1. SHORT TITLE.-- Chapter 61, Article 12C NMSA 1978 may be cited as the "Massage Therapy Practice Act"."

Section 2

Section 2. Section 61-12C-3 NMSA 1978 (being Laws 1991, Chapter 147, Section 3) is amended to read:

"61-12C-3. DEFINITIONS.--As used in the Massage Therapy Practice Act:

A. "approved massage therapy school" means a facility registered with the board that meets established standards of training and curriculum;

B. "board" means the board of massage therapy;

C. "department" means the regulation and licensing department;

D. "massage therapist" means a person who uses the title of massage therapist, is licensed pursuant to the Massage Therapy Practice Act and administers massage therapy for compensation;

E. "massage therapy" means the treatment of soft tissues for therapeutic purposes as defined in Section 61-12C-4 NMSA 1978; and

F. "jurisprudence" means the statutes and rules of the state pertaining to the practice of massage therapy."

Section 3

Section 3. Section 61-12C-4 NMSA 1978 (being aws 1991, Chapter 147, Section 4) is amended to read:

"61-12C-4. MASSAGE THERAPY--THERAPY--DEFINED.--

A. Massage therapy is the treatment of soft tissues for therapeutic purposes, primarily comfort and relief of pain. Massage therapy is a health care service. Massage therapy includes but is not limited to effleurage, petrissage, tapotement, compression, vibration, friction, nerve strokes and Swedish gymnastics. Massage therapy may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Synonymous terms for massage therapy include massage, therapeutic massage, body massage, myomassage, bodywork, body rub or any derivation of those terms.

B. The terms "therapy" and "therapeutic massage" do not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic, physical therapy, occupational therapy, acupuncture or podiatry is required by law."

Section 4

Section 4. Section 61-12C-5 NMSA 1978 (being Laws 1991, Chapter 147, Section 5) is amended to read:

"61-12C-5. LICENSE REQUIRED.--Effective April 30, 1992:

A. it is unlawful for any person to practice massage therapy for compensation, to offer services as a massage therapist for compensation or to purport to be a massage therapist unless that person possesses a license to practice massage therapy under the provisions of the Massage Therapy Practice Act; and

B. no person shall use the title of or represent himself to be a massage therapist or use any other title, abbreviations, letters, figures, signs or devices that indicate that person is a massage therapist unless he is licensed to practice massage therapy pursuant to the provisions of the Massage Therapy Practice Act."

Section 5

Section 5. Section 61-12C-6 NMSA 1978 (being Laws 1991, Chapter 147, Section 6) is amended to read:

"61-12C-6. EXEMPTIONS.--Nothing in the Massage Therapy Practice Act shall be construed to prevent:

A. qualified members of other recognized professions that are licensed or regulated under New Mexico law from rendering services within the scope of their license or regulation, provided they do not represent themselves as massage therapists;

B. students from rendering massage therapy services within the course of study of an approved massage therapy school and under the supervision of a licensed massage therapy instructor;

C. visiting massage therapy instructors from another state or territory of the United States, the District of Columbia or any foreign nation from teaching massage therapy; provided the instructor is duly licensed or registered, if required, and is qualified in his place of residence for the practice of massage therapy. The board shall establish by rule the duration of stay for a visiting massage therapy instructor; and

D. sobadores and Native American healers from using traditional Hispanic or Native American healing practices. Healers who use these practices but apply for a license or registration pursuant to the Massage Therapy Practice Act shall comply with all licensure requirements."

Section 6

Section 6. Section 61-12C-7 NMSA 1978 (being Laws 1991, Chapter 147, Section 7) is amended to read:

"61-12C-7. BOARD CREATED--MEMBERSHIP.--

A. There is created the "board of massage therapy". The board shall be administratively attached to the department.

B. The board shall consist of five members who are New Mexico residents. Members of the board shall be appointed by the governor. Three members of the board shall be massage therapists, each with at least five years of massage therapy practice in New Mexico. Two members of the board shall be public members. The initial three professional members appointed shall meet the requirements for licensure and be licensed by the deadline specified for licensure in the Massage Therapy Practice Act. The public members shall not have been licensed or have any financial interest, direct or indirect, in the profession regulated.

C. Each member of the board shall hold office until the expiration of the term for which appointed or until a successor has been appointed and qualified.

D. No board member shall serve more than two consecutive terms.

E. The board shall elect annually a chairman and such other officers as it deems necessary. The board shall meet as often as necessary for the conduct of business, but no less than twice a year. Meetings shall be called by the chairman or upon the written request of three or more members of the board. Three members, at least one of whom is a public member, shall constitute a quorum.

F. Any board member may be recommended for removal as a member of the board for failing to attend, after proper notice, three consecutive board meetings.

G. Members of the board shall be reimbursed as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Section 7

Section 7. Section 61-12C-8 NMSA 1978 (being Laws 1991, Chapter 147, Section 8) is amended to read:

"61-12C-8. BOARD DUTIES.--The board shall have the power to:

A. adopt and file, in accordance with the State Rules Act, rules and regulations necessary to carry out the provisions of the Massage Therapy Practice Act, in accordance with the provisions of the Uniform Licensing Act;

B. provide for the evaluation of the qualifications of applicants for licensure or registration under the Massage Therapy Practice Act;

C. provide for the issuance of licenses or registrations to applicants who meet the requirements of the Massage Therapy Practice Act;

D. provide for the inspection, when required, of the business premises of any licensee during regular business hours;

E. establish minimum training and educational standards for licensure;

F. establish a process for approval of training programs and massage therapy schools;

G. provide for the investigation of persons engaging in practices that may violate the provisions of the Massage Therapy Practice Act;

H. revoke, suspend or deny a license or registration in accordance with the provisions of the Uniform
Licensing Act;

I. adopt an annual budget;

J. adopt a code of ethics; and

K. provide for the investigation of complaints against licensees. The board may issue investigation subpoenas prior to the issuance of a notice of contemplated action as set forth in Section 61-1-4 NMSA 1978."

Section 8

Section 8. Section 61-12C-9 NMSA 1978 (being Laws 1991, Chapter 147, Section 9) is amended to read:

"61-12C-9. REQUIREMENTS FOR LICENSURE--REGISTERED INSTRUCTORS.--

A. The board shall issue a license to practice massage therapy to any person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

(1) has reached the age of majority;

(2) has completed all educational requirements established by the board;

(3) has completed a training program approved by the board, at a school approved by the board, that program being at least six hundred fifty hours in length; provided that if the approved training program is less than six hundred fifty hours, the applicant shall provide documentation of up to three hundred fifty hours of alternative qualifying experience, including but not limited to professional massage

therapy experience, apprenticeship training in massage therapy, clinical or internship training and prior experience in a health career, to be approved by the board; and

(4) demonstrates professional competence by passing a written examination as prescribed by the board.

B. The board may also require a practical examination as a condition for licensure.

C. The board shall register as a massage therapy instructor any applicant who:

(1) is currently licensed as a massage therapist; and

(2) proves to the board's satisfaction that he meets the minimum requirement of two years of experience in his area of instruction."

Section 9

Section 9. Section 61-12C-10 NMSA 1978 (being Laws 1991, Chapter 147, Section 10) is amended to read:

"61-12C-10. APPROVED MASSAGE THERAPY SCHOOLS--REGISTRATION.--

A. The board shall establish by rule procedures for approval of massage therapy schools and shall register massage therapy schools that meet the educational requirements of the Massage Therapy Practice Act.

B. The board shall establish minimum standards of training and curriculum for approved training programs and for approved massage therapy schools. At a minimum, approved massage therapy schools shall provide training programs that include a minimum of three hundred hours of training. This shall include instruction in:

(1) anatomy;

(2) physiology;

(3) massage therapy;

(4) business;

(5) hydrotherapy;

(6) first aid;

(7) cardiopulmonary resuscitation; and

(8) professional ethics.

C. The board shall establish a list of approved massage therapy schools and shall register any institution that meets the requirements of the board and files a current curriculum and list of instructors.

D. An approved massage therapy school shall register annually with the board."

Section 10

Section 10. Section 61-12C-11 NMSA 1978 (being Laws 1991, Chapter 147, Section 11) is amended to read:

"61-12C-11. DISPLAY OF LICENSE.--A massage therapy license or registration issued by the board shall at all times be posted in a conspicuous place in the holder's principal place of business."

Section 11

Section 11. Section 61-12C-12 NMSA 1978 (being Laws 1991, Chapter 147, Section 12) is amended to read:

"61-12C-12. ASSIGNABILITY OF LICENSE.--A license or registration issued pursuant to the Massage Therapy Practice Act is not assignable or transferable."

Section 12

Section 12. Section 61-12C-13 NMSA 1978 (being Laws 1991, Chapter 147, Section 13) is amended to read:

"61-12C-13. EXAMINATIONS.--

A. Examinations shall be heldat least twice each year on a date and at a location established by the board. Applicants who have been found to meet the education and experience requirements for licensure shall be scheduled for the next examination following the filing of the application. The board shall establish by rule the examination application deadline and other rules relating to taking and retaking licensure examinations. The board shall determine the passing grade on examinations.

B. The board shall specify by rule the general areas of competency to be covered by examinations for licensure and ensure that the examinations measure adequately both an applicant's competency and knowledge of related statutory requirements. Professional testing services may be utilized for the examinations.

C. After taking the written examination, each applicant may be tested in the practical application of massage therapy techniques in such a manner and by such methods as shall reveal the applicant's skill and knowledge.

D. All licensing examinations shall be conducted in such a manner that the applicants shall be known to the board by number until the examination is completed and the grade determined. A record of each examination shall be filed in the board office and available for inspection for a period of not less than two years immediately following the examination."

Section 13

Section 13. Section 61-12C-14 NMSA 1978 (being Laws 1991, Chapter 147, Section 14) is amended to read:

"61-12C-14. TEMPORARY LICENSE.--

A. Prior to examination, an applicant for licensure may obtain a temporary license to engage in the practice of massage therapy, provided that the applicant meets all the requirements for licensure except completion of the examination.

B. The temporary license is valid until the results of the next scheduled examination are available and a license is issued or denied. If approved, the applicant shall be issued the initial license for the remainder of the year.

C. No more than one temporary license may be issued to an individual, and no temporary license shall be issued to an applicant who has previously failed the examinations."

Section 14

Section 14. Section 61-12C-16 NMSA 1978 (being Laws 1991, Chapter 147, Section 16) is amended to read:

"61-12C-16. LICENSURE BY CREDENTIALS.--After successful completion of a jurisprudence examination, the board may license an applicant, provided that he possesses a valid license or registration to practice massage therapy issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation and has met educational requirements substantially equivalent to or exceeding those established pursuant to the Massage Therapy Practice Act."

Section 15

Section 15. Section 61-12C-17 NMSA 1978 (being Laws 1991, Chapter 147, Section 17) is amended to read:

"61-12C-17. LICENSE OR REGISTRATION RENEWAL--CONTINUING EDUCATION.--

A. Massage therapy licenses shall expire biennially, and massage therapy school registrations shall expire annually on a date established by rule.

B. Each licensee shall renew his license by submitting a renewal application on a form provided by the board. Initial licenses may be valid for one or two years, depending on assigned license number and board rule.

C. The board may establish continuing educational requirements as a condition of the renewal of licenses.

D. Each massage therapy school shall renew its registration by submitting a renewal application and providing a description of its current curriculum and list of all instructors.

E. A sixty-day grace period shall be allowed each license or registration holder after the end of the renewal period, during which time a license or registration may be renewed upon payment of the renewal fee and a late fee as prescribed by the board."

Section 16

Section 16. Section 61-12C-20 NMSA 1978 (being Laws 1991, Chapter 147, Section 20) is amended to read:

"61-12C-20. LICENSE FEES.--

A. The board shall establish a schedule of reasonable fees for applications, licenses, registrations, renewals, placement on inactive status and necessary administrative fees.

B. The initial licensure application fee shall not exceed fifty dollars ($50.00).

C. The initial license fee shall not exceed one hundred fifty dollars ($150).

D. The examination fee shall not exceed four hundred dollars ($400).

E. The biennial renewal fee shall not exceed three hundred dollars ($300).

F. The fee for reactivation of an inactive license shall not exceed four hundred dollars ($400).

G. A late renewal fee shall not exceed one hundred dollars ($100).

H. The registration fee for an approved massage therapy school shall not exceed one hundred dollars ($100).

I. The registration fee for a massage therapy instructor shall not exceed fifty dollars ($50.00)."

Section 17

Section 17. Section 61-12C-21 NMSA 1978 (being Laws 1991, Chapter 147, Section 21) is amended to read:

"61-12C-21. ADVERTISING.--Each massage therapist licensed under the provisions of the Massage Therapy Practice Act shall include the number of his license or registration, and the designation as either a license or registration, in any advertisement of massage therapy services appearing in any newspaper, airwave transmission, telephone directory or other advertising medium."

Section 18

Section 18. Section 61-12C-24 NMSA 1978 (being Laws 1991, Chapter 147, Section 24) is amended to read:

"61-12C-24. DENIAL, SUSPENSION, REVOCATION AND REINSTATEMENT OF LICENSES.--

A. The board may impose a fine not to exceed one thousand dollars ($1,000), place on probation as specified by the board or refuse to issue or renew or may deny, suspend or revoke any license, temporary license or registration held or applied for under the Massage Therapy Practice Act in accordance with the procedures set forth in the Uniform Licensing Act upon a finding by the board that the licensee, registrant or applicant:

(1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure a license or registration provided for in the Massage Therapy Practice Act;

(2) attempted to use as his own the license or registration of another;

(3) allowed the use of his license or registration by another;

(4) has been adjudicated as mentally incompetent by regularly constituted authorities;

(5) has been convicted or found guilty, regardless of adjudication, of a crime, in any jurisdiction, that directly relates to the practice of massage therapy or

to the ability to practice massage therapy. Any plea of nolo contendere shall be considered a conviction for the purposes of this section;

(6) is guilty of unprofessional or unethical conduct or a violation of the code of ethics;

(7) is habitually or excessively using controlled substances or alcohol;

(8) is guilty of false, deceptive or misleading advertising;

(9) is guilty of aiding, assisting or advertising any unlicensed or unregistered person in the practice of massage therapy;

(10) is grossly negligent or incompetent in the practice of massage therapy; or

(11) has had a license or registration to practice massage therapy revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee or registrant similar to acts described in this section. A certified copy of the record of conviction shall be conclusive evidence of such conviction.

B. Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board, and shall conform with the provisions of the Uniform Licensing Act.

C. The board may establish the guidelines for the disposition of the disciplinary cases. Such guidelines may include minimum and maximum fines, periods of probation, conditions of probation or reissuance of a license or registration.

D. License and registration holders who have been found culpable and sanctioned by the board shall be responsible for the payments of all costs of the disciplinary proceedings."

Section 19

Section 19. A new section of the Massage Therapy Practice Act is enacted to read:

"PROTECTED ACTIONS.--

A. No member of the board shall bear liability or be subject to civil damages or criminal prosecution for any action undertaken or performed within the scope of his duty.

B. No person or legal entity providing truthful and accurate information to the board, whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions."

Section 20

Section 20. A new section of the Massage Therapy Practice Act is enacted to read:

"PENALTIES.--Any person who violates any provision of the Massage Therapy Practice Act is guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed one thousand dollars ($1,000) or imprisonment for a period not to exceed one year or both."

Section 21

Section 21. A new section of the Massage Therapy Practice Act is enacted to read:

"TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of massage therapy is terminated on July 1, 1999, pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 12C NMSA 1978 until July 1, 2000. Effective July 1, 2000, Article 12C of Chapter 61 NMSA 1978 is repealed."

Section 22

Section 22. REPEAL.--Sections 61-12C-15 and 61-12C-19 NMSA 1978 (being Laws 1991, Chapter 147, Sections 15 and 19) are repealed. SB 708

CHAPTER 174

RELATING TO PROBATE; AMENDING, REPEALING, ENACTING, RECOMPILING AND RESERVING SECTIONS OF THE UNIFORM PROBATE CODE.

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

Section 1

Section 1. Section 12-2-4 NMSA 1978 (being Laws 1973, Chapter 168, Section 1) is repealed and a new Section 12-2-4 NMSA 1978 is enacted to read:

"12-2-4. DETERMINATION OF DEATH.--

A. For all medical, legal and statutory purposes, death occurs when an individual has sustained either:

(1) irreversible cessation of circulatory or respiratory functions; or Chapter 174 Section 1 Laws 1993

(2) irreversible cessation of all functions of the entire brain, including the brain stem.

B. A determination of death shall be made in accordance with accepted medical standards.

C. Death is to be pronounced pursuant to the provisions of Subsection A of this section before artificial means of supporting circulatory or respiratory functions are terminated and before any vital organ is removed for purposes of transplantation in compliance with the provisions of the Uniform Anatomical Gift Act.

D. The definition of death set forth in Subsection A of this section is to be utilized for all purposes in this state, including civil and criminal actions, notwithstanding any other law to the contrary."

Section 2

Section 2. Section 45-1-101 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-101) is amended to read:

"45-1-101. SHORT TITLE.--Chapter 45 NMSA 1978 may be cited as the "Uniform Probate Code"."

Section 3

Section 3. Section 45-1-107 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-107) is repealed and a new section of the Uniform Probate Code, Section 45-1-107 NMSA 1978, is enacted to read:
"45-1-107. EVIDENCE OF DEATH OR STATUS.--In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

A. in accordance with Subsection A of Section 12-2-4 NMSA 1978, death occurs when an individual has sustained either:

(1) irreversible cessation of circulatory and respiratory functions; or

(2) irreversible cessation of all functions of the entire brain, including the brain stem.

A determination of death must be made in accordance with accepted medical standards;

B. a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date and time of death and the identity of the decedent;

C. a certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

D. in the absence of prima facie evidence of death pursuant to Subsections B or C of this section, the fact of death may be established by clear and convincing evidence, including circumstantial evidence;

E. an individual whose death is not established pursuant to Subsection A, B, C or D of this section who is absent for a continuous period of five years, during which he has not been heard from and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier; and

F. in the absence of evidence disputing the time of death stated on a document described in Subsection B or C of this section, a document described in Subsection B or C of this section that states a time of death one hundred twenty hours or more after the time of death of another individual,
however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty hours."

Section 4

Section 4. Section 45-1-201 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-201, as amended) is repealed and a new section of the Uniform Probate Code, Section 45-1-201 NMSA 1978, is enacted to read:

"45-1-201. DEFINITIONS.--

A. As used in the Uniform Probate Code, unless the context otherwise requires:

(1) "agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning

another's health care and an individual authorized to make decisions for another under a natural death act;

(2) "application" means a written request to the probate court for an order of informal probate or appointment pursuant to Sections 45-3-301 through 45-3-311 NMSA 1978;

(3) "beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation", refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD) or of a pension, profit-sharing, retirement or similar benefit plan or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee or taker in default of a power of appointment or a person in whose favor a power of attorney or a power held in any individual, fiduciary or representative capacity is exercised;

(4) "beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD) or of a pension, profit-sharing, retirement or similar benefit plan or other nonprobate transfer at death;

(5) "child" includes an individual entitled to take as a child pursuant to the Uniform Probate Code by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild or any more remote descendant;

(6) "claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort or otherwise and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. "Claims" does not include estate or inheritance taxes or demands or disputes regarding title of a decedent, an incapacitated person or a minor ward to specific assets alleged to be included in the estate;

(7) "conservator" means a person who is appointed by a court to manage the property or financial affairs or both of an incapacitated person or a minor ward;

(8) "descendant" of an individual means all of his descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in the Uniform Probate Code;

(9) "devise", when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will;

(10) "devisee" means a person designated in a will to receive a devise. For the purposes of Chapter 45, Article 3 NMSA 1978, in the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees;

(11) "distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this paragraph, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets;

(12) "estate" includes the property of the decedent, trust or other person whose affairs are subject to the Uniform Probate Code as originally constituted and as it exists from time to time during administration;

(13) "exempt property" means that property of a decedent's estate that is described in Section 45-2-403 NMSA 1978;

(14) "fiduciary" includes a personal representative, guardian, conservator and trustee;

(15) "foreign personal representative" means a personal representative appointed by another jurisdiction;

(16) "formal proceedings" means proceedings conducted before a judge with notice to interested persons;

(17) "governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney or a dispositive, appointive or nominative instrument of any similar type;

(18) "guardian" means a person who has qualified to provide for the care, custody or control of the person of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem;

(19) "guardian ad litem" means a person appointed by the district court to represent and protect the interests of a minor or an incapacitated person in connection with litigation or any other court proceeding;

(20) "heirs", except as controlled by Section 45-2-711 NMSA 1978, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent;

(21) "incapacitated person" means an individual described in Section 45-5-101 NMSA 1978;

(22) "informal proceedings" means those proceedings conducted without notice to interested persons before the probate court for probate of a will or appointment of a personal representative, except as provided for in Section 45-3-306 NMSA 1978;

(23) "interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, a minor ward or an incapacitated person. "Interested person" also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding. "Interested person" does not apply to the provisions of Chapter 45, Article 5 NMSA 1978;

(24) "issue" of a person means all of his descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in the Uniform Probate Code;

(25) "lease" includes an oil, gas or other mineral lease;

(26) "letters" includes letters testamentary, letters of guardianship, letters of administration and letters of conservatorship;

(27) "minor" means a person who has not reached eighteen years of age;

(28) "mortgage" means any conveyance, agreement or arrangement in which property is encumbered or used as security;

(29) "nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death;

(30) "organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency or any other legal or commercial entity;

(31) "parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent pursuant to the Uniform Probate Code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent or grandparent;

(32) "payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision or any other person authorized or obligated by law or a governing instrument to make payments;

(33) "person" means an individual or an organization;

(34) "personal representative" includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator;

(35) "petition" means a written request to the probate court for an order after notice;

(36) "proceeding" includes action at law and suit in equity;

(37) "property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership;

(38) "protected person" is as defined in Section 45-5-101 NMSA 1978;

(39) "protective proceeding" means a proceeding described in Section 45-5-101 NMSA 1978;

(40) "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing;

(41) "settlement", in reference to a decedent's estate, includes the full process of administration, distribution and closing;

(42) "special administrator" means a personal representative as described by Sections 45-3-614 through 45-3-618 NMSA 1978;

(43) "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States;

(44) "successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative;

(45) "successors" means persons, other than creditors, who are entitled to property of a decedent under his will or the Uniform Probate Code;

(46) "supervised administration" refers to the proceedings described in Article III, Part 5 of the Uniform Probate Code;

(47) "survive", except for the purposes of Chapter 45, Article 6, Part 3 NMSA 1978, means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event pursuant to Section 45-2-104 or 45-2-702 NMSA 1978. "Survive" includes its derivatives, such as "survives", "survived", "survivor" and "surviving";

(48) "testacy proceeding" means a proceeding to establish a will or determine intestacy;

(49) "testator" includes an individual of either sex;

(50) "trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. "Trust" also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article VI of the Uniform Probate Code, custodial arrangements, including those created under the Uniform Gifts to Minors Act or the Uniform Transfer to Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another;

(51) "trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by court;

(52) "ward" means a person for whom a guardian has been appointed; and

(53) "will" includes codicil and any testamentary instrument that merely appoints a personal representative, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession. "Will" does not include a holographic will.

B. The definitions in Subsection A of this section are made subject to additional definitions contained in subsequent articles that are applicable to specific articles."

Section 5

Section 5. Section 45-2-101 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-101) is repealed and a new section of the Uniform Probate Code, Section 45-2-101 NMSA 1978, is enacted to read:

"45-2-101. INTESTATE ESTATE.--

A. Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in the Uniform Probate Code, except as modified by the decedent's will.

B. A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his intestate share."

Section 6

Section 6. Section 45-2-103 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-103, as amended) is repealed and a new section of the Uniform Probate Code, Section 45-2-103 NMSA 1978, is enacted to read:

"45-2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.--Any part of the intestate estate not passing to the decedent's surviving spouse pursuant to Section 45-2-102 NMSA 1978, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

A. to the decedent's descendants by representation;

B. if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent;

C. if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation; and

D. if there is no surviving descendant, parent or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation, and the other half passes to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half."

Section 7

Section 7. Section 45-2-104 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-104, as amended) is repealed and a new section of the Uniform Probate Code, Section 45-2-104 NMSA 1978, is enacted to read:

"45-2-104. REQUIREMENT THAT HEIR SURVIVE DECEDENT BY ONE HUNDRED TWENTY HOURS.--An individual who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of family allowance, personal property allowance and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an
individual who would otherwise be an heir survived the decedent by one hundred twenty hours, it is deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state pursuant to Section 45-2-105 NMSA 1978."

Section 8

Section 8. Section 45-2-105 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-105) is amended to read:

"45-2-105. NO TAKER.--If there is no taker under the provisions of Chapter 45, Article 2 NMSA 1978, the intestate estate passes to the state."

Section 9

Section 9. Section 45-2-106 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-106) is repealed and a new section of the Uniform Probate Code, Section 45-2-106 NMSA 1978, is enacted to read:

"45-2-106. REPRESENTATION.--

A. As used in this section:

(1) "deceased descendant", "deceased parent" or "deceased grandparent" means a descendant, parent or grandparent who either predeceased the decedent or is deemed to have predeceased the decedent pursuant to Section 45-2-104 NMSA 1978; and

(2) "surviving descendant" means a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent pursuant to Section 45-2-104 NMSA 1978.

B. If, pursuant to Section 45-2-103 NMSA 1978, a decedent's intestate estate or a part thereof passes "by representation" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are:

(1) surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and

(2) deceased descendants in the same generation who left surviving descendants, if any.

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are
combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

C. If, pursuant to Section 45-2-103 NMSA 1978, a decedent's intestate estate or a part thereof passes "by representation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are:

(1) surviving descendants in the generation nearest the deceased parents or either of them or the deceased grandparents or either of them that contains one or more surviving descendants; and

(2) deceased descendants in the same generation who left surviving descendants, if any.

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent."

Section 10

Section 10. Section 45-2-108 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-108) is repealed and a new section of the Uniform Probate Code, Section 45-2-108 NMSA 1978, is enacted to read:

"45-2-108. AFTER-BORN HEIRS.--An individual in gestation at a particular time is treated as living at that time if the individual lives one hundred twenty hours or more after birth."

Section 11

Section 11. Section 45-2-109 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-109, as amended) is repealed and a new section of the Uniform Probate Code, Section 45-2-109NMSA 1978, is enacted to read:

"45-2-109. ADVANCEMENTS.--

A. If an individual dies intestate as to all or a portion of his estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if:

(1) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement; or

(2) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

B. For purpose of Subsection A of this section, property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

C. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise."

Section 12

Section 12. Section 45-2-110 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-110) is repealed and a new section of the Uniform Probate Code, Section 45-2-110 NMSA 1978, is enacted to read:

"45-2-110. DEBTS TO DECEDENT.--A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to

survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants."

Section 13

Section 13. Section 45-2-111 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-111, as amended) is repealed and a new section of the Uniform Probate Code, Section 45-2-111 NMSA 1978, is enacted to read:

"45-2-111. ALIENAGE.--No individual is disqualified to take as an heir because the individual or an individual through whom he claims is or has been an alien."

Section 14

Section 14. Section 45-2-112 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-112) is repealed and a new section of the Uniform Probate Code, Section 45-2-112 NMSA 1978, is enacted to read:

"45-2-112. DOWER AND CURTESY ABOLISHED.--The estates of dower and curtesy are abolished."

Section 15. Section 45-2-113 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-113) is repealed and a new section of the Uniform Probate Code, Section 45-2-113 NMSA 1978, is enacted to read:

"45-2-113. INDIVIDUALS RELATED TO DECEDENT THROUGH TWO LINES.--An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share."

Section 16

Section 16. A new section of the Uniform Probate Code, Section 45-2-114 NMSA 1978, is enacted to read:

"45-2-114. PARENT AND CHILD RELATIONSHIP.--

A. Except as provided in Subsections B and C of this section, for purposes of intestate succession by, through or from a person, an individual is the child of his natural parents, regardless of their marital status. The parent and child relationship may be established under the Uniform Parentage Act.

B. An adopted individual is the child of his adopting parent or parents and not of his natural parents, but adoption of a child by the spouse of either natural parent has no effect on:

(1) the relationship between the child and that natural parent; or

(2) the right of the child or a descendant of the child to inherit from or through the other natural parent.

C. Inheritance from or through a child by either natural parent or his kindred is precluded unless that natural parent has openly treated the child as his and has not refused to support the child."

Section 17

Section 17. Section 45-2-301 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-301, as amended) is repealed and a new section of the Uniform Probate Code, Section 45-2-301 NMSA 1978, is enacted to read:

"45-2-301. ENTITLEMENT OF SPOUSE--PREMARITAL WILL.--

A. If a testator's surviving spouse married the testator after the testator executed his will, the surviving
spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate he would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised or passes pursuant to Section 45-2-603 or 45-2-604 NMSA 1978 to a descendant of such a child, unless:

(1) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(2) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(3) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

B. In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift pursuant to Section 45-2-603 or 45-2-604 NMSA 1978 to a descendant of such a child, abate as provided in Section 45-3-902 NMSA 1978."

Section 18

Section 18. Section 45-2-302 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-302, as amended) is repealed and a new section of the Uniform Probate Code, Section 45-2-302 NMSA 1978, is enacted to read:

"45-2-302. OMITTED CHILDREN.--

A. Except as provided in Subsection B of this section, if a testator fails to provide in his will for any of his children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(1) if the testator had no child living when he executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will; or

(2) if the testator had one or more children living when he executed the will and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(a) the portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will;

(b) the omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in Subparagraph (a) of Paragraph (2) of Subsection A of this section, that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child;

(c) to the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will; and

(d) in satisfying a share provided by Paragraph (2) of Subsection A of this section, devises to the testator's children who were living when the will was executed abate ratably. In abating the devices of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

B. Neither Subsection A or C of this section applies if:

(1) it appears from the will that the omission was intentional; or

(2) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

C. Except as provided in Subsection B of this section, if at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

D. In satisfying a share provided by Paragraph (1) of Subsection A of this section, devises made by the will abate pursuant to Section 45-3-902 NMSA 1978."

Section 19

Section 19. Section 45-2-401 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-401) is repealed and a new section of the Uniform Probate Code, Section 45-2-401 NMSA 1978, is enacted to read:

"45-2-401. APPLICABLE LAW.--Chapter 45, Article 2, Part 4 NMSA 1978 applies to the estate of a decedent who dies domiciled in this state. Rights to family allowance and personal property allowance for a decedent who dies not domiciled in this state are governed by the laws of the decedent's domicile at death."

Section 20

Section 20. Section 45-2-402 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-402) is repealed and a new section of the Uniform Probate Code, Section 45-2-402 NMSA 1978, is enacted to read:

"45-2-402. FAMILY ALLOWANCE.--A decedent's surviving spouse is entitled to a family allowance of fifteen thousand dollars ($15,000). If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a family allowance amounting to fifteen thousand dollars ($15,000) divided by the number of minor and dependent children of the decedent. The family allowance is exempt from and has priority over all claims against the estate. Family allowance is in addition to any share passing to the surviving spouse or minor or dependent children by the decedent's will, unless otherwise provided, or by intestate succession."

Section 21

Section 21. A new section of the Uniform Probate Code, Section 45-2-403 NMSA 1978, is enacted to read:
"45-2-403. PERSONAL PROPERTY ALLOWANCE.--In addition to the family allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding ten thousand dollars ($10,000) in excess of any security interests therein, in household

furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests plus that of other exempt property is less than ten thousand dollars ($10,000) or if there is not ten thousand dollars ($10,000) worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the ten-thousand-dollar ($10,000) value. Rights to specific property for the family allowance and assets needed to make up a deficiency in the property have priority over all claims against the estate, but the rightto any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of the family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, or by intestate succession."

Section 22

Section 22. Section 45-2-404 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-404) is repealed and that section number is reserved.

Section 23

Section 23. Section 45-2-405 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-405) is repealed and a new section of the Uniform Probate Code, Section 45-2-405 NMSA 1978, is enacted to read:

"45-2-405. SOURCE, DETERMINATION AND DOCUMENTATION.--If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to family allowance or personal property allowance. Subject to this restriction, the surviving spouse, guardians of minor children or children who are adults may select property of the estate as family allowance and personal property allowance. The personal representative may make those selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as family allowance or personal property allowance. The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment or failure to act under this section may petition the court for appropriate relief, which may include a family allowance or personal property allowance other than that which the personal representative determined or could have determined."

Section 24

Section 24. A new section of the Uniform Probate Code, Section 45-2-406 NMSA 1978, is enacted to read:

"45-2-406. MODIFICATION OF EXEMPTIONS.--With respect to the estate of a decedent, the allowances granted pursuant to Sections 45-2-402 and 45-2-403 NMSA 1978 are in lieu of the exemptions provided in Sections 42-10-1 through 42-10-12 NMSA 1978."

Section 25

Section 25. Section 45-2-501 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-501) is repealed and a new section of the Uniform Probate Code, Section 45-2-501 NMSA 1978, is enacted to read:

"45-2-501. WHO MAY MAKE WILL.--An individual eighteen or more years of age who is of sound mind may make a will."

Section 26

Section 26. Section 45-2-502 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-502) is repealed and a new section of the Uniform Probate Code, Section 45-2-502 NMSA 1978, is enacted to read:

"45-2-502. EXECUTION--WITNESSED WILLS.--Except as provided in Sections 45-2-506 and 45-2-513 NMSA 1978:

A. every will shall be in writing, signed by the testator or in the testator's name by some other person in the testator's presence and by his direction and attested in the presence of the testator by two or more credible witnesses; and

B. the witnesses to a will shall be present, see the testator sign the will, or one sign it for him at his request as and for his last will and testament, and shall sign as witnesses in his presence and in the presence of each other."

Section 27

Section 27. Section 45-2-504 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-504) is repealed and a new section of the Uniform Probate Code, Section 45-2-504 NMSA 1978, is enacted to read:

"45-2-504. SELF-PROVED WILL.--

A. A will may be simultaneously executed, attested and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate under the official seal in substantially the following form:

"I, _____, the testator, sign my name to this instrument this _____ day of _____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed and that I am eighteen years of age or older, of sound mind and under no constraint or undue influence.

_____
Testator

We, _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence of the testator and in the presence of each other, hereby signs this will as witness to the testator's signing and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind and under no constraint or undue influence.

_____
Witness

_____
Witness

The State of _____
County of _____

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by_____and _____, witness, this_____ day of _____.
(Seal)

(Signed) _____

_____
(Official capacity of officer)".

B. An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate under the official seal attached or annexed to the will in substantially the following form:

"The State of _____

County of _____

We, _____, _____,and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed

the instrument as the testator's will and that he had signed willingly (or willingly directed another to sign for him), and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence of the testator and in the presence of each other, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

_____
Testator

_____
Witness

_____
Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by_____ and _____, witnesses, this_____ of _____.
(Seal)

(Signed) _____

_____
(Official capacity of officer)".

C. A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will if necessary to prove the will's due execution."

Section 28

Section 28. Section 45-2-505 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-505) is repealed and a new section of the Uniform Probate Code, Section 45-2-505 NMSA 1978, is enacted to read:

"45-2-505. WHO MAY WITNESS.--

A. An individual generally competent to be a witness may act as a witness to a will.

B. The signing of a will by an interested witness does not invalidate the will or any provision of it."

Section 29

Section 29. Section 45-2-506 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-506) is repealed and a new section of the Uniform Probate Code, Section 45-2-506 NMSA 1978, is enacted to read:

"45-2-506. CHOICE OF LAW AS TO EXECUTION.--A written will is valid if executed in compliance with Section 45-2-502 NMSA 1978 or if its execution complies with the law at the time of execution of the place where the will is executed or of the law of the place where at the time of execution or at the time of death the testator is domiciled or is a national."

Section 30

Section 30. Section 45-2-507 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-507) is repealed and a new section of the Uniform Probate Code, Section 45-2-507 NMSA 1978, is enacted to read:

"45-2-507. REVOCATION BY WRITING OR BY ACT.--

A. A will or any part thereof is revoked:

(1) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or

(2) by performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this paragraph, "revocatory act on the will" includes burning, tearing, canceling, obliterating or destroying the will or any part of it. A burning, tearing or canceling is a "revocatory act on the will", whether or not the burn, tear or cancellation touched any of the words on the will.

B. If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

C. The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.

D. The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent."

Section 31

Section 31. Section 45-2-508 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-508) is repealed and a new section of the Uniform Probate Code, Section 45-2-508 NMSA 1978, is enacted to read:

"45-2-508. REVOCATION BY CHANGE OF CIRCUMSTANCES.--Except as provided in Sections 45-2-803 and 45-2-804 NMSA 1978, a change of circumstances does not revoke a will or any part of it."

Section 32

Section 32. Section 45-2-509 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-509) is repealed and anew section of the Uniform Probate Code, Section 45-2-509 NMSA 1978, is enacted to read:

"45-2-509. REVIVAL OF REVOKED WILL.--

A. If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act pursuant to Paragraph (2) of Subsection A of Section 45-2-507 NMSA 1978, the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent written declarations that the testator intended the previous will to take effect as executed.

B. If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act pursuant to Paragraph (2) of Subsection A of Section 45-2-507 NMSA 1978, a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent written declarations that the testator did not intend the revoked part to take effect as executed.

C. If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later, will, the previous will remains revoked in whole or in part unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect."

Section 33

Section 33. Section 45-2-510 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-510) is amended to read:

"45-2-510. INCORPORATION BY REFERENCE.--A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification."

Section 34

Section 34. Section 45-2-511 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-511) is repealed and a new section of the Uniform Probate Code, Section 45-2-511 NMSA 1978, is enacted to read:

"45-2-511. TESTAMENTARY ADDITIONS TO TRUST.--

A. A will may validly devise property to the trustee of a trust established or to be established:

(1) during the testator's lifetime by the testator, by the testator and some other person or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts; or

(2) at the testator's death by the testator's devise to the trustee if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator regardless of the existence, size or character of the corpus of the trust.

The devise is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or the testator's death.

B. Unless the testator's will provides otherwise, property devised to a trust described in Subsection A of this section is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

C. Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse."

Section 35

Section 35. Section 45-2-512 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-512) is amended to read:

"45-2-512. EVENTS OF INDEPENDENT SIGNIFICANCE.--A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event."

Section 36

Section 36. Section 45-2-513 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-513) is repealed and a new section of the Uniform Probate Code, Section 45-2-513 NMSA 1978, is enacted to read:

"45-2-513. SEPARATE WRITING IDENTIFYING DEVISE OF CERTAIN TYPES OF TANGIBLE PERSONAL PROPERTY.--A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be:

A. referred to as one to be in existence at the time of the testator's death;

B. prepared before or after the execution of the will;

C. altered by the testator after its preparation; or

D. a writing that has no significance apart from its effect on the dispositions made by the will."

Section 37

Section 37. A new section of the Uniform Probate Code, Section 45-2-514 NMSA 1978, is enacted to read:

"45-2-514. CONTRACTS CONCERNING SUCCESSION.--

A. A contract to make a will or devise or not to revoke a will or devise or to die intestate, if executed after the effective date of this article, may be established only by:

(1) provisions of a will stating material provisions of the contract;

(2) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(3) a writing signed by the decedent evidencing the contract.

B. The execution of a joint will or of mutual wills does not create a presumption of a contract not to revoke the will or wills."

Section 38

Section 38. A new section of the Uniform Probate Code, Section 45-2-515 NMSA 1978, is enacted to read:

"45-2-515. DEPOSIT OF WILL WITH COURT IN TESTATOR'S LIFETIME.--A will may be deposited by the testator or his agent with the clerk of any district court in New Mexico for safekeeping pursuant to rules of that court. The will shall be kept confidential. During the testator's lifetime, a deposited will shall be delivered only to him or to a person authorized in writing signed by him to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under district court procedures designed to maintain the confidential character of the document to the extent possible and to assure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the district court clerk shall notify any person designated to receive the will and deliver it to him on request, or the court clerk may deliver the will to the appropriate court."

Section 39

Section 39. A new section of the Uniform Probate Code, Section 45-2-516 NMSA 1978, is enacted to read:

"45-2-516. DUTY OF CUSTODIAN OF WILL--LIABILITY.--

A. Any person having custody of a will shall, as soon as he is informed of the death of the testator, deliver the will to a person able to secure its probate or, if none is known, to an appropriate court.

B. If any person having the custody of a will fails to produce the will as provided for in Subsection A of this section, after receiving a reasonable notice to do so, he is liable to any person aggrieved for the damages that may be sustained by the failure.

C. Any person who refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court."

Section 40

Section 40. Section 45-2-601 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-601, as amended) is repealed and a new section of the Uniform Probate Code, Section 45-2-601 NMSA 1978, is enacted to read:

"45-2-601. SCOPE.--In the absence of a finding of a contrary intention, the rules of construction in Chapter 45, Article 2, Part 6 NMSA 1978 control the construction of a will."

Section 41

Section 41. A new section of the Uniform Probate Code, Section 45-2-602 NMSA 1978, is enacted to read:

"45-2-602. WILL MAY PASS ALL PROPERTY AND AFTER-ACQUIRED PROPERTY.--A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death, subject to the provisions of Section 45-2-101 NMSA 1978."

Section 42

Section 42. Section 45-2-603 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-603) is repealed and a new section of the Uniform Probate Code, Section 45-2-603 NMSA 1978, is enacted to read:

"45-2-603. ANTILAPSE--DECEASED DEVISEE--CLASS GIFTS.--

A. As used in this section:

(1) "alternative devise" means a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause;

(2) "class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had he survived the testator;

(3) "devise" includes an alternative devise, a devise in the form of a class gift and an exercise of a power of appointment;

(4) "devisee" includes:

(a) a class member if the devise is in the form of a class gift;

(b) an individual or class member who was deceased at the time the testator executed his will as well as an individual or class member who was then living but who failed to survive the testator; and

(c) an appointee under a power of appointment exercised by the testator's will;

(5) "stepchild" means a child of the surviving, deceased or former spouse of the testator or of the donor of a power of appointment and not of the testator or donor;

(6) "surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is deemed to have predeceased the testator pursuant to the provisions of Section 45-2-702 NMSA 1978; and

(7) "testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

B. If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(1) except as provided in Paragraph (4) of this subsection, ifthe devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator;

(2) except as provided in Paragraph (4) of this subsection, if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives" or "family" or a class described by language of similar import, a substitute gift is created in the deceased devisee or devisee's surviving descendants. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which he would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this paragraph, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants;

(3) for the purposes of Section 45-2-601 NMSA 1978, words of survivorship, such as in a devise to an individual "if he survives me" or in a devise to "my surviving children" are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section;

(4) if the will creates an alternative devise with respect to a devise for which a substitute gift is created by Paragraph (1) or (2) of this subsection, the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will; and

(5) unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be

substituted for the appointee pursuant to the provisions of this section whether or not the descendant is an object of the power.

C. If, pursuant to the provisions of Subsection B of this section, substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) except as provided in Paragraph (2) of this subsection, the devised property passes under the primary substitute gift; and

(2) if there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

D. As used in Subsections C and D of this section:

(1) "primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator;

(2) "primary substitute gift" means the substitute gift created with respect to the primary devise;

(3) "younger-generation devise" means a devise that:

(a) is to a descendant of a devisee of the primary devise;

(b) is an alternative devise with respect to the primary devise;

(c) is a devise for which a substitute gift is created; and

(d) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise; and

(4) "younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise."

Section 43

Section 43. Section 45-2-604 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-604) is repealed and a new section of the Uniform Probate Code, Section 45-2-604 NMSA 1978, is enacted to read:

"45-2-604. FAILURE OF TESTAMENTARY PROVISION.--

A. Except as provided in Section 45-2-603 NMSA 1978, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

B. Except as provided in Section 45-2-603 NMSA 1978, if the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee or to other residuary devisees in proportion to the interest of each in the remaining part of the residue."

Section 44

Section 44. Section 45-2-605 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-605, as amended) is repealed and a new section of the Uniform Probate Code, Section 45-2-605 NMSA 1978, is enacted to read:

"45-2-605. INCREASE IN SECURITIES--ACCESSIONS.--

A. If a testator executes a will that devises securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

(1) securities of the same organization acquired by reason of action initiated by the organization or any successor, related or acquiring organization, excluding any acquired by exercise of purchase options;

(2) securities of another organization acquired as a result of merger, consolidation, reorganization or other distribution by the organization or any successor, related or acquiring organization; or

(3) securities of the same organization acquired as a result of a plan of reinvestment.

B. Distributions in cash before death with respect to a described security are not part of the devise."

Section 45

Section 45. Section 45-2-606 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-606) is repealed and a new section of the Uniform Probate Code, Section 45-2-606 NMSA 1978, is enacted to read:

"45-2-606. NONADEMPTION OF SPECIFIC DEVISES--UNPAID PROCEEDS OF SALE, CONDEMNATION OR INSURANCE--SALE BY CONSERVATOR OR AGENT.--

A. A specific devisee has a right to the specifically devised property in the testator's estate at death and:

(1) any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

(3) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;

(4) property owned by the testator at death and acquired as a result of foreclosure or obtained in lieu of foreclosure of the security interest for specifically devised obligation; and

(5) real or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real or tangible personal property.

B. If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal or if a condemnation award, insurance proceeds or recovery for injury to the property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds or the recovery.

C. The right of a specific devisee pursuant to Subsection B of this section is reduced by any right the devisee has pursuant to Subsection A of this section.

D. For the purposes of the references in Subsection B of this section to a conservator, Subsection B of this section does not apply if after the sale, mortgage, condemnation, casualty or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year.

E. For the purposes of the references in Subsection B of this section to an agent acting within the authority of a durable power of attorney for an incapacitated principal:

(1) "incapacitated principal" means a principal who is an incapacitated person;

(2) no adjudication of incapacity before death is necessary; and

(3) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal."

Section 46

Section 46. Section 45-2-607 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-607) is repealed and a new section of the Uniform Probate Code, Section 45-2-607 NMSA 1978, is enacted to read:

"45-2-607. NONEXONERATION.--A specific devise passes subject to any mortgage interest existing at the date of death without right of exoneration regardless of a general directive in the will to pay debts."

Section 47

Section 47. Section 45-2-608 NMSA 1978 (being Laws 1976 (S.S.), Chapter 37, Section 5) is repealed and a new section of the Uniform Probate Code, Section 45-2-608 NMSA 1978, is enacted to read:

"45-2-608. EXERCISE OF POWER OF APPOINTMENT.--In the absence of a requirement that a power of appointment be exercised by a reference or by an express or specific reference to the power, a general residuary clause in a will or a will making general disposition of all of the testator's property expresses an intention to exercise a power of appointment held by the testator only if:

A. the power is a general power and the creating instrument does not contain a gift if the power is not exercised; or

B. the testator's will manifests an intention to include the property subject to the power."

Section 48

Section 48. Section 45-2-609 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-609) is repealed and a new section of the Uniform Probate Code, Section 45-2-609 NMSA 1978, is enacted to read:

"45-2-609. ADEMPTION BY SATISFACTION.--

A. Property a testator gave in his lifetime to a person is treated as a satisfaction of a devise in whole or in part only if:

(1) the will provides for deduction of the gift;

(2) the testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or

(3) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

B. For purposes of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

C. If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying Sections 45-2-603 and 45-2-604 NMSA 1978, unless the testator's contemporaneous writing provides otherwise."

Section 49

Section 49. Section 45-2-701 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-701) is repealed and a new section of the Uniform Probate Code, Section 45-2-701 NMSA 1978, is enacted to read:

"45-2-701. SCOPE.--In the absence of a finding of a contrary intention, the rules of construction in Chapter 45, Article 2, Part 7 NMSA 1978 control the construction of a governing instrument. The rules of construction in Chapter 45, Article 2, Part 7 NMSA 1978 apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument."

Section 50

Section 50. A new section of the Uniform Probate Code, Section 45-2-702 NMSA 1978, is enacted to read:

"45-2-702. REQUIREMENT OF SURVIVAL BY ONE HUNDRED TWENTY HOURS.--

A. For the purposes of the Uniform Probate Code, except for purposes of Chapter 45, Article 6, Part 3 NMSA 1978 and except as provided in Subsection D of this section, an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by one hundred twenty hours is deemed to have predeceased the event.

B. Except as provided in Subsection D of this section and except for a security registered in beneficiary form (TOD) pursuant to the provisions of Chapter 45,

Article 6, Part 3 NMSA 1978, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event.

C. Except as provided in Subsection D of this section:

(1) if it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours; and

(2) if there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of co-owners.

For the purposes of this subsection, "co-owners with right of survivorship" includes joint tenants and other co-owners of property or accounts held under circumstances that entitles one or more to the whole of the property or account on the death of the other or others.

D. This section does not apply if:

(1) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(2) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period;

(3) the imposition of a one-hundred-twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity pursuant to the provisions of Paragraph (1) of Subsection A, Paragraph (1) of Subsection B or Paragraph (1) of Subsection C of Section 45-2-901 NMSA 1978 or to become invalid pursuant to the provisions of Paragraph (2) of Subsection A, Paragraph (2) of Subsection B or Paragraph (2) of Subsection C of Section 45-2-901 NMSA 1978; or

(4) the application of this section to multiple governing instruments would result in an unintended failure or duplication of a disposition.

E. A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument before the payor or other third party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

Written notice of a claimed lack of entitlement pursuant to the provisions of this subsection must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

F. A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it under this section.

G. If this section or any part of this section is pre-empted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not pre-empted."

Section 51

Section 51. A new section of the Uniform Probate Code, Section 45-2-703 NMSA 1978, is enacted to read:

"45-2-703. CHOICE OF LAW AS TO MEANING AND EFFECT OF GOVERNING INSTRUMENT.--The meaning and legal effect of a governing instrument is determined by the local law of the state selected by the transferor in the governing instrument unless the application of that law is contrary to the provisions relating to allowances described in Chapter 45, Article 2, Part 4 NMSA 1978 or any other public policy of this state otherwise applicable to the disposition."

Section 52

Section 52. A new section of the Uniform Probate Code, Section 45-2-704 NMSA 1978, is enacted to read:

"45-2-704. POWER OF APPOINTMENT--MEANING OF SPECIFIC REFERENCE REQUIREMENT.--If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference or a specific reference to the power or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power."

Section 53

Section 53. A new section of the Uniform Probate Code, Section 45-2-705 NMSA 1978, is enacted to read:

"45-2-705. CLASS GIFTS CONSTRUED TO ACCORD WITH INTESTATE SUCCESSION.--

A. Adopted individuals and individuals born out of wedlock and their respective descendants if appropriate to the class are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces" or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces" or "nephews", are construed to include both types of relationships.

B. In addition to the requirements of Subsection A of this section, in construing a dispositive provision of a transferor who is not the natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that parent's parent, brother, sister, spouse or surviving spouse.

C. In addition to the requirements of Subsection A of this section, in construing a dispositive provision of a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent."

Section 54

Section 54. A new section of the Uniform Probate Code, Section 45-2-706 NMSA 1978, is enacted to read:

"45-2-706. LIFE INSURANCE--RETIREMENT PLAN--ACCOUNT WITH POD DESIGNATION--TRANSFER-ON-DEATH REGISTRATION--DECEASED BENEFICIARY.--

A. As used in this section:

(1) "alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent or any other form;

(2) "beneficiary" means the beneficiary of a beneficiary designation and includes:

(a) a class member if the beneficiary designation is in the form of a class gift; and

(b) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent;

(3) "beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift;

(4) "class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had he
survived the decedent;

(5) "stepchild" means a child of the decedent's surviving, deceased or former spouse and not of the decedent; and

(6) "surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent pursuant to the provisions of Section 45-2-702 NMSA 1978.

B. If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent or a stepchild of the decedent, the following apply:

(1) except as provided in Paragraph (4) of this subsection, if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the ecedent;

(2) except as provided in Paragraph (4) of this subsection, if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives" or "family" or a class described by language of similar import, a substitute gift is created in the deceased beneficiary or beneficiaries' surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants;

(3) for the purposes of Section 45-2-701 NMSA 1978, words of survivorship, such as in a beneficiary designation to an individual "if he survives me" or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section; and

(4) if a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by Paragraph (1) or (2) of this subsection, the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

C. If, pursuant to the provisions of Subsection B of this section, substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) except as provided in Paragraph (2) of this subsection, the property passes under the primary substitute gift; and

(2) if there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

D. As used in Subsections C and D of this section:

(1) "primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent;

(2) "primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation;

(3) "younger-generation beneficiary designation" means as a beneficiary designation that:

(a) is to a descendant of a beneficiary of the primary beneficiary designation;

(b) is an alternative beneficiary designation with respect to the primary beneficiary designation;

(c) is a beneficiary designation for which a substitute gift is created; and

(d) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation; and

(4) "younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

E. A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received whether or not written notice of the claim is given.

The written notice of the claim must be mailed to the payor's main office or home by registered or certified mail, return receipt requested, or served upon the payor in the

same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

F. A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated pursuant to the provisions of this section to return the payment, item of property or benefit nor is liable pursuant to the provisions of this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it pursuant to the provisions of this section.

G. If this section or any part of this section is pre-empted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not pre-empted."

Section 55

Section 55. A new section of the Uniform Probate Code, Section 45-2-707 NMSA 1978, is enacted to read:

"45-2-707. SURVIVORSHIP WITH RESPECT TO FUTURE INTERESTS UNDER TERMS OF TRUST--SUBSTITUTE TAKERS.--

A. As used in this section:

(1) "alternative future interest" means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause;

(2) "beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift;

(3) "class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had he survived the distribution date;

(4) "distribution date", with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day;

(5) "future interest" includes an alternative future interest and a future interest in the form of a class gift;

(6) "future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust or creating a trust; and

(7) "surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date pursuant to the provisions of Section 45-2-702 NMSA 1978.

B. A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(1) except as provided in Paragraph (4) of this subsection, if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date;

(2) except as provided in Paragraph (4) of this subsection, if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives" or "family" or a class described by language of similar import, a substitute gift is created in the deceased beneficiary or beneficiaries' surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which he would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the ceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled

had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants;

(3) for the purposes of Section 45-2-701 NMSA 1978, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent or any other form; and

(4) if a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by Paragraph (1) or (2) of this subsection, the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

C. If, pursuant to the provisions of Subsection B of this section, substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) except as provided in Paragraph (2) of this subsection, the property passes under the primary substitute gift; and

(2) if there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

D. As used in Subsections C and D of this section:

(1) "primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date;

(2) "primary substitute gift" means the substitute gift created with respect to the primary future interest;

(3) "younger-generation future interest" means a future interest that:

(a) is to a descendant of a beneficiary of the primary future interest;

(b) is an alternative future interest with respect to the primary future interest;

(c) is a future interest for which a substitute gift is created; and

(d) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest; and

(4) "younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

E. If, after the application of Subsections B and C of this section, there is no surviving taker, the property passes in the following order:

(1) if the trust was created in a nonresiduary devise in the transferor's will or in codicil to the transferor's will, the property passes under the residuary clause in the transferor's will; for purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust; and

(2) if no taker is produced by the application of Paragraph (1) of this subsection, the property passes to the transferor's heirs pursuant to the provisions of Section 45-2-711 NMSA 1978."

Section 56

Section 56. A new section of the Uniform Probate Code, Section 45-2-708 NMSA 1978, is enacted to read:

"45-2-708. CLASS GIFTS TO DESCENDANTS, ISSUE OR HEIRS OF THE BODY--FORM OF DISTRIBUTION IF NONE SPECIFIED.--If a class gift in favor of "descendants", "issue" or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment in such shares as they would receive pursuant to the applicable law of intestate succession if the designated ancestor had then died intestate owning the subject matter of the class gift."

Section 57

Section 57. A new section of the Uniform Probate Code, Section 45-2-709 NMSA 1978, is enacted to read:

"45-2-709. REPRESENTATION--PER CAPITA AT EACH GENERATION--PER STIRPES.--

A. As used in this section:

(1) "deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date pursuant to the provisions of Section 45-2-702 NMSA 1978;

(2) "distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day; and

(3) "surviving ancestor", "surviving child" or "surviving descendant" means an ancestor, a child or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date pursuant to the provisions of Section 45-2-702 NMSA 1978.

B. If an applicable statute or a governing instrument calls for property to be distributed "by representation" or "per capita at each generation", the property is divided into as many equal shares as there are:

(1) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(2) deceased descendants in the same generation who left surviving descendants, if any.

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are
combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

C. If a governing instrument calls for property to be distributed "per stirpes", the property is divided into as many equal shares as there are:

(1) surviving children of the designated ancestor; and

(2) deceased children who left surviving descendants. Each surviving child is allocated one share.

The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

D. For the purposes of Subsections B and C of this section, an individual who is deceased and left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share."

Section 58

Section 58. A new section of the Uniform Probate Code, Section 45-2-710 NMSA 1978, is enacted to read:

"45-2-710. WORTHIER-TITLE DOCTRINE ABOLISHED.--The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributees", "relatives" or "family" or language of similar import does not create or presumptively create a reversionary interest in the transferor."

Section 59

Section 59. A new section of the Uniform Probate Code, Section 45-2-711 NMSA 1978, is enacted to read:

"45-2-711. FUTURE INTERESTS IN HEIRS AND LIKE.--If an applicable statute or a governing instrument calls for a future distribution to or creates a future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives" or "family" or language of similar import, the property passes to those persons, including the state pursuant to the provisions of Section 45-2-105 NMSA 1978, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual."

Section 60

Section 60. Section 45-2-801 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-801, as amended) is repealed and a new section of the Uniform Probate Code, Section 45-2-801 NMSA 1978, is enacted to read:

"45-2-801. DISCLAIMER OF PROPERTY INTERESTS.--

A. A person or the representative of a person to whom an interest in or with respect to property or an interest therein devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer pursuant to the provisions of this section. The right to disclaim exists notwithstanding:

(1) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or

(2) any restriction or limitation on the right to disclaim contained in the governing instrument.

For purposes of this subsection, the "representative of a person" includes a personal representative of a decedent, a conservator of a disabled person, a guardian of a minor or incapacitated person and an agent acting on behalf of the person within the authority of a power of attorney.

B. The following rules govern the time when a disclaimer must be filed or delivered:

(1) if the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than nine months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by registered or certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power;

(2) if a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than nine months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than nine months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to himself or another the entire legal and equitable ownership of the interest. The disclaimer or a copy thereof must be delivered in person or mailed by registered or certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed;

(3) a surviving joint tenant may disclaim as a separate interest any property or interest therein devolving to him by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest therein that is the subject of a joint tenancy devolving to him if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy and has not accepted a benefit under it; and

(4) if real property or an interest therein is disclaimed, a copy of the disclaimer may be recorded in the office of the county clerk of the county in which the property or interest disclaimed is located.

C. The disclaimer must:

(1) describe the property or interest disclaimed;

(2) declare the disclaimer and extent thereof; and

(3) be signed by the disclaimant.

D. The effects of a disclaimer are:

(1) if property or an interest therein devolves to a disclaimant under a testamentary instrument under a power of appointment exercised by a testamentary instrument or pursuant to the laws of intestacy and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent; but if by law or under the testamentary instrument the descendants of the disclaimant would take the disclaimant's share by representation were the disclaimant to predecease the decedent, then the disclaimed interest passes by representation to the descendants of the disclaimant who survived the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of death of the decedent;

(2) if property or an interest therein devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant has predeceased the effective date of the instrument or contract; but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would take the disclaimant's share by representation were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes by repesentation to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest; and

(3) the disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under
either of them.

E. The right to disclaim property or an interest therein is barred by:

(1) an assignment, conveyance, encumbrance, pledge or transfer of the property or interest or a contract therefor;

(2) a written waiver of the right to disclaim;

(3) an acceptance of the property or interest or a benefit under it; or

(4) a sale of the property or interest under judicial sale made before the disclaimer is made.

F. This section does not abridge the right of a person to waive, release, disclaim or renounce property or an interest therein under any other statute.

G. An interest in property that exists on the effective date of this section as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be disclaimed within nine months after the effective date of this section."

Section 61

Section 61. Section 45-2-802 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-802) is repealed and a new section of the Uniform Probate Code, Section 45-2-802 NMSA 1978, is enacted to read:

"45-2-802. EFFECT OF DIVORCE, ANNULMENT AND DECREE OF SEPARATION.--

A. An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

B. For purposes of Chapter 45, Article 2, Parts 1 through 4 and Section 45-3-203 NMSA 1978, a surviving spouse does not include:

(1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife;

(2) an individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or

(3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights."

Section 62

Section 62. Section 45-2-803 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-803) is repealed and a new section of the Uniform Probate Code, Section 45-2-803 NMSA 1978, is enacted to read:

"45-2-803. EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, TRUSTS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY DESIGNATIONS.--

A. As used in this section:

(1) "disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument; and

(2) "revocable", with respect to a disposition, appointment, provision or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation, in favor of the killer, whether or not the decedent was then empowered to designate himself in place of his killer and the decedent then had capacity to exercise the power.

B. An individual who feloniously and intentionally kills the decedent forfeits all benefits pursuant to the provisions of Chapter 45, Article 2 NMSA 1978 with respect to the decedent's estate, including an intestate share, an omitted spouse's or child's share, a family allowance and a personal property allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed his intestate share.

C. The felonious and intentional killing of the decedent:

(1) revokes any revocable:

(a) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(b) provision in a governing instrument executed by the decedent conferring a general or nongeneral power of appointment on the killer; and

(c) nomination of the killer in a governing instrument executed by the decedent, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee or agent; and

(2) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into tenancies in common.

D. A severance pursuant to the provisions of Paragraph (2) of Subsection C of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon in the ordinary course of transactions involving such property as evidence of ownership.

E. Provisions of a governing instrument executed by the decedent that are not revoked by this section are given effect as if the killer disclaimed all revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

F. An acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from his wrong.

G. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court upon the petition of an interested person must determine whether under the preponderance of evidence standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

H. A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument executed by the decedent affected by an intentional and felonious killing or for having taken any other action in good faith reliance on the validity of the governing instrument executed by the decedent upon request and satisfactory proof of the decedent's death before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

Written notice of a claimed forfeiture or revocation pursuant to the provisions of this section must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation pursuant to the provisions of this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination pursuant to the provisions of this section, shall order disbursement in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts
paid to or items of property transferred to or deposited with the court.

I. A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated pursuant to the provisions of this section to return the payment, item of property or benefit nor is liable pursuant to the provisions of this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it pursuant to the provisions of this section.

J. If this section or any part of this section is pre-empted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not pre-empted."

Section 63

Section 63. A new section of the Uniform Probate Code, Section 45-2-804 NMSA 1978, is enacted to read:

"45-2-804. REVOCATION OF PROBATE AND NONPROBATE TRANSFERS BY DIVORCE--NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.--

A. As used in this section:

(1) "disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument;

(2) "divorce or annulment" means any divorce or annulment or any dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of Section 45-2-802 NMSA 1978. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section;

(3) "divorced individual" includes an individual whose marriage has been annulled;

(4) "governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of his marriage to his former spouse;

(5) "relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption or affinity; and

(6) "revocable", with respect to a disposition, appointment, provision or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered by law or under the governing instrument to cancel the designation in favor of his former spouse or former spouse's relative whether or not the divorced individual was then empowered to designate himself in place of his former spous or in place of his former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

B. Except as provided by the express terms of a governing instrument, a court order or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

(1) revokes any revocable:

(a) disposition or appointment of property made by a divorced individual to his former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(b) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(c) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent or guardian; and

(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into tenancies in common.

C. A severance pursuant to the provisions of Paragraph (2) of Subsection B of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon in the ordinary course of transactions involving such property as evidence of ownership.

D. Provisions of a governing instrument that are not revoked by this section are given effect as if the former spouse and relatives of the former spouse disclaimed the revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

E. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

F. No change of circumstances other than as described in this section and in Section 45-2-803 NMSA 1978 effects a revocation.

G. A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment or remarriage or for having taken any other action in good faith reliance on the validity of the governing instrument before the payor or other third party received written notice of the divorce, annulment or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation pursuant to the provisions of this section.

Written notice of the divorce, annulment or remarriage pursuant to the provisions of this section must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of the written notice of the divorce, annulment or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the

court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination pursuant to the provisions of this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

H. A person who purchases property from a former spouse, relative of a former spouse or any other person for value and without notice or who receives from a former spouse, relative of a former spouse or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated pursuant to the provisions of this section to return the payment, item of property or benefit nor is liable pursuant to the provisions of this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse or other person who, not for value, received a payment, item of property or any other benefit to which that person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it pursuant to the provisions of this section.

I. If this section or any part of this section is pre-empted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a former spouse, relative of the former spouse or any other person who, not for value, received a payment, item of property or any other benefit to which that person is not entitled pursuant to the provisions of this section is obligated to return that payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not pre-empted."

Section 64

Section 64. RECOMPILATION.--Section 45-2-804 (being Laws 1975, Chapter 257, Section 2-804, as amended) is recompiled as Section 45-2-805 NMSA 1978.

Section 65

Section 65. RECOMPILATION.--Section 45-8-9 NMSA 1978 (being Laws 1973, Chapter 276, Section 8) is recompiled as Section 45-2-806 NMSA 1978.

Section 66

Section 66. RECOMPILATION.--Sections 45-2-1001 through 45-2-1006 NMSA 1978 (being Laws 1992, Chapter 66, Sections 1 through 6) are recompiled as Sections 45-2-901 through 45-2-906 NMSA 1978.

Section 67

Section 67. RECOMPILATION.--Sections 45-2-1101 through 45-2-1110 NMSA 1978 (being Laws 1992, Chapter 66, Sections 7 through 16) are recompiled as Sections 45-2-1001 through 45-2-1010 NMSA 1978.

Section 68

Section 68. Section 45-3-108 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-108) is amended to read:

"45-3-108. PROBATE, TESTACY AND APPOINTMENT PROCEEDINGS--ULTIMATE TIME LIMIT.--

A. No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile or appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:

(1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, then appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed at any time within three years after the conservator becomes able to establish the death of the protected person;

(3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of twelve months from the informal probate or three years from the decedent's death; and

(4) if no proceeding concerning the succession or administration of the estate has occurred within three years after decedent's death, a formal testacy proceeding may be commenced at any time thereafter for the sole purpose of establishing a devise of property that the devisee or his successors and assigns possessed in accordance with the will or property that was not possessed or claimed by anyone by virtue of the decedent's title during the three-year period and the order of the court shall be limited to that property.

B. The limitations set out in Subsection A of this section do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases

pursuant to the provisions of Paragraph (1) or (2) of Subsection A of this section, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitation provisions of the Uniform Probate Code that relate to the date of death."

Section 69

Section 69. Section 45-3-705 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-705) is amended to read:

"45-3-705. DUTY OF PERSONAL REPRESENTATIVE--NOTICE TO HEIRS AND DEVISEES.--

A. Not later than ten days after his appointment, every personal representative, except any special administrator, shall give notice of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application or petition for appointment of a personal representative.

B. The notice shall be delivered or mailed to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require notice to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The notice shall:

(1) include the name and address of the personal representative;

(2) indicate that it is being sent to persons who have or may have some interest in the estate being administered;

(3) indicate whether bond has been filed; and

(4) describe the court where papers relating to the estate are on file.

C. The notice shall state that the estate is being administered by the personal representative pursuant to the provisions of the Uniform Probate Code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and can petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.

D. The personal representative shall file a statement with the appointing court giving the names and addresses of those persons notified pursuant to Subsection A of this section.

E. The personal representative's failure to give notice pursuant to this section is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers or other duties. A personal representative may inform other persons of his appointment by delivery or mail."

Section 70

Section 70. Section 45-3-708 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-708) is amended to read:

"45-3-708. DUTY OF PERSONAL REPRESENTATIVE--SUPPLEMENTARY INVENTORY.--

A. If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneos or misleading, he shall make a supplementary inventory or appraisement showing the estimated value as of the date of the decedent's death of the new item or the revised estimated value or descriptions.

B. The personal representative shall send a copy of the inventory to interested persons who request it. He may also file the original of the inventory with the appropriate court."

Section 71

Section 71. Section 45-3-801 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-801) is amended to read:

"45-3-801. NOTICE TO CREDITORS.--

A. A personal representative shall give written notice by mail or other delivery to any known creditor and to any creditor who is reasonably ascertainable by the personal representative within three months after the personal representative's appointment. A personal representative shall notify a creditor to present his claim within two months of the published notice, if given as provided in Subsection B of this section, or within two months after the mailing or other delivery of the notice, whichever is later, or be forever barred.

B. A personal representative, within a reasonable time after his appointment, may also publish a notice to creditors once a week for two successive weeks in a newspaper of general circulation in the county announcing the appointment and the personal representative's address and the name of the decedent and notifying creditors of the estate to present their claims within two months after the date of the first publication of the notice or be forever barred.

C. A personal representative who has proceeded in accordance with Subsection A of this section is not liable to a creditor whose claim was not identified or to a successor of the decedent for giving or failing to give notice pursuant to the provisions of this section."

Section 72

Section 72. Section 45-3-802 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-802) is amended to read:

"45-3-802. STATUTES OF LIMITATIONS.--

A. Unless an estate is insolvent, the personal representative, with the consent of all successors, may waive any defense of limitations available to the estate. If the defense is not waived, no claim that was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

B. The running of a statute of limitations measured from an event other than death or the giving of notice to creditors is suspended for four months after the decedent's death but resumes thereafter as to claims not barred by other sections.

C. For purposes of a statute of limitations, the presentation of a claim pursuant to Section 45-3-804 NMSA 1978 is equivalent to commencement of a proceeding on the claim."

Section 73

Section 73. Section 45-3-803 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-803) is amended to read:

"45-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS.--

A. All claims against a decedent's estate that arose before the death of the decedent, including claims of the state and any subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated or founded on contract, tort or other legal basis, if not barred earlier by another statute of limitations or non-claim statute, are barred against the estate, the personal representative and the heirs and devisees of the decedent unless presented within the earlier of the following:

(1) one year after the decedent's death; or

(2) the time provided by Subsection A of Section 45-3-801 NMSA 1978 for creditors who are given actual notice and the time provided in Subsection B of Section 45-3-801 NMSA 1978 for all creditors barred by publication.

B. A claim described in Subsection A of this section that is barred by the non-claim statute of the decedent's domicile before the giving of notice to creditors in this state is barred in this state.

C. All claims against a decedent's estate that arise at or after the death of the decedent, including claims of the state and any subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated or founded on contract, tort or other legal basis, are barred against the estate, the personal representative and the heirs and devisees of the decedent unless presented as follows:

(1) a claim based on a contract with the personal representative within four months after performance by the personal representative is due; or

(2) any other claim within the later of four months after it arises or the time specified in Paragraph (1) of this subsection.

D. Nothing in this section affects or prevents:

(1) any proceeding to enforce any mortgage, pledge or other lien upon property of the estate;

(2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance; or

(3) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate."

Section 74

Section 74. Section 45-3-806 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-806) is amended to read:

"45-3-806. ALLOWANCE OF CLAIMS.--

A. As to claims presented in the manner described in Section 45-3-804 NMSA 1978 within the time limit prescribed in Section 45-3-803 NMSA 1978, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If after allowing or disallowing a claim the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim that is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the district court or commences a proceeding against the

personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance. Failure of the personal representative to mail notice to a claimant of action on his claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

B. After allowing or disallowing a claim the personal representative may change the allowance or disallowance as hereafter provided. The personal representative may prior to payment change the allowance to a disallowance in whole or in part but not after allowance by a court order or judgment or an order directing payment of the claim. He shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in Subsection A of this section. The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred pursuant to Subsection A of this section; after it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

C. Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the district court may allow in whole or in part any claim presented to the personal representative or filed with the clerk of the district court in due time and not barred by Subsection A of this section. Notice in this proceeding shall be given to the claimant, the personal representative and those other persons interested in the estate, as the court may direct by order entered at the time the proceeding is commenced.

D. A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

E. Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision."

Section 75

Section 75. Section 45-3-807 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-807) is amended to read:

"45-3-807. PAYMENT OF CLAIMS.--

A. Upon the expiration of the earlier of the time limitations provided in Section 45-3-803 NMSA 1978, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority described, after making provision for family and personal property allowances, for claims already presented that have not yet been allowed or whose allowance has been appealed and for unbarred

claims that may yet be presented, including costs and expenses of administration. By petition to the district court in a proceeding for the purpose or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid may secure an order directing the personal representative to pay the claim to the extent funds of the estate are available to pay it.

B. The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by its payment if:

(1) payment was made before the expiration of the time limit stated in Subsection A of this section and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(2) payment was made, due to negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of priority."

Section 76

Section 76. Section 45-3-906 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-906) is amended to read:

"45-3-906. DISTRIBUTION IN KIND--VALUATION--METHOD.--

A. Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(1) a specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in Section 45-2-402 NMSA 1978 shall receive the items selected;

(2) any family allowance, personal property allowance or devise of a stated sum of money may be satisfied in kind, provided:

(a) the person entitled to the payment has not demanded payment in cash;

(b) the property distributed in kind is valued at fair market value as of the date of its distribution; and

(c) no residuary devisee has requested that the asset in question remain a part of the residue of the estate; and

(3) the residuary estate shall be distributed in any equitable manner.

B. For the purpose of valuation pursuant to Paragraph (2) of Subsection A of this section, securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets that do not have readily ascertainable values, a valuation as of a date not more than thirty days prior o the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

C. After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal."

Section 77

Section 77. Section 45-3-910 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-910) is repealed and a new section of the Uniform Probate Code, Section 45-3-910 NMSA 1978, is enacted to read:

"45-3-910. PURCHASES FROM DISTRIBUTEES PROTECTED.--If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution."

Section 78

Section 78. Section 45-3-914 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-914) is amended to read:

"45-3-914. DISPOSITION OF UNCLAIMED ASSETS.--If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any. Otherwise, the personal representative shall sell the share of the missing person and distribute the proceeds to the state treasurer as prescribed by the Uniform Unclaimed Property Act."

Section 79

Section 79. Section 45-3-915 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-915) is amended to read:

"45-3-915. DISTRIBUTION TO PERSON UNDER DISABILITY.--

A. A personal representative may discharge his obligation to distribute to any minor or person under disability by distributing in a manner expressly provided in the will.

B. Unless contrary to an express provision in the will, the personal representative may discharge his obligation to distribute to a minor or person under other disability as authorized by Section 45-5-101 NMSA 1978 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

C. If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(1) an attorney in fact who has authority under a power of attorney to receive property for that person; or

(2) the spouse, parent or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding ten thousand dollars ($10,000) a year or property not exceeding ten thousand dollars ($10,000) in value unless the court authorizes a larger amount or greater value.

Persons receiving money or property for the disabled person are obligated to apply the money or property to the support of the disabled person. Persons may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection."

Section 80

Section 80. Section 45-3-916 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-916) is amended to read:

"45-3-916. APPORTIONMENT OF ESTATE TAXES.--

A. For purposes of this section:

(1) "estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and any death taxes payable to New Mexico;

(2) "person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency or local governmental agency;

(3) "person interested in the estate" means any person entitled to receive or who has received from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator and trustee;

(4) "state" means any state, territory or possession of the United States, the District of Columbia and the commonwealth of Puerto Rico;

(5) "tax" means the federal estate tax and any death taxes imposed by New Mexico and interest and penalties imposed in addition to the tax; and

(6) "fiduciary" means personal representative or trustee.

B. Except as provided in Subsection I of this section and, unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest, subject to tax of each such person interested in the estate, bears to the total value of the interests, subject to tax of all such persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in the Uniform Probate Code, the method described in the will controls.

C. The district court in which venue lies for the administration of the estate of a decedent, on petition for such purpose, may determine the apportionment of the tax. If the district court finds that it is inequitable to apportion interest and penalties in the manner provided in Subsection B of this section, it may direct equitable apportionment thereof. If the district court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the district court may charge him with the amount of the assessed penalties and interest.

D. The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this section. If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

E. Under the provisions of this section:

(1) in making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax;

(2) any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal;

(3) any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment;

(4) any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax; and

(5) to the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or devise is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in Subsection B of this section and to that extent no apportionment is made against the property. The provisions of this paragraph do not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Subsection D of Section 2053 of the Internal Revenue Code of 1954, as amended, of

the United States, relating to deduction for state death taxes on transfers for public, charitable or religious uses.

F. No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

G. Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

H. A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of New Mexico and may recover a proportionate amount of the federal tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in New Mexico or who owns property in New Mexico subject to attachment or execution. For the purposes of the action, the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

I. If the liabilities of persons interested in the estate as prescribed by the provisions of the Uniform Probate Code differ from those which result under the Federal Estate tax law, the liabilities imposed by the federal law will control and the balance of this section shall apply as if the resulting liabilities had been rescribed by the Uniform Probate Code."

Section 81

Section 81. Section 45-3-1003 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-1003, as amended) is amended to read:

"45-3-1003. CLOSING ESTATES--BY SWORN STATEMENT OF PERSONAL REPRESENTATIVE.--

A. Unless prohibited by order of the district court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court, no earlier than three months after the date of original appointment of a general personal representative for the estate, a verified statement stating that the personal representative or a previous personal representative has:

(1) determined that the time limited for presentation of creditors' claims has expired;

(2) fully administered the estate of the decedent by making payment, settlement or other disposition of all claims that were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or it shall state in detail other arrangements that have been made to accommodate outstanding liabilities; and

(3) sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby, including guardians ad litem appointed pursuant to Section 45-1-403 NMSA 1978, conservators and guardians.

B. If no proceedings involving the personal representative are pending in the district court one year after the closing statement is filed, the appointment of the personal representative terminates."

Section 82

Section 82. Section 45-3-1006 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-1006) is amended to read:

"45-3-1006. LIMITATIONS ON ACTIONS AND PROCEEDINGS AGAINST DISTRIBUTEES.--Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or unless otherwise barred, the claim of a claimant to recover from a distributee who is liable to pay the claim and the right of an heir or devisee or of a successor personal representative acting in their behalf to recover property improperly distributed or its value from any distributee is forever barred at the later of three years after the decedent's death or one year after the time of its distribution, but all claims of creditors of the decedent are barred one year after the decedent's death. This section does not bar an action to recover property or value received as the result of fraud."

Section 83

Section 83. Section 45-6-216 NMSA 1978 (being Laws 1992, Chapter 66, Section 29) is amended to read:

"45-6-216. COMMUNITY PROPERTY.--A deposit of community property in an account does not alter the community character of the property or community rights in the property, but a right of survivorship between parties married to each other arising from the express terms of the account or Section 45-6-212 NMSA 1978 may not be altered by will."

Section 84

Section 84. REPEAL.--Sections 12-2-5, 45-2-610 through 45-2-612, 45-2-901, 45-2-902, 45-8-1 through 45-8-8 and 46-5-1 through 46-5-3 NMSA 1978 (being Laws 1973, Chapter 168, Section 2, Laws 1975, Chapter 257, Sections 2-610 through 2-612, Laws 1975, Chapter 257, Sections 2-901 and 2-902, Laws 1959, Chapter 172, Sections 1 through 8 and Laws 1965, Chapter 26, Sections 1, 2 and 4) are repealed.

Section 85

Section 85. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 12

CHAPTER 175

RELATING TO THE CHILDREN'S TRUST FUND; PROVIDING FOR A DELAY IN THE AMOUNT OF FUND MONEY DEEMED INCOME; AMENDING A SECTION OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 24-19-4 NMSA 1978 (being Laws 1986, Chapter 15, Section 4, as amended) is amended to read:

"24-19-4. CHILDREN'S TRUST FUND CREATED--EXPENDITURE LIMITATIONS.--

A. There is created in the state treasury the "children's trust fund". The children's trust fund may be used for any purpose enumerated in Section 24-19-2 NMSA 1978. All income received from investment of the fund shall be credited to the fund. No money appropriated to the fund or otherwise accruing to it shall be disbursed in any manner except as provided in the Children's Trust Fund Act.

B. The children's trust fund shall be administered by the department for the purpose of funding children's projects from the income received from investment of the fund; provided that none of the income shall be used for capital expenditures. All income from investment of the fund is appropriated to the department for that purpose or for administrative costs as provided in Subsection C of this section. Grants, appropriations and transfers of money from the fund shall be made only from the income received from investment of the fund.

C. Up to ten percent of the income received from investment of the children's trust fund may be expended for costs of administration of the fund and administration of the children's projects undertaken with fund money. Administrative costs include per diem and mileage, staff salaries and expenses related to administration of the fund.

D. Disbursements from income credited to the children's trust fund and appropriated to the department shall be made only upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of children, youth and families or his designated representative for the purpose of funding children's projects approved by the board.

E. Until June 30, 1997, one-half of the money transferred to the children's trust fund pursuant to Section 40-1-11 NMSA 1978 shall be deemed income received from investment of the fund." HB 148

CHAPTER 176

RELATING TO CULTURAL PROPERTIES; ENACTING THE CULTURAL PROPERTIES PROTECTION ACT; PROVIDING FOR RESTORATION, PRESERVATION, STABILIZATION AND PROTECTION OF CULTURAL PROPERTIES; CREATING A FUND; PROVIDING FOR CRIMINAL AND CIVIL PENALTIES; AMENDING, REPEALING, ENACTING AND RECOMPILING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Cultural Properties Protection Act".

Section 2

Section 2. DEFINITIONS.--As used in the Cultural Properties Protection Act:

A. "committee" means the cultural properties review committee;

B. "cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance;

C. "division" means the historic preservation division of the office of cultural affairs;

D. "fund" means the cultural properties restoration fund;

E. "interpretation" means the inventory, registration, mapping and analysis of cultural properties and public educational programs designed to prevent the loss of cultural properties;

F. "officer" means the state historic preservation officer;

G. "preservation" means sustaining the existing form, integrity and material of a cultural property or the existing form and vegetative cover of a cultural property, and may include protective maintenance or stabilization where necessary in the case of archaeological sites;

H. "professional survey" means an archaeological or architectural survey;

I. "protection" means safeguarding the physical condition or environment of a cultural property from deterioration or damage caused by weather or other natural, animal or human intrusions;

J. "restoration" means recovering the general historic appearance of a cultural property or the form and details of an object or structure by removing incompatible natural or human-caused accretions and replacing missing elements as appropriate;

K. "stabilization" means reestablishing the structural stability or weather-resistant condition of a cultural property or arresting deterioration that may lead to structural failure;

L. "state agency" means a department, agency, institution or political subdivision of the state; and

M. "state land" means property owned, controlled or operated by a state agency.

Section 3

Section 3. FUND--CREATED--PURPOSE.--

A. The "cultural properties restoration fund" is created in the state treasury. The fund may receive money appropriated by the legislature or gifts, grants,

bequests or payments for services rendered by the division from any public or private source. All money appropriated to the fund or accruing to the fund as a result of gifts, grants, bequests, payments for services rendered, investment of the fund or from any other source shall not be transferred to another fund but shall remain in the fund to be encumbered and disbursed according to the provisions of the Cultural Properties Protection Act. Money in the fund shall not revert to the general fund or to any other fund from which money was appropriated.

B. Money in the fund shall be used solely for the purpose of providing grants for interpretation, restoration, preservation, stabilization and protection of cultural property that is state property.

C. Disbursements from the fund shall be made only upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the officer.

Section 4

Section 4. ADMINISTRATION--REGULATORY AUTHORITY.--

A. The officer shall administer the provisions of the Cultural Properties Protection Act and shall adopt rules, regulations and criteria for reviewing and awarding grants as necessary to carry out the provisions of that act.

B. Rules and regulations shall include:

(1) the method to be used to determine the eligibility of a state agency to receive grants from the fund;

(2) a procedure for application, approval and rejection of grant proposals;

(3) a requirement that an interpretation, restoration, preservation, stabilization or protection project be undertaken in accordance with specifications approved by the officer; and

(4) a requirement that a cultural property assisted by a grant be preserved and protected for a specified period of time, but in no case less than ten years.

C. Criteria for reviewing and awarding grants shall include the:

(1) degree of physical damage or deterioration of the cultural property;

(2) special status of the cultural property, including whether the property is listed on a national, state or local register of historic places; and

(3) suitability of the cultural property for interpretation.

D. At least annually, the officer, in consultation with the committee and with the approval of the officials having jurisdiction over cultural properties being considered, shall select:

(1) cultural properties to be restored, preserved, stabilized and protected; and

(2) programs for interpretation.

E. The officer may contract with state agencies, architectural and engineering firms, private nonprofit organizations or individuals for interpretation, restoration, preservation, stabilization and protection.

Section 5

Section 5. PROFESSIONAL SURVEYS.--The officer shall, in cooperation with the heads of state agencies, establish a system of professional surveys of cultural properties on state lands. State agencies shall cooperate with the officer and exercise due caution to ensure that cultural properties are not inadvertently damaged or destroyed.

Section 6

Section 6. JOINT POWERS AGREEMENTS.--As authorized by the Joint Powers Agreements Act, any state agency may enter into a joint powers agreement with the division to effect the purposes of the Cultural Properties Protection Act.

Section 7

Section 7. Section 18-6-3 NMSA 1978 (being Laws 1969, Chapter 223, Section 3) is amended to read:

"18-6-3. DEFINITIONS.--As used in the Cultural Properties Act:

A. "committee" means the cultural properties review committee;

B. "cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance;

C. "registered cultural property" means a cultural property that has been placed on the official register on either a permanent or temporary basis by the committee;

D. "official register" means the New Mexico register of cultural properties maintained by the committee for the purpose of recording cultural properties deemed worthy of preservation; and

E. "state land" means property owned, controlled or operated by a department, agency, institution or political subdivision of the state."

Section 8

Section 8. Section 18-6-9 NMSA 1978 (being Laws 1969, Chapter 223, Section 8, as amended) is repealed and a new Section 18-6-9 NMSA 1978 is enacted to read:

"18-6-9. CULTURAL PROPERTY--UNAUTHORIZED EXCAVATION, INJURY OR DESTRUCTION--CRIMINAL DAMAGE TO PROPERTY.--

A. Any person who knowingly excavates, injures or destroys cultural property located on state land without a permit is guilty of criminal damage to property.

B. Any person who solicits, employs or counsels another person to excavate, injure or destroy cultural property located on state land without a permit is guilty of criminal damage to property.

C. Whoever commits criminal damage to property pursuant to the provisions of this section and the value of the property excavated, injured or destroyed is:

(1) less than one thousand dollars ($1,000) is guilty of a petty misdemeanor and shall be sentenced according to the provisions of Section 31-19-1 NMSA 1978; or

(2) one thousand dollars ($1,000) or more is guilty of a fourth degree felony and shall be sentenced according to the provisions of Section 31-18-15 NMSA 1978."

Section 9

Section 9. A new Section 18-6-9.1 NMSA 1978 is enacted to read:

"18-6-9.1. CULTURAL PROPERTY--UNAUTHORIZED APPROPRIATION--LARCENY.--

A. Any person who knowingly appropriates cultural property located on state land without a permit is guilty of larceny.

B. Any person who solicits, employs or counsels another person to appropriate cultural property located on state land without a permit is guilty of larceny.

C. Any person who receives, traffics in or sells cultural property appropriated from state land without a valid permit is guilty of larceny.

D. Whoever commits larceny pursuant to the provisions of this section and the value of the property appropriated is:

(1) less than one hundred dollars ($100) is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(2) over one hundred dollars ($100) but less than two hundred fifty dollars ($250) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(3) two hundred dollars ($200) or more but less than two thousand five hundred ($2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(4) two thousand five hundred dollars ($2,500) or more but less than twenty thousand dollars ($20,000) is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; or

(5) more than twenty thousand dollars ($20,000) is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

Section 10

Section 10. A new Section 18-6-9.2 NMSA 1978 is enacted to read:

"18-6-9.2. CULTURAL PROPERTY--UNAUTHORIZED DAMAGE OR APPROPRIATION--CIVIL PENALTIES.--Any person violating the provisions of the Cultural Properties Act shall be liable for civil damages to the state agency, department, institution or political subdivision having jurisdiction over the cultural property in an amount equal to the cost or, in the discretion of the court, in an 0amount equal to twice the cost of restoration, stabilization and interpretation of the cultural property."

Section 11

Section 11. A new Section 18-6-9.3 NMSA 1978 is enacted to read:

"18-6-9.3. CULTURAL PROPERTY--FORFEITURE OF INSTRUMENTS.--

A. Any instrument, vehicle, tool or equipment used or intended to be used to violate the provisions of the Cultural Properties Act is subject to forfeiture; except that no instrument, vehicle, tool or equipment shall be subject to forfeiture if the violation was without the knowledge or consent of the owner of the property subject to forfeiture.

B. Property subject to forfeiture pursuant to the provisions of this section may be seized by a conservation officer, sheriff, state police officer or law enforcement officer upon an order of the district court in the county having jurisdiction over the offense.

C. Seizure without a court order may occur if:

(1) the seizure is incident to an arrest or a search pursuant to a search warrant; or

(2) the enforcement officer has probable cause to believe that the property was used or intended for use to violate the Cultural Properties Act.

D. In the event of seizure pursuant to this section, proceedings shall be instituted within thirty days from the date of seizure. A proceeding brought pursuant to this section shall be in rem. The claim shall not be filed against the owner or any other person and shall be filed only as a civil case.

E. Property taken or detained pursuant to the provisions of this section shall not be subject to replevin, but is deemed to be in the custody of the state agency employing the enforcing officer, subject only to the orders and decrees of the district court. When property is seized pursuant to the Cultural Properties Act, the state agency seizing it shall remove the property to a place designated by the state agency for disposition in accordance with law.

F. Except as otherwise specifically provided by law, property forfeited due to a violation of the Cultural Properties Act shall be sold at public auction pursuant to a court order. The proceeds of the court-ordered sale of forfeited property are subject first to the claims, verified by the court, of innocent persons and the legitimate rights to restitution of actual victims of the criminal acts. Where proceeds are derived from violations:

(1) on lands controlled by the commissioner of public lands, one-half of the proceeds from the sale shall accrue to the state agency of which the law enforcement officer seizing that property is a member, and one-half shall be deposited in the cultural properties restoration fund; and

(2) on any other state lands, one-half of the proceeds from the sale shall accrue to the state agency of which the law enforcement officer seizing that

property is a member, and one-half of the proceeds shall be deposited in the cultural properties restoration fund."

Section 12

Section 12. TEMPORARY PROVISION--RECOMPILATION.-- Section 18-6-9.1 NMSA 1978 (being Laws 1986, Chapter 10, Section 5) is recompiled as Section 18-6-8.1 NMSA 1978. HB 164

CHAPTER 177

RELATING TO CRIMINAL LAW; PROHIBITING SEXUAL EXPLOITATION OF PATIENTS BY PSYCHOTHERAPISTS; AMENDING SECTIONS OF THE CRIMINAL CODE.

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

Section 1

Section 1. Section 30-9-10 NMSA 1978 (being Laws 1975, Chapter 109, Section 1, as amended) is amended to read:

"30-9-10. DEFINITIONS.--As used in Sections 30-9-10 through 30-9-16 NMSA 1978:

A. "force or coercion" means:

(1) the use of physical force or physical violence;

(2) the use of threats to use physical violence or physical force against the victim or another when the victim believes that there is a present ability to execute the threats;

(3) the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;

(4) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or

(5) the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy;

Physical or verbal resistance of the victim is not an element of force or coercion.

B. "great mental anguish" means psychological or emotional damage that requires psychiatric or psychological treatment or care, either on an inpatient or outpatient basis, and is characterized by extreme behavioral change or severe physical symptoms;

C. "patient" means a person who seeks or obtains psychotherapy;

D. "personal injury" means bodily injury to a lesser degree than great bodily harm and includes, but is not limited to, disfigurement, mental anguish, chronic or recurrent pain, pregnancy or disease or injury to a sexual or reproductive organ;

E. "position of authority" means that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child;

F. "psychotherapist" means a person who is or purports to be a:

(1) licensed physician who practices psychotherapy;

(2) licensed psychologist;

(3) licensed social worker;

(4) licensed nurse;

(5) counselor;

(6) substance abuse counselor;

(7) psychiatric technician;

(8) mental health worker;

(9) marriage and family therapist;

(10) hypnotherapist; or

(11) minister, priest, rabbi or other similar functionary of a religious organization acting in his role as a pastoral counselor;

G. "psychotherapy" means professional treatment or assessment of a mental or an emotional illness, symptom or condition; and

H. "spouse" means a legal husband or wife, unless the couple is living apart or either husband or wife has filed for separate maintenance or divorce."

Section 2

Section 2. Section 30-9-11 NMSA 1978 (being Laws 1975, Chapter 109, Section 2, as amended) is amended to read:

"30-9-11. CRIMINAL SEXUAL PENETRATION.--

A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.

B. Criminal sexual penetration does not include medically indicated procedures.

C. Criminal sexual penetration in the first degree consists of all sexual penetration perpetrated:

(1) on a child under thirteen years of age; or

(2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.

Whoever commits criminal sexual penetration in the first degree is guilty of a first degree felony.

D. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:

(1) on a child thirteen to sixteen years of age when the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;

(2) by the use of force or coercion that results in personal injury to the victim;

(3) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;

(4) in the commission of any other felony; or

(5) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony.

E. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion.

Whoever commits criminal sexual penetration in the third degree is guilty of a third degree felony.

F. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration not defined in Subsections C through E of this section perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than and not the spouse of that child.

Whoever commits criminal sexual penetration in the fourth degree is guilty of a fourth degree felony."

Section 3

Section 3. Section 30-9-12 NMSA 1978 (being Laws 1975, Chapter 109, Section 3, as amended) is amended to read:

"30-9-12. CRIMINAL SEXUAL CONTACT.--

A. Criminal sexual contact is the unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of another who has reached his eighteenth birthday, or intentionally causing another who has reached his eighteenth birthday to touch one's intimate parts.

B. Criminal sexual contact does not include touching by a psychotherapist on his patient that is:

(1) inadvertent;

(2) casual social contact not intended to be sexual in nature; or

(3) generally recognized by mental health professionals as being a legitimate element of psychotherapy.

C. Criminal sexual contact in the fourth degree consists of all criminal sexual contact perpetrated:

(1) by the use of force or coercion that results in personal injury to the victim;

(2) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons; or

(3) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony.

D. Criminal sexual contact is a misdemeanor when perpetrated with the use of force or coercion.

E. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast."

Section 4

Section 4. Section 30-9-16 NMSA 1978 (being Laws 1975, Chapter 109, Section 7) is amended to read:

"30-9-16. TESTIMONY--LIMITATIONS--IN CAMERA HEARING.--

A. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 30-9-11 through 30-9-15 NMSA 1978, evidence of the victim's past sexual conduct, opinion evidence of the victim's past sexual conduct or of reputation for past sexual conduct, shall not be admitted unless, and only to the extent that the court finds that, the evidence is material to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

B. As a matter of substantive right, in prosecutions pursuant to the provisions of Sections 30-9-11 through 30-9-15 NMSA 1978, evidence of a patient's psychological history, emotional condition or diagnosis obtained by an accused psychotherapist during the course of psychotherapy shall not be admitted unless, and only to the extent that, the court finds that the evidence is material and relevant to the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

C. If the evidence referred to in Subsection A or B of this section is proposed to be offered, the defendant shall file a written motion prior to trial. The court shall hear the pretrial motion prior to trial at an in camera hearing to determine whether the evidence is admissible pursuant to the provisions of Subsection A or B of this section. If new information, which the defendant proposes to offer pursuant to the provisions of Subsection A or B of this section, is discovered prior to or during the trial, the judge shall order an in camera hearing to determine whether the proposed evidence is admissible. If the proposed evidence is deemed admissible, the court shall issue a written order stating what evidence may be introduced by the defendant and stating the specific questions to be permitted."

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 174

CHAPTER 178

RELATING TO DEVELOPMENTAL DISABILITIES; IMPLEMENTING THE FAMILY, INFANT, TODDLER PROGRAM FOR EARLY INTERVENTION SERVICES FOR CERTAIN CHILDREN WITH OR AT RISK OF DEVELOPMENTAL DELAY.

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

Section 1

Section 1. Section 28-18-1 NMSA 1978 (being Laws 1990, Chapter 4, Section 1) is amended to read:

"28-18-1. DEPARTMENT DESIGNATION--AUTHORIZATION--PAYMENT SYSTEM.--

A. The department of health is designated as the lead state agency for the development and administration of a statewide system of comprehensive, coordinated, multidisciplinary, interagency early intervention services for eligible children with or at risk of developmental delay and their families. The program shall be known as the "family, infant, toddler program".

B. The parent may choose whether his eligible child shall participate in the family, infant, toddler program.

C. The state department of public education, the human services department, the children, youth and families department and other publicly funded services shall collaborate with the department of health and continue to provide all services within their respective statutory responsibilities to eligible children. State and local interagency agreements shall delineate responsibility for provisions of the family, infant, toddler program.

D. The department of health shall establish a payment system that shall maximize funds from appropriate federal, state, local and private sources to support the family, infant, toddler program.

E. The secretary of health shall meet the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1475(c) and 1476(a), et seq. contingent upon voluntary participation by the state, including:

(1) establishing policies and adopting regulations necessary to comply with those sections of that act;

(2) implementing procedures to ensure that services are provided to eligible children in a timely manner;

(3) making arrangements for the provisions of the family, infant, toddler program;

(4) carrying out the general administration, supervision and monitoring of the family, infant, toddler program;

(5) resolving complaints concerning the family, infant, toddler program;

(6) maintaining and expanding state and local coordination and interagency agreements pertaining to the family, infant, toddler program;

(7) identifying and coordinating all available resources for early intervention services for the family, infant, toddler program; and

(8) establishing requirements for qualified personnel involved in the family, infant, toddler program.

F. As used in this section:

(1) "early intervention services" means services that are designed to meet the developmental needs of eligible children, including physical development, communications development, adaptive development, social and emotional development or sensory development; and

(2) "eligible child" means ifants and toddlers between the ages of birth and thirty-six months with developmental delay or who are at risk of delay according to specific criteria established by the department of health."

Section 2

Section 2. Section 28-18-2 NMSA 1978 (being Laws 1990, Chapter 4, Section 2) is amended to read:

"28-18-2. CUSTODIAN OF FUNDS.--The department of health is designated as the custodian of all money that may be received by the state of New Mexico from any appropriation made by the congress of the United States for the purpose of implementing the Individuals with Disabilities Education Act, 20 U.S.C. 1475(c) and 1476(a), et seq."HB 180

CHAPTER 179

RELATING TO LAW ENFORCEMENT; PROVIDING FOR CONSIDERATION FOR STATE-COMMISSIONED TRIBAL POLICE OFFICERS; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 29-1-11 NMSA 1978 (being Laws 1972, Chapter 8, Section 1, as amended) is amended to read:

"29-1-11. AUTHORIZATION OF TRIBAL AND PUEBLO POLICE OFFICERS AND CERTAIN FEDERAL OFFICERS TO ACT AS NEW MEXICO PEACE OFFICERS--AUTHORITY, PAYMENT AND PROCEDURE FOR COMMISSIONED PEACE OFFICERS.--

A. All persons who are duly commissioned officers of the police or sheriff's department of any New Mexico Indian tribe or pueblo or who are law enforcement officers employed by the bureau of Indian affairs and are assigned in New Mexico are, when commissioned under Subsection B of this section, recognized and authorized to act as New Mexico peace officers. These officers have all the powers of New Mexico peace officers to enforce state laws in New Mexico, including but not limited to the power to make arrests for violation of state laws.

B. The chief of the New Mexico state police is granted authority to issue commissions as New Mexico peace officers to members of the police or sheriff's department of any New Mexico Indian tribe or pueblo or a law enforcement officer employed by the bureau of Indian affairs to implement the provisions of this section. The procedures to be followed in the issuance and revocation of commissions and the respective rights and responsibilities of the departments shall be set forth in a written agreement to be executed between the chief of the New Mexico state police and the tribe or pueblo or the appropriate federal official.

C. The agreement referred to in Subsection B of this section shall contain the following conditions:

(1) the tribe or pueblo, but not the bureau of Indian affairs, shall submit proof of adequate public liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance from a company licensed to sell insurance in the state;

(2) each applicant for a commission shall successfully complete four hundred hours of basic police training that is approved by the director of the New Mexico law enforcement academy;

(3) the chief of the New Mexico state police shall have the authority to suspend any commission granted pursuant to Subsection B of this section for reasons solely within his discretion;

(4) if any provision of the agreement is violated by the tribe or pueblo or any of its agents, the chief of the New Mexico state police shall suspend the agreement on five days' notice, which suspension shall last until the chief is satisfied that the violation has been corrected and will not recur;

(5) the goldenrod-colored officer's second copy of any citation issued pursuant to a commission authorized by this section shall be submitted within five days to the chief of the New Mexico state police;

(6) any citation issued pursuant to a commission authorized by this section shall be to a magistrate court of New Mexico; except that any citations issued to Indians within the exterior boundaries of an Indian reservation shall be cited into tribal court;

(7) the agreement or any commission issued pursuant to it shall not confer any authority on a tribal court or other tribal authority which that court or authority would not otherwise have;

(8) the authority conferred by any agreement entered into pursuant to the provisions of this section shall be coextensive with the exterior boundaries of the reservation; except that an officer commissioned under this section may proceed in hot pursuit of an offender beyond the exterior boundaries of the reservation, and the authority conferred in any written agreement between the chief of the New Mexico state police and the Navajo tribe may extend beyond the exterior boundaries of the Navajo reservation to and including the area enclosed by the following description:

Beginning at a point where the southern boundary line of the Navajo Indian reservation intersects the western right-of-way line of US 666, and running thence; southerly along the western right-of-way line of US 666 to the northerly city limits of Gallup; thence, easterly along the northerly city limits of Gallup to the northern side of the right-of-way of I-40; thence, in an easterly direction along the northerly side of the right-of-way of I-40 to the northerly limits of the village of Prewitt; thence, in a straight line between the northerly boundary of the village of Prewitt to the southerly boundary of Ambrosia lake; thence in a straight line between the southerly boundary of Ambrosia lake to the southerly boundary of Hospah; thence, east along a straight line from the southerly boundary of Hospah to the southern boundary of Torreon; thence along the easterly side of the right-of-way of state road 197 to the westerly city limits of Cuba; thence, north along the westerly side of the right-of-way of state road 44 to the southerly boundary of the Jicarilla Apache Indian reservation; thence, westerly along the southerly boundary of the Jicarilla Apache Indian reservation to the southwest corner of that reservation; thence, northerly along the westerly boundary of the Jicarilla Apache Indian reservation to a point where the westerly boundary of the reservation intersects the

southerly side of the right-of-way of state road 44; thence, northerly along the southerly side of the right-of-way of state road 44 to its intersection with the northerly side of the right-of-way of Navajo road 3003; thence, along the northerly side of the right-of-way of Navajo road 3003 to a point where the northerly side of the right-of-way of Navajo road 3003 intersects the westerly side of the right-of-way line of state road 371; thence, northerly along the west side of the right-of-way of state road 371 to the southerly side of the right-of-way of Navajo road 36; thence, westerly along the southerly side of the right-of-way of Navajo road 36 to the eastern border of the Navajo Indian reservation; thence, along the eastern and southerly borders of the Navajo Indian reservation to the point of beginning.

The municipalities of Cuba and Gallup and the villages of Thoreau and Prewitt are excluded from the grant of authority that may be conferred in any written agreement entered into under this section; provided, however, any written agreement may include under such grant of authority the communities of Ambrosia lake, Hospah, Torreon, Lybrook, Nageezi, Counselors and Blanco trading post and those communities commonly known as the Wingate community; the Navajo Tribe blue water ranch area of the Thoreau community; the Prewitt community, exclusive of the village of Prewitt; the Haystack community; the Desidero community; the Sand Springs community; the Rincon Marquis community; the Charley Jesus Arviso and the Castillo community; and state road 264 beginning at the point where it intersects US 666 and ending where state road 264 intersects the Arizona-New Mexico state line;

(9) the chief of the New Mexico state police or his designee and the tribe or pueblo or the appropriate federal official shall be required to meet at least quarterly or more frequently at the call of the chief of the New Mexico state police to discuss the status of the agreement and invite other law enforcement or other officials to attend as necessary; and

(10) as consideration for law enforcement services rendered for the state by tribal or pueblo police officers who are commissioned peace officers pursuant to this section, each tribe or pueblo shall receive from the law enforcement protection fund three hundred dollars ($300) for each commissioned peace officer in the tribe or pueblo. To be counted as a commissioned peace officer for the purposes of this paragraph, a commissioned peace officer shall have been assigned to duty and have worked in New Mexico for no fewer than two hundred days in the calendar year immediately prior to the date of payment. Payments shall be made for only those divisions of the tribal or pueblo police departments that perform services in New Mexico. No Indian nation, tribe or pueblo police department shall be eligible for any disbursement under the fund if officers of that department cite non-Indians into the court of that Indian nation, tribe or pueblo. This eligibility requirement would apply to either civil or criminal citations issued by an Indian nation, tribe or pueblo police department.

D. Nothing in this section impairs or affects the existing status and sovereignty of tribes and pueblos of Indians as established under the laws of the United States.

E. All persons who are duly commissioned federal law enforcement officers employed by the federal bureau of investigation; drug enforcement administration; bureau of alcohol, tobacco and firearms; United States secret service; United States customs service; immigration and naturalization service; United States marshals service; and postal inspection service; and other appropriate federal officers as designated by the chief of the New Mexico state police, who are assigned in New Mexico, are recognized and authorized to act as New Mexico peace officers and have all the powers of New Mexico peace officers to enforce state laws in New Mexico, including the power to make arrests for violation of state laws. This subsection shall not be construed to impose liability upon or to require indemnification by the state for any act performed by a federal law enforcement officer pursuant to this subsection."

Section 2

Section 2. Section 29-13-1 NMSA 1978 (being Laws 1983, Chapter 289, Section 1) is amended to read:

"29-13-1. SHORT TITLE.--Chapter 29, Article 13 NMSA 1978 may be cited as the "Law Enforcement Protection Fund Act"."

Section 3

Section 3. Section 29-13-2 NMSA 1978 (being Laws 1983, Chapter 289, Section 2) is amended to read:

"29-13-2. PURPOSE OF ACT.--The purpose of the Law Enforcement Protection Fund Act is to provide for the equitable distribution of money to municipal and tribal police and county sheriff's departments for use in the maintenance and improvement of those departments in order to enhance the efficiency and effectiveness of law enforcement services."

Section 4

Section 4. A new Section 29-13-2.1 NMSA 1978 is enacted to read:

"29-13-2.1. DEFINITIONS.--As used in the Law Enforcement Protection Fund Act:

A. "division" means the local government division of the department of finance and administration;

B. "fund" means the law enforcement protection fund;

C. "governmental entity" means a municipality, tribe or pueblo or a county; and

D. "tribal police department" means any tribal or pueblo police department that has entered into an agreement with the department of public safety pursuant to Section 29-1-11 NMSA 1978."

Section 5

Section 5. Section 29-13-3 NMSA 1978 (being Laws 1983, Chapter 289, Section 3, as amended) is amended to read:

"29-13-3. DISTRIBUTION OF CERTAIN INSURANCE DEPARTMENT COLLECTIONS--LAW ENFORCEMENT PROTECTION FUND CREATED.--There is created in the state treasury the "law enforcement protection fund". Ten percent of all money received for fees, licenses, penalties and taxes from life, general casualty and title insurance business pursuant to the New Mexico Insurance Code shall be paid daily to the state treasurer and by him credited to the fund. On or before June 30 of each year, the state treasurer shall transfer to the general fund any balance in the law enforcement protection fund in excess of one hundred thousand dollars ($100,000) that is not obligated and that is in excess of the amount certified by the division to be distributed from that fund."

Section 6

Section 6. Section 29-13-4 NMSA 1978 (being Laws 1983, Chapter 289, Section 4, s amended) is repealed and a new Section 29-13-4 NMSA 1978 is enacted to read:

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

A. Annually on or before April 15, the division shall:

(1) consider and determine the relative needs as requested by municipal police and county sheriff's departments for money in the fund pursuant to the provisions of Subsection B of this section; and

(2) calculate the amount of consideration due a tribal police department pursuant to the provisions of Paragraph (10) of Subsection C of Section 29-1-11 NMSA 1978.

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

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

CLASS	POPULATION	AMOUNT
1	0 to 20,000	$17,000
2	20,001 to 160,000	30,000
3	160,001 to 1,280,000	40,000;

and

(2) municipal police and county sheriff's departments shall be entitled, unless allocations are adjusted pursuant to the provisions of Subsection C of this section, to three hundred dollars ($300) for each police officer or sheriff's deputy employed full-time by his department who has been certified by the New Mexico law enforcement academy pursuant to the provisions of Section 29-7-8 NMSA 1978 or has been authorized to act as a New Mexico peace officer pursuant to the provisions of Section 29-1-11 NMSA 1978.

C. After distributions are determined in accordance with Paragraph (2) of Subsection A and Paragraph (1) of Subsection B of this section, if the balance in the fund is insufficient to permit the total allocations provided by Paragraph (2) of Subsection B of this section, the division shall reduce that allocation to the maximum amount permitted by available money."

Section 7

Section 7. Section 29-13-5 NMSA 1978 (being Laws 1983, Chapter 289, Section 5, as amended) is amended to read:

"29-13-5. DETERMINATION OF NEEDS--REVIEW.--No later than May 1 of each year, the division shall notify in writing each affected municipal and tribal police and county sheriff's department of its determination of money to be distributed pursuant to the provisions of Section 29-13-4 NMSA 1978. Any affected department may appeal that determination by filing a notice of appeal with the secretary of finance and administration no later than May 15. If an appeal is filed, the secretary of finance and administration shall review the determination of the division in an informal and summary proceeding and shall certify the result of the appeal to the division no later than June 30, and the division shall adjust its determination accordingly. If no appeal is filed, the original determination of the division shall be final and binding and not subject to further review."

Section 8

Section 8. Section 29-13-6 NMSA 1978 (being Laws 1983, Chapter 289, Section 6) is amended to read:

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

A. Annually on or before July 31, the state treasurer shall distribute from the fund the amounts certified by the division to be distributed to municipalities and counties. Payments shall be made to the treasurer of the appropriate governmental entity.

B. Annually on or before July 31 of each year, the state treasurer shall distribute from the excess money remaining in the fund after distributions pursuant to Subsection A of this section are made, money certified by the division to be distributed to tribes and pueblos. Payment shall be made to the chief financial officer of the tribe or pueblo. If necessary the fund may be decreased below the level of one hundred thousand dollars ($100,000) to enable payment to the tribes and pueblos. If insufficient money remains in the fund to fully compensate the tribes and pueblos, a report shall be made to the New Mexico office of Indian affairs and to an appropriate interim committee of the legislature that reviews issues having impact on tribes and pueblos in New Mexico by September 1 of the year of the shortfall."

Section 9

Section 9. Section 29-13-7 NMSA 1978 (being Laws 1983, Chapter 289, Section 7, as amended) is amended to read:

"29-13-7. EXPENDITURE LIMITATION--CONTROL.--

A. Amounts distributed from the fund shall be expended only for the following:

(1) the repair and purchase of law enforcement apparatus and equipment that meet minimum nationally recognized standards;

(2) expenses associated with advanced law enforcement planning and training;

(3) complying with match or contribution requirements for the receipt of federal funds relating to criminal justice programs; and

(4) no more than fifty percent of the replacement salaries of municipal and county law enforcement personnel of municipalities or counties rated as Class 1 in Paragraph (1) of Subsection B of Section 29-13-4 NMSA 1978 participating in basic law enforcement training.

B. Amounts distributed from the fund shall be expended only pursuant to approved budgets and upon duly executed vouchers approved as required by law."

Section 10

Section 10. Section 29-13-8 NMSA 1978 (being Laws 1983, Chapter 289, Section 8) is amended to read:

"29-13-8. RULES AND REGULATIONS.--The division shall promulgate necessary rules and regulations to administer the provisions of the Law Enforcement Protection Fund Act."

Section 11

Section 11. Section 29-13-9 NMSA 1978 (being Laws 1983, Chapter 289, Section 9) is amended to read:

"29-13-9. EXPENDITURES OF MONEY DISTRIBUTED FROM THE LAW ENFORCEMENT PROTECTION FUND--WRONGFUL EXPENDITURE.--

A. Amounts distributed from the fund shall be expended only for the specific purposes for which they are distributed and shall not be distributed for accumulation.

B. Any person who expends or directs or permits the expenditure of any money distributed from the fund for purposes other than those expressly authorized by the Law Enforcement Protection Fund Act shall be personally liable to the state for the amount of money wrongfully expended and interest and costs. An action to recover the amount of any wrongful expenditure may be commenced by the attorney general or the district attorney upon the filing with that officer of a verified statement describing the wrongful expenditure." _____HB 181

CHAPTER 180

RELATING TO MOTOR VEHICLES; EXPANDING THE AUTHORIZATION FOR SPECIAL REGISTRATION PLATES FOR ARMED FORCES VETERANS; AMENDING AND ENACTING CERTAIN SECTIONS OF THE MOTOR VEHICLE CODE.

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

Section 1

Section 1. Section 66-3-406 NMSA 1978 (being Laws 1978, Chapter 35, Section 85, as amended) is amended to read:

"66-3-406. SPECIAL REGISTRATION PLATES FOR PRIVATE VEHICLES.--

A. Upon compliance with all laws relating to registration and licensing of motor vehicles and upon application to the division, special registration plates shall be furnished for vehicles owned by:

(1) elected state officials;

(2) members of the legislature;

(3) the chief clerks of the house of representatives and of the senate;

(4) the sergeants-at-arms of the house of representatives and of the senate; and

(5) disabled persons, pursuant to Section 66-3-16 NMSA 1978.

B. Special registration plates furnished under this section shall identify the officials, members and disabled persons as such. If legislators, the special registration plates shall indicate whether they are members of the house of representatives or of the senate.

C. At the time of delivery of the special registration plate, the official, member or disabled person shall surrender his current registration plate issued for the vehicle if any has been issued. When the ownership of the vehicle for which a special registration plate has been furnished by the division changes or the holder ceases to qualify, the special registration plate shall immediately be removed from the vehicle by the holder of the special registration plate and returned to the director, at which time the person removing the special registration plate shall
receive a regular registration plate for the vehicle.

D. The holder of a special registration plate may transfer his special registration plate from one vehicle to another during the year in which the plate is valid upon application to the director for the transfer. If a transfer is made, the owner of the vehicle from which the special registration plate is removed may not receive a regular registration plate except upon payment of the fees established by law."

Section 2

Section 2. Section 66-3-409 NMSA 1978 (being Laws 1978, Chapter 199, Section 1, as amended) is amended to read:

"66-3-409. SPECIAL REGISTRATION PLATES--MEDAL OF HONOR RECIPIENTS.--

A. The division shall issue distinctive pale blue, white and gold registration plates to any person who has been awarded the medal of honor and who so requests and submits proof satisfactory to the division that he has been awarded that medal. The plates shall each bear the inscription "Medal of Honor Recipient". No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for the issuance of a special registration plate pursuant to this section.

B. No person shall falsely represent himself to be a medal of honor recipient in order to be eligible to be issued special registration plates pursuant to this section when he is in fact not such a recipient. Any person who violates the provisions of this subsection is guilty of a petty misdemeanor.

C. No special registration plate, other than a replacement plate, shall be issued under the provisions of this section after July 1, 1995."

Section 3

Section 3. Section 66-3-411 NMSA 1978 (being Laws 1978, Chapter 99, Section 2, as amended) is amended to read:

"66-3-411. SPECIAL REGISTRATION PLATES--PRISONERS OF WAR AND SURVIVING SPOUSES--SUBMISSION OF PROOF--PENALTY.--

A. The division shall issue distinctive registration plates to any person, or to the surviving spouse of any deceased person, who was held as a prisoner of war by an enemy of the United States during any armed conflict, upon the submission by the person or surviving spouse of proof satisfactory to the division that he was held as a prisoner
of war by an enemy of the United States during a period of armed conflict or that he is the surviving spouse of such a person. No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for issuance of a special registration plate pursuant to this section.

B. No person shall falsely represent himself to have been held as a prisoner of war or to be the surviving spouse of a prisoner of war so as to be eligible to be issued special registration plates pursuant to this section when he in fact was not held as a prisoner of war or when he in fact is not the surviving spouse of a prisoner of war.

C. Any person who violates the provisions of Subsection B of this section is guilty of a misdemeanor.

D. No special registration plate, other than a replacement plate, shall be issued under the provisions of this section after July 1, 1995."

Section 4

Section 4. Section 66-3-412 NMSA 1978 (being Laws 1979, Chapter 299, Section 2, as amended) is amended to read:

"66-3-412. SPECIAL REGISTRATION PLATES--ONE HUNDRED PERCENT DISABLED VETERANS--SUBMISSION OF PROOF--PENALTY.--

A. The division shall issue distinctive registration plates to any person who was one hundred percent disabled by an enemy of the United States during any armed conflict, upon the submission by the person of proof satisfactory to the division that he was one hundred percent disabled by an enemy of the United States during a period of armed conflict. No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for issuance of a special registration plate pursuant to this section. Any person eligible for a special registration plate pursuant to this section and also eligible for one or more special registration plates pursuant to Sections 66-3-406, 66-3-409 and 66-3-411 NMSA 1978 shall be issued only one special registration plate of his choice.

B. No person shall falsely represent himself to have been one hundred percent disabled by an enemy of the United States during a period of armed conflict so as to be eligible to be issued special registration plates pursuant to this section when he in fact was not one hundred percent disabled.

C. Any person eligible for a special registration plate under this section shall only be eligible for one such plate.

D. Any person who violates the provisions of Subsection B of this section is guilty of a misdemeanor.

E. No special registration plate, other than a replacement plate, shall be issued under the provisions of this section after July 1, 1995."

Section 5

Section 5. Section 66-3-414 NMSA 1978 (being Laws 1987, Chapter 23, Section 1, as amended) is amended to read:

"66-3-414. SPECIAL REGISTRATION PLATES FOR PURPLE HEART VETERANS.--

A. The division shall issue special registration plates to any person who is a veteran and a bona fide purple heart medal recipient and who submits proof satisfactory to the division that he has been awarded that medal. No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for the issuance of the special registration plates pursuant to this section. Any person eligible for a special registration plate pursuant to this section and also eligible for one or more special registration plates pursuant to Sections 66-3-406, 66-3-409, 66-3-411 and 66-3-412 NMSA 1978 shall be issued only one special registration plate of his choice.

B. No person shall falsely represent himself to be a purple heart veteran so as to be eligible to be issued special plates pursuant to this section when he, in fact, is not a purple heart veteran.

C. Any person who violates the provisions of Subsection B of this section is guilty of a misdemeanor.

D. No special registration plate, other than a replacement plate, shall be issued under the provisions of this section after July 1, 1995."

Section 6

Section 6. Section 66-3-415 NMSA 1978 (being Laws 1989, Chapter 162, Section 1) is amended to read:

"66-3-415. SPECIAL REGISTRATION PLATES FOR PEARL HARBOR SURVIVORS.--

A. The division shall issue distinctive registration plates indicating that the recipient is a survivor of the attack on Pearl Harbor if that person submits satisfactory proof to the division indicating that the person:

(1) was a member of the United States armed forces on December 7, 1941;

(2) received an honorable discharge from the United States armed forces; and

(3) was on station on December 7, 1941 during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not exceeding three miles.

B. The division shall confirm satisfactory proof with the New Mexico chapter of the Pearl Harbor survivors association.

C. No fee other than the registration fee applicable to the passenger motor vehicle, if any, shall be collected for the issuance of the distinctive registration plate pursuant to this section.

D. The recipient of a distinctive plate issued pursuant to this section shall be issued replacement plates upon request and without charge if the plate is lost, stolen or mutilated.

E. Any person eligible for a distinctive registration plate pursuant to this section and also eligible for one or more special or distinctive registration plates pursuant to Sections 66-3-406, 66-3-409, 66-3-411, 66-3-412 and 66-3-414 NMSA 1978 shall be issued only one special or distinctive registration plate of the person's choice.

F. No person shall falsely represent himself to be a survivor of the attack on Pearl Harbor so as to be eligible to be issued distinctive plates pursuant to this section when that person, in fact, is not a survivor of the attack on Pearl Harbor.

G. Any person who violates the provisions of Subsection F of this section is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000) or by imprisonment for a definite term less than one year or both.

H. No special registration plate, other than a replacement plate, shall be issued under the provisions of
this section after July 1, 1995."

Section 7

Section 7. Section 66-3-419 NMSA 1978 (being Laws 1990, Chapter 46, Section 2) is amended to read:

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

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

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

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

D. Each armed forces veteran may elect to receive a veteran-designation decal to be placed across the top of the plate, centered above the registration number in lieu of the county-designation decal specified in Subsection H of Section 66-3-14 NMSA 1978. Replacement or different veteran-designation decals shall be available for purchase from the division at a reasonable charge to be set by the director. The department shall furnish the following veteran-designation decals with the armed forces veteran plate to a:

(1) medal of honor recipient;

(2) silver star recipient;

(3) bronze star recipient;

(4) navy cross recipient;

(5) ex-prisoner of war;

(6) disabled veteran;

(7) purple heart veteran;

(8) atomic veteran;

(9) Pearl Harbor survivor;

(10) Navajo code talker;

(11) Vietnam veteran;

(12) Korean veteran;

(13) World War II veteran;

(14) World War I veteran;

(15) Grenada veteran;

(16) Panama veteran; and

(17) Desert Storm veteran.

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

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

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

F. There is created in the state treasury the "armed forces veterans license fund". A portion of the fee collected for each special registration plate for armed forces veterans, as provided in Subsection E of this section, shall be transferred to the state treasurer for the credit of the fund. Expenditures from the fund shall be made on

vouchers issued and signed by the director of veterans' affairs upon warrants drawn by the department of finance and administration for the purpose of expanding services to rural areas of the state, including Native American communities and senior citizen centers. Any unexpended or unencumbered balance remaining at the end of any fiscal year in the armed forces veterans license fund shall not revert to the general fund."

Section 8

Section 8. A new section of the Motor Vehicle Code is enacted to read:

"SPECIAL REGISTRATION PLATES--NEW MEXICO RANGERS AND NEW MEXICO MOUNTED PATROL--SUBMISSION OF PROOF--PENALTY.--

A. The division shall issue special registration plates to any person who is a New Mexico ranger or a member of the New Mexico mounted patrol, upon the submission by the person of proof satisfactory to the division that he is currently a New Mexico ranger or a member of the New Mexico mounted patrol. No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for the issuance of the special registration plates pursuant to this section.

B. No person shall falsely represent himself to be a New Mexico ranger or a member of the New Mexico mounted patrol so as to be eligible to be issued special registration plates pursuant to this section when he in fact is not a New Mexico ranger or a member of the New Mexico mounted patrol.

C. Any person eligible for a special registration plate under this section shall only be eligible for one such plate.

D. Any person who violates the provisions of Subsection B of this section is guilty of a misdemeanor."

Section 9

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 227

CHAPTER 181

RELATING TO FANDANGOS; REPEALING SECTIONS OF THE NMSA 1978 THAT PROVIDE FOR THE LICENSURE OF PERSONS WHO GIVE A FANDANGO.

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

Section 1

Section 1. Sections 5-6-1 through 5-6-5 NMSA 1978 (being Laws 1861, p. 30, Sections 1 and 2, Laws 1869, Chapter 32, Sections 14 and 15 and Laws 1963, Chapter 142, Section 1, as amended) are repealed. HB 296

CHAPTER 182

RELATING TO CORRECTIONS; CLARIFYING THE PERIOD OF PAROLE TO BE SERVED BY CERTAIN FELONY OFFENDERS; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 31-18-15 NMSA 1978 (being Laws 1977, Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--BASIC SENTENCES AND FINES--PAROLE AUTHORITY.--

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

(1) for a first degree felony, eighteen years imprisonment;

(2) for a second degree felony, nine years imprisonment;

(3) for a third degree felony, three years imprisonment; or

(4) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted of a first, second, third or fourth degree felony unless the court alters such sentence pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

C. The court shall include in the judgment and sentence of each person convicted of a first, second, third or fourth degree felony and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to

Subsection A of this section together with alterations, if any, pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

(1) for a first degree felony, fifteen thousand dollars ($15,000);

(2) for a second degree felony, ten thousand dollars ($10,000); or

(3) for a third or fourth degree felony, five thousand dollars ($5,000)."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 348

CHAPTER 183

RELATING TO LICENSING; PROVIDING FOR THE LICENSURE AND REGULATION OF HOISTING OPERATORS; PRESCRIBING VIOLATIONS; PROVIDING FOR PENALTIES; ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Hoisting Operators Safety Act".

Section 2

Section 2. PURPOSE.--The purpose of the Hoisting Operators Safety Act is to promote the general welfare and protect the lives and property of the people of New Mexico by requiring persons operating hoisting equipment to be trained and licensed when employed in construction, demolition or excavation work.

Section 3

Section 3. DEFINITIONS.--As used in the Hoisting Operators Safety Act:

A. "council" means the hoisting operators licensure examining council;

B. "crane" means a tower crane used in construction, demolition or excavation work; a hydraulic crane; a power-operated derrick; or a mobile, carrier-mounted, track or crawler type power-operated hoisting machine that utilizes a power-operated boom capable of lateral movement by the rotation of the machine on the carrier. "Crane" does not include a crane used in oil and gas exploration, production or drilling; a rotary drilling rig or well servicing rig used in oil and gas production; any winch truck associated with oil and gas operations; cranes or winch trucks involved in commercial sign operations; any machinery or equipment used in the construction or operation of railroads; or machinery or equipment used in the installation and maintenance of telephone or television cable;

C. "department" means the regulation and licensing department;

D. "first class hoisting operator" means any person who operates hoisting equipment in industrial or construction operations;

E. "hoisting equipment" means any of the following:

(1) a tower crane;

(2) a hydraulic crane rated at under one hundred tons by the manufacturer's rating capacity;

(3) a hydraulic crane rated at over one hundred tons by the manufacturer's rating capacity;

(4) a derrick crane; and

(5) a mobile cable crane; "hoisting equipment" does not include any equipment in use in construction, demolition or excavation work associated with:

(a) natural gas gathering lines;

(b) interstate transmission facilities and interstate natural gas facilities subject to the federal Natural Gas Pipeline Safety Act of 1968 and its amendments;

(c) interstate pipeline facilities and carbon dioxide pipeline facilities subject to the federal Hazardous Pipeline Safety Act of 1979;

(d) gas and oil pipeline facilities subject to the Pipeline Safety Act; or

(e) prefabricated control rooms of natural gas, oil or carbon dioxide pipeline transmission facilities;

F. "licensee" means any person licensed under the Hoisting Operators Safety Act;

G. "person" means an individual, firm, partnership, corporation, association or other organization or any combination thereof;

H. "second class hoisting operator" means any person who operates hoisting equipment with a manufacturer's rating capacity equal to or greater than fifteen tons and a boom length of forty-five feet;

I. "superintendent" means the superintendent of regulation and licensing; and

J. "third class hoisting operator" means any person who operates a mobile cable crane or carrier driver.

Section 4

Section 4. LICENSE REQUIRED.--No person shall operate hoisting equipment in construction, demolition or excavation work when the hoisting equipment is used to hoist or lower individuals or material unless he is licensed under the Hoisting Operators Safety Act; provided, however, that no license shall be required for a person who has successfully completed an industrial in-house training course for hoist operators and who is employed by the entity that taught the training course or contracted to have the training course taught. The operator's employer is subject to applicable regulations controlling the use and operation of cranes as promulgated by the occupational safety and health administration, the mine safety and health administration or the American national standards institute.

Section 5

Section 5. LICENSE WITHOUT EXAMINATION.--A person who had experience operating hoisting equipment on or before January 1, 1993 may apply for and be issued

a license without meeting the requirements of Section 7 of the Hoisting Operators Safety Act. Licensure pursuant to this section shall be subject to the discretion of the council following review of the applicant's experience and qualifications.

Section 6

Section 6. ADMINISTRATION OF ACT.--

A. The department shall enforce and administer the provisions of the Hoisting Operators Safety Act.

B. The department shall adopt rules and regulations necessary to carry out the provisions of the Hoisting Operators Safety Act.

Section 7

Section 7. REQUIREMENTS FOR LICENSURE.--

A. The department shall issue a license for a first class hoisting operator to a person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that he:

(1) is at least twenty-one years of age;

(2) has passed a written examination as prescribed by the department;

(3) has had an annual physical examination, including substance abuse testing, within the twelve-month period preceding the date of his application, showing that the applicant is in satisfactory physical condition for performing the functions of a first class hoisting operator; and

(4) has had at least three years experience in operating hoisting equipment with a manufacturer's rating capacity equal to or greater than fifteen tons and a boom length of twenty-five feet and equipment with a manufacturer's rating capacity of equal to or less than fifteen tons and a boom length of forty-five feet, or otherwise shall demonstrate his operating experience and competency by completing an examination.

B. The department shall issue a license for a second class hoisting operator to a person who files a completed application, accompanied by the required fees and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has passed a written examination prescribed by the department;

(3) has had an annual physical examination, including substance abuse testing, within the twelve-month period preceding the date of his application, showing that theapplicant is in satisfactory physical condition for performing the functions of a second class hoisting operator; and

(4) has had at least two years experience in the actual operation of hoisting equipment with a manufacturer's rating capacity equal to or greater than fifteen tons and a boom length of forty-five feet, or otherwise shall demonstrate his operating experience and competency by examination prescribed by the department.

C. The department shall issue a license for a third class hoisting operator to a person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has passed an examination prescribed by the department; and

(3) has had an annual physical examination, including substance abuse testing, within the twelve-month period preceding the date of his application, showing that the applicant is in satisfactory physical condition for performing the functions of a third class hoisting operator.

Section 8

Section 8. LICENSE RENEWAL.--

A. A license issued pursuant to Section 7 of the Hoisting Operators Safety Act shall be valid for two years from the date of issuance.

B. License renewal procedures shall be prescribed by the department by regulation.

C. A person who is employed as a first class hoisting operator, a second class hoisting operator or a third class hoisting operator after his license has expired is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment for not more than six months or both.

Section 9

Section 9. LICENSE FEES.--Applicants for licensure shall pay a fee set by the department not to exceed:

A. seventy-five dollars ($75.00) for an initial license or a renewal; and

B. five dollars ($5.00) per month in late fees for failure to renew a license within the allocated time period.

Section 10

Section 10. HOISTING OPERATORS FUND CREATED.--There is created within the state treasury the "hoisting operators fund" to be administered by the department. All fees and other money received by the department under the Hoisting Operators Safety Act shall be deposited in the fund. Money in the fund is appropriated to the department and shall be expended only to carry out the provisions of the Hoisting Operators Safety Act. All balances in the fund at the end of any fiscal year shall remain in the fund and shall not revert to the general fund.

Section 11

Section 11. REVOCATION OF LICENSE.--The department may revoke the license of a licensee, pursuant to the findings of a hearing of the council, for negligent or reckless operation of hoisting equipment that causes damage to property or injury to an individual.

Section 12

Section 12. LICENSURE DENIAL, SUSPENSION OR REVOCATION--HEARING--APPEALS.--The superintendent may deny a license to an applicant who fails to meet the requirements of Section 7 of the Hoisting Operators Safety Act. The superintendent may revoke a license for reasons set forth in Section 11 of that act after a hearing before the superintendent or his appointed hearing officer pursuant to the provisions of the Uniform Licensing Act.

Section 13

Section 13. VIOLATIONS--CRIMINAL PENALTIES.--

A. A person who operates a crane without the appropriate license is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment of not more than six months or both.

B. A person who knowingly, willingly and intentionally allows a person not licensed under the Hoisting Operators Safety Act to operate hoisting equipment is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500) or imprisonment of not more than six months or both.

Section 14

Section 14. HOISTING OPERATORS LICENSURE EXAMINING COUNCIL--APPOINTED.--The "hoisting operators licensure examining council" is created. The superintendent shall appoint no fewer than three members to the council. One member of the council shall be a first class hoisting operator and another member of the council shall be a contractor as defined by Section 60-13-3 NMSA 1978. The members of the council shall serve at the pleasure of the superintendent, and their duties shall include:

A. reviewing the applications, qualifications and examinations of applicants for licensure as hoisting operators and recommending to the superintendent whether licensure should be granted based on their evaluation of the operating experience and competence of the applicants;

B. reporting findings and recommendations from the hearings to the superintendent; and

C. proceeding according to regulations adopted by the department.

Section 15

Section 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995.HB 361

CHAPTER 184

RELATING TO CIVIL PROCEDURES; PROVIDING PROCEDURES FOR CERTAIN SERVICE OF PROCESS ON SECRETARY OF STATE; INCREASING THE FEE FOR SERVICE OF PROCESS ON SECRETARY OF STATE.

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

Section 1

Section 1. Section 38-1-5 NMSA 1978 (being Laws 1905, Chapter 79, Section 48(2), as amended) is amended to read:

"38-1-5. SERVICE OF PROCESS--FAILURE TO REPORT.--

A. In case any domestic corporation or any foreign corporation authorized to transact business in this state fails to file a report within the time required, or, in case the agent of any corporation, designated by the corporation as the agent upon whom process against the corporation may be served, dies, resigns or leaves the state, or the agent cannot with due diligence be found, it is lawful, while the default continues, to serve process against the corporation upon the secretary of state, and the service shall be as effective to all intents and purposes as if made upon an officer, director or the registered agent of the corporation. The plaintiff shall include an affidavit that the

registered agent has died, resigned, left the state or cannot be found. The plaintiff shall provide, if known, the name upon whom the summons and complaint is to be served and the last known address and include two copies of every paper, including the summons, complaint, attachments and affidavits.

B. Within two days after service upon the secretary of state, the secretary shall notify the corporation of service of process by certified or registered mail directed to the corporation at its registered office and enclose a copy of the process or other paper served.

C. It is the duty of the plaintiff in any action in which the process is issued to pay to the secretary of state the sum of twenty-five dollars ($25.00), which sum shall be taxed as a part of the taxable costs in the suit if the plaintiff prevails in the suit.

D. The secretary of state shall keep a record of all summonses that have been presented for service to the secretary of state, along with a summary of all that occurred in regard to the service of each summons."

Section 2

Section 2. Section 38-1-6 NMSA 1978 (being Laws 1905, Chapter 79, Section 94, as amended) is amended to read:

"38-1-6. PROCESS AGAINST FOREIGN CORPORATIONS.--

A. In all personal actions brought in any court of this state against any foreign corporation, process may be served upon any officer, director or statutory agent of the corporation, either personally or by leaving a copy of the process at his residence or by leaving a copy at the office or usual place of business of the foreign corporation.

B. If no person has been designated by a foreign corporation doing business in this state as its statutory agent upon whom service of process can be made, or, if, upon diligent search, neither the agent so designated nor any of the officers or directors of the foreign corporation can be found in the state, then, upon the filing of an affidavit by the plaintiff to that effect, together with service upon the secretary of state of two copies of the process in the cause, the secretary of state shall accept service of process as the agent of the foreign corporation, but the service is not complete until a fee of twenty-five dollars ($25.00) is paid to the secretary of state by the plaintiff in the action. The plaintiff shall provide, if known, the name of the person upon whom summons and complaint is to be served and the last known address.

C. Within two days after receipt of the process and fee, the secretary of state shall give notice by certified or registered mail to the foreign corporation at its principal place of business outside the state of the service of the process. Where the secretary of state has no record of the principal office of the foreign corporation outside the state, he shall forward the copy of the process to the place designated as its

principal office in an affidavit filed with the secretary of state by the plaintiff in the suit or by his attorney.

D. The foreign corporation served as provided in this section shall appear and answer within thirty days after the secretary of state gives the notice. The certificate of service shall not be issued by the secretary of state until the defendant is served with the summons and complaint.

E. The secretary of state shall keep a record of all process served on him as provided for in this section, and of the time of the service and of his action in respect to the service.

F. Any foreign corporation engaging in business in this state, either in its corporate name or in the name of an agent, without having first procured a certificate of authority or otherwise become qualified to engage in business in this state shall be deemed to have consented to the provisions of this section."HB 412

CHAPTER 185

RELATING TO PIPELINE SAFETY; AMENDING THE PIPELINE SAFETY ACT; PROVIDING PENALTIES.

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

Section 1

Section 1. Section 70-3-12 NMSA 1978 (being Laws 1969, Chapter 71, Section 2) is amended to read:

"70-3-12. DEFINITIONS.--As used in the Pipeline Safety Act:

A. "person" means any individual, firm, joint venture, partnership, corporation, association, state, municipality, political subdivision, cooperative association, joint stock association or any combination thereof and includes any receiver, trustee, assignee or personal representative thereof;

B. "commission" means the state corporation commission;

C. "gas" means natural gas, flammable gas or gas that is toxic or corrosive;

D. "oil" means crude oil and liquid hydrocarbons and manufactured products derived from either;

E. "transportation of gas" means the gathering, transmission or distribution of gas by pipeline or its storage, except that it shall not include the gathering of gas in

those rural locations which lie outside the limits of any municipality or unincorporated city, town or village or any residential or commercial area such as a subdivision, a business or shopping center, a community development or any similar populated area which the commission may define by order as a nonrural area;

F. "transportation of oil" means the transmission of oil by pipeline, except pipelines operated exclusively for the gathering of oil in any field or area or pipelines constituting a part of any tank farm, plant facilities of any processin plant, gasoline plant, refinery, carbon-black plant, recycling system or similar operations;

G. "gas pipeline facilities" means new and existing pipeline rights of way and any equipment, facility
or structure used in the transportation of gas or the treatment of gas during the course of transportation;

H. "oil pipeline facilities" means new and existing pipeline rights of way and any equipment facility or structure used in the transportation of oil; and

I. "intrastate pipeline facilities" means oil pipeline facilities or gas pipeline facilities within the state that are not gas pipeline facilities subject to the jurisdiction of the federal energy regulatory commission pursuant to the federal Natural Gas Act or oil pipeline facilities used in the transportation of oil in interstate or foreign commerce, except that it shall include pipeline facilities within the state that transport gas from an interstate gas pipeline to a direct sales customer within the state purchasing gas for its own consumption."

Section 2

Section 2. Section 70-3-19 NMSA 1978 (being Laws 1969, Chapter 71, Section 9, as amended) is amended to read:

"70-3-19. ENFORCEMENT--PENALTIES.--

A. If as a result of investigation the commission has good cause to believe that any person is violating any provision of Subsection A of Section 70-3-18 NMSA 1978 or any regulation adopted by the commission under the Pipeline Safety Act, the commission shall, when practicable and except in the case of a knowing and willful violation, give the person notice of the violation and an opportunity to comply. If the commission is unable within a reasonable time to obtain voluntary cooperation to prevent the continuing violation, the commission may apply for an injunction in the district court of the county in which the violation occurs to secure compliance. The failure to give notice and afford an opportunity to comply shall not preclude the granting of injunctive relief.

B. In any action to enforce the provisions of the Pipeline Safety Act or any regulation of the commission, the commission and the state shall be represented by the attorney general.

C. The trial before the district court shall be before the court without jury, and the court shall enter judgment and orders enforcing the judgment as the public interest and equities of the case may require.

D. Any person owning or operating gas pipeline facilities or engaged in the transportation of gas or owning or operating oil pipeline facilities or engaged in the transportation of oil who has been determined by order of the commission after hearing to have violated any provision of Subsection A of Section 70-3-18 NMSA 1978 or any regulation promulgated under the Pipeline Safety Act applicable to intrastate pipeline facilities shall be subject to a civil penalty in an amount not to exceed twenty-five thousand dollars ($25,000) for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed five hundred thousand dollars ($500,000) for any related series of violations.

E. In determining the amount of the penalty, the commission shall consider the nature, circumstances and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the penalty and such other matters as justice may require.

F. Judicial review of any provision of this section may be accomplished in the same manner as is found in Section 70-3-15 NMSA 1978.

G. Any person who willfully and knowingly injures or destroys or attempts to injure or destroy an intrastate pipeline facility shall upon conviction be subject for each offense to a fine not to exceed twenty-five thousand dollars ($25,000) or imprisonment for a term not to exceed fifteen years, or both.

H. Any person who willfully and knowingly damages, removes or destroys any pipeline sign, right-of-way marker required by the Pipeline Safety Act or any regulation or order issued thereunder shall upon conviction be subject for each offense to a fine of not more than five thousand dollars ($5,000) or imprisonment for a term not to exceed one year, or both." HB 437

CHAPTER 186

RELATING TO FUELS; PLACING COMPRESSED NATURAL GAS UNDER THE REGULATORY AUTHORITY OF THE LIQUEFIED PETROLEUM AND COMPRESSED GAS BUREAU OF THE CONSTRUCTION INDUSTRIES DIVISION OF THE REGULATION AND LICENSING DEPARTMENT; PROVIDING FOR THE REGULATION OF COMPRESSED NATURAL GAS MOTOR VEHICLE EQUIPMENT

AND LIQUEFIED PETROLEUM GAS; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 70-5-1 NMSA 1978 (being Laws 1947, Chapter 214, Section 1, as amended) is amended to read:

"70-5-1. DEFINITIONS.--As used in the LPG and CNG Act:

A. "liquefied petroleum gases", "LPG" and "LP gas" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of them: propane, propylene, butanes (normal butane or iso-butane) and butylenes;

B. "compressed natural gases" and "CNG" means mixtures of hydrocarbon gases and vapors consisting principally of methane in gaseous form, which has been compressed for vehicular fuel;

C. "product" or "products" of liquefied petroleum gases or compressed natural gases are considered to be liquefied petroleum gases or compressed natural gases respectively;

D. "qualified instructor" means an employee who has passed the required examination and performed for at least one year the work being taught;

E. "inspector" means a person hired by the bureau to enforce under administrative direction the laws and safety rules and regulations of the LP gas industry and the use of CNG in motor vehicles;

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

G. "bureau" means the liquefied petroleum and compressed gas bureau of the division; and

H. "commission" means the construction industries commission."

Section 2

Section 2. Section 70-5-2 NMSA 1978 (being Laws 1973, Chapter 362, Section 2) is amended to read:

"70-5-2. SHORT TITLE.--Chapter 70, Article 5 NMSA 1978 may be cited as the "LPG and CNG Act"."

Section 3

Section 3. Section 70-5-3 NMSA 1978 (being Laws 1947, Chapter 214, Section 2, as amended) is amended to read:

"70-5-3. RULES AND REGULATIONS FOR DESIGN, CONSTRUCTION, ASSEMBLING, EQUIPPING AND INSTALLING OF CONTAINERS AND EQUIPMENT.--All containers and pertinent equipment used or to be used in this state for CNG equipment when attached to motor vehicles or for the storage, transporting or dispensing of LP gases or CNG by industrial, commercial or domestic users, together with appliances used or to be used in this state with LP gases as fuel, shall be designed, constructed, assembled, equipped and installed as specified by the rules and regulations of the commission, adopted and promulgated as provided in the LPG and CNG Act."

Section 4

Section 4. Section 70-5-4 NMSA 1978 (being Laws 1947, Chapter 214, Section 3, as amended) is amended to read:

"70-5-4. ACTS CONCERNING LP GAS OR CNG SUBJECT TO COMMISSION RULES AND REGULATIONS.--The selling, offering for sale, constructing, assembling, repairing, equipping, installing, filling with fuel, storage of fuel within, dispensing of fuel from or transporting fuel within containers described in Section 70-5-3 NMSA 1978 without the containers having been designed, constructed, assembled, equipped, maintained, tested and inspected as specified by the rules and regulations of the commission pursuant to the LPG and CNG Act shall be a violation of the LPG and CNG Act and shall be subject to the fines, penalties and restrictions provided."

Section 5

Section 5. Section 70-5-5 NMSA 1978 (being Laws 1947, Chapter 214, Section 4, as amended) is amended to read:

"70-5-5. POWER TO ADOPT AND PROMULGATE RULES AND REGULATIONS--EXCEPTIONS TO ACT.--

A. The commission may adopt and promulgate rules and regulations as are necessary to carry out the purpose of the LPG and CNG Act and for the public peace, health and safety as affected by the use of such materials. The regulations made shall substantially conform with the standards as published by the national fire protection association covering the same subject matter. Nothing contained in this section is intended to alter the specifications for manufacturing or testing of containers established by the interstate commerce commission or the U.S. department of transportation or of containers installed in refineries, gas processing plants, underground storage terminals, natural gas distributing plants and pipeline terminals.

B. The bureau may adopt a schedule of reasonable fees to be charged for furnishing any printed matter or forms, for filing or recording any data sheets, blueprints, drawings, plans, specifications, reports and any other instrument or document and for making and furnishing copies of any record, report, regulation, rule, law or any other matter on file with the bureau."

Section 6

Section 6. Section 70-5-6 NMSA 1978 (being Laws 1947, Chapter 214, Section 5, as amended) is amended to read:

"70-5-6. LICENSE--EXCEPTIONS.--

A. No person, firm or corporation shall engage in this state in the manufacturing, assembling, repairing, selling or installing of containers or appliances or of equipment for CNG attached or to be attached to motor vehicles to be used with LP gases as a fuel, nor shall any person, firm or corporation engage in the manufacture, sale, transportation, dispensing or storage of LP gases within this state, except where stored by the ultimate consumer for consumption only, without having first obtained from the bureau a license to do so for each main and branch office or business operated within the state pursuant to the LPG and CNG Act. No license shall be issued until the bureau has determined that the applicant meets all safety requirements provided for in that act and required by the rules and regulations of the commission and the bureau finds that the applicant is fit and able to perform the work for which a license is requested. Provided that household appliances and any other appliance, container or equipment being fed from a reservoir less than five pounds shall not be subject to the LPG and CNG Act. Provided, further, that retail sale of LP gas appliances, including factory installed LP gas appliances and equipment on campers, mobile homes and recreational vehicles, shall be exempt from this section.

B. When LP gas or CNG is to be the source of fuel, the installation of piping, appliances and equipment shall be made by installers qualified by the bureau. Property-owner installed systems, when certified by qualified installers or inspectors of the bureau, are exempt from the provisions of this subsection."

Section 7

Section 7. Section 70-5-7 NMSA 1978 (being Laws 1970, Chapter 65, Section 1, as amended) is amended to read:

"70-5-7. REQUIRING COMPETENT EMPLOYEES IN TRANSPORTING, DISPENSING, INSTALLATION, SERVICE OR REPAIR.--

A. The bureau may require each person, firm or corporation that transports or dispenses LP gas or that installs, repairs or services appliances, containers, equipment or piping for the use of LP gas to have all persons who perform

these activities pass an appropriate examination based on the safety requirements of the commission.

B. A trainee employee shall be exempt from such examination for a period of forty-five working days and until examined by a representative of the bureau. A trainee employee, during the forty-five day period, shall be under supervision of a qualified instructor. Any LP or CNG gas licensee hiring a trainee shall, within forty-five days of the commencement of employment, notiy the bureau of this fact so that an examination may be scheduled. If the trainee fails to pass the examination, he may retake it after additional instruction.

C. The bureau shall set a reasonable fee for administering an examination."

Section 8

Section 8. Section 70-5-8 NMSA 1978 (being Laws 1973, Chapter 362, Section 8, as amended) is amended to read:

"70-5-8. AUTHORITY OF INSPECTORS.--

A. An inspector of the bureau may enter any building or proceed on to any premises at any reasonable time in the discharge of his official duties for the purpose of making an inspection of work performed or of testing any installation within the jurisdiction of the bureau.

B. An inspector may cause immediate discontinuance of service to any installation or device, appliance or equipment found to be dangerous to life or property because it is defective, of faulty design, not
properly qualified or incorrectly installed, until the installation, device, appliance or equipment is made safe. Any device, appliance or equipment that is dangerous to life or property and cannot be made safe shall be removed by the bureau and properly disposed of.

C. The inspector shall order the correction of any defects or of any incorrect installation and shall issue a notice to the owner, lessee or renter outlining the corrections to be made in order to meet bureau requirements.

D. Any authorized representative of the bureau may enter any building or proceed on to any premises for investigation where an accident has occurred in which LP gas may have been a factor. The representative may remove any item which may have been a factor in the accident, and the item shall be retained by the bureau until all questions regarding the accident are resolved."

Section 9

Section 9. Section 70-5-9 NMSA 1978 (being Laws 1970, Chapter 65, Section 2, as amended) is amended to read:

"70-5-9. ANNUAL LICENSE FEES--INSPECTION FEES.--

A. For the purpose of defraying the expenses of administering the laws relating to the use of CNG in motor vehicles or the LP gas industry, each person, firm or corporation, at the time of application for a license and annually thereafter on or before December 31 of each calendar year, shall pay to the bureau reasonable license fees as set, classified and defined by the bureau for each operating location. Provided, the total annual fees charged any one licensee for a combination of LP gas activities at one location and subject to licensure under this section shall not exceed three hundred fifty dollars ($350), and the fee charged for any single activity or operation as set, classified and defined by the bureau shall not exceed one hundred fifty dollars ($150).

B. Nothing in the LPG and CNG Act is intended to alter the jurisdiction of the state corporation commission, pipeline safety department.

C. In addition, there shall be paid a reasonable fee for the safety inspection, made by a representative of the bureau, of each LP gas bulk storage plant, LP gas liquid transfer facility and of the LP gas equipment on each vehicular unit used for transportation of LP gas in bulk quantities. The fee shall be set by the bureau and shall not be assessed more frequently than once in each twelve months. The bureau may also charge a reasonable fee for late payment of any fees.

D. No annual license fee fixed by the bureau as provided in this section shall become effective until after notice to each licensee has been made and hearing held on the proposed annual license fees in the manner provided by Section 70-5-14 NMSA 1978. At the conclusion of any hearing, the bureau shall enter its findings and decision in writing as a regulation, and the regulation shall be filed as provided by the State Rules Act."

Section 10

Section 10. Section 70-5-10 NMSA 1978 (being Laws 1947, Chapter 214, Section 9, as amended) is amended to read:

"70-5-10. REVENUE--SUSPENSE FUND.--All fees and money collected under the provisions of the LPG and CNG Act shall be remitted by the bureau to the director of the division to be deposited in the general fund of the state. The bureau may maintain a "special suspense fund" with the division in an amount of one thousand dollars ($1,000) budgeted by the bureau for the purpose of making any necessary refunds. The bureau shall, with the advice and consent of the director of the division, employ inspectors, assistants and other necessary help as may be required to carry out its lawful duties."

Section 11

Section 11. Section 70-5-12 NMSA 1978 (being Laws 1947, Chapter 214, Section 12, as amended) is amended to read:

"70-5-12. POWER OF BUREAU AND COMMISSION TO REFUSE TO GRANT, SUSPEND OR CANCEL A LICENSE.--The bureau may refuse to grant a license to any applicant and may request the commission to suspend or cancel the license of any licensee if it appears to the bureau upon hearing, as provided in the LPG and CNG Act, that an applicant or licensee has violated or failed to comply with any provision of law relating to LP gas or CNG or with any rule, regulation or order of the bureau or commission or that any licensee has demonstrated that he is incompetent or lacks knowledge in matters relevant to a license to such an extent that, in the judgment of the bureau, it would endanger the public safety to allow the licensee to continue to engage in LP gas or CNG activities or operations."

Section 12

Section 12. Section 70-5-13 NMSA 1978 (being Laws 1947, Chapter 214, Section 13, as amended) is amended to read:

"70-5-13. PROVISIONS FOR HEARINGS.--Upon receipt of written complaint from one of its representatives or by any person or party affected, the bureau may, if it finds probable cause for such complaint, request the commission to hold a hearing to consider the complaint under the provisions of the LPG and CNG Act and under such rules and regulations not inconsistent with that act. If at the hearing the commission finds that the licensee has violated or failed to comply with any of the provisions of the LPG and CNG Act or the rules and regulations of the bureau or commission, then the commission may revoke or suspend the license of the licensee. The bureau may investigate on its own motion any matters pertaining to the subject of the LPG and CNG Act and may hold such hearings as it deems necessary. The bureau may also summon and compel the attendance of witnesses, require the production of any records or documents deemed by it to be pertinent to the subject matter of any investigation and provide for the taking of depositions of witnesses under such rules as it may prescribe."

Section 13

Section 13. Section 70-5-15 NMSA 1978 (being Laws 1973, Chapter 362, Section 15, as amended) is amended to read:

"70-5-15. FINDING--RECORD.--At the conclusion of any hearing held to consider a complaint filed against any licensee under the LPG and CNG Act, the commission shall enter its finding and order in writing, and the finding and order shall be recorded in a permanent record to be kept by the division. A copy of the commission's finding and order shall be furnished to the licensee complained of."

Section 14

Section 14. Section 70-5-17 NMSA 1978 (being Laws 1947, Chapter 214, Section 17, as amended) is amended to read:

"70-5-17. NO FORMAL NOTICE REQUIRED OF HEARING ON APPLICATION FOR LICENSE.--The same procedure, rights and penalties as specified in the LPG and CNG Act in the cases of revocation or suspension of licenses are available, where applicable, in cases where the bureau refused to grant a license, except that no formal notice of hearing on an application for license need be given an applicant, other than that he is given a reasonable opportunity to appear in support of his application before the bureau renders its order refusing him a license. Appeal shall be to the district court at Santa Fe county in all cases where an application for a license under the LPG and CNG Act is denied."

Section 15

Section 15. Section 70-5-18 NMSA 1978 (being Laws 1947, Chapter 214, Section 18, as amended) is amended to read:

"70-5-18. CIVIL PENALTY FOR FAILURE TO COMPLY WITH ACT OR ANY ORDER, RULE OR REGULATION.--The failure of any person, firm or corporation or any association engaged in any LP gas or CNG activity or operation requiring a license by the bureau to comply, within forty-eight hours after the receipt of any certified order of the bureau or commission requiring compliance, with the laws relating to LP gases or CNG or any order, rule or regulation of the bureau or commission shall subject the person or the officers of the corporation to a civil penalty of one hundred dollars ($100) for each day the violation continues, and the attorney general may institute civil actions in the district court of the county in which the violation occurs to recover penalties in the name and on behalf of the state."

Section 16

Section 16. Section 70-5-19 NMSA 1978 (being Laws 1947, Chapter 214, Section 20, as amended) is amended to read:

"70-5-19. MUNICIPALITIES--TAXES--LICENSE FEES.--Nothing contained in the LPG and CNG Act shall be construed as preventing any municipality from collecting local occupation taxes or license fees under the provisions of any local ordinance, but licensees under the LPG and CNG Act are specifically exempted from application of the Construction Industries Licensing Act, the Uniform Licensing Act and the Manufactured Housing Act insofar as their LP gas operations or CNG equipment attached to or to be attached to motor vehicles are concerned."

Section 17

Section 17. Section 70-5-20 NMSA 1978 (being Laws 1947, Chapter 214, Section 21, as amended) is amended to read:

"70-5-20. ENFORCEMENT.--The bureau may enforce the laws relating to LP gases and CNG and any rules, regulations or orders adopted by it or the commission pursuant to those laws by injunction in the district courts, which remedy shall be in addition to the civil and criminal penalties provided in the LPG and CNG Act. The chief and the inspectors of the bureau may issue citations for violation of the LPG and CNG Act."

Section 18

Section 18. Section 70-5-21 NMSA 1978 (being Laws 1947, Chapter 214, Section 22, as amended) is amended to read:

"70-5-21. MISDEMEANOR.--Any person violating any provision of the LPG and CNG Act or the rules, regulations or orders of the bureau or the commission issued pursuant to that act is guilty of a misdemeanor and shall be punished by a fine levied in a magistrate court of not less than fifty dollars ($50.00) or more than five hundred dollars ($500) or by imprisonment for not more than ninety days or both."

Section 19

Section 19. Section 70-5-22 NMSA 1978 (being Laws 1973, Chapter 362, Section 22, as amended) is amended to read:

"70-5-22. ADMINISTRATIVE PENALTY ASSESSMENTS.--The bureau may charge an administrative penalty for any violation of the LPG and CNG Act or the rules, regulations, codes or orders of the bureau."

Section 20

Section 20. A new Section 70-5-23 NMSA 1978 is enacted to read:

"70-5-23. CONTAINERS TO BE FILLED ONLY BY OWNER OR UPON THE OWNER'S AUTHORIZATION.--Any LP gas container shall be filled only by the owner or upon the owner's authorization."

Section 21

Section 21. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 462

CHAPTER 187

RELATING TO PARKING; INCREASING THE FINE FOR PARKING IN A DESIGNATED DISABLED PARKING SPACE WITHOUT PROPER AUTHORIZATION OR FOR BLOCKING A CURB CUT; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 66-7-352.5 NMSA 1978 (being Laws 1983, Chapter 45, Section 5) is amended to read:

"66-7-352.5. UNAUTHORIZED USE--PENALTY.--

A. It is unlawful for any person to park a motor vehicle not carrying registration plates or a placard indicating disability in accordance with Section 66-3-16 NMSA 1978 in a designated disabled parking space or blocking a curb cut. Any person who violates this subsection is subject to a fifty-dollar ($50.00) fine.

B. A person charged with a violation of Subsection A of this section shall not be determined to have committed an infraction if he produces in court special disabled registration plates or a placard indicating disability in accordance with Section 66-3-16 NMSA 1978 or demonstrates he was entitled to such at the time of the violation." HB 467

CHAPTER 188

RELATING TO AGRICULTURE; CHANGING THE REGULATOR OF DAIRY PRODUCTS FROM THE DEPARTMENT OF ENVIRONMENT TO THE NEW MEXICO DEPARTMENT OF AGRICULTURE; ENACTING THE NEW MEXICO DAIRY PRODUCT ACT AND THE DAIRY ESTABLISHMENT SANITATION ACT; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 19 of this act may be cited as the "New Mexico Dairy Product Act".

Section 2

Section 2. DEFINITIONS.--As used in the New Mexico Dairy Product Act:

A. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food;

B. "board" means the board of regents of New Mexico state university;

C. "contaminated with filth" applies to any dairy product not securely protected from dust, dirt and, so far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or any dairy product found to contain any dust, dirt, foreign or injurious contamination or infestation; the provisions shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such dairy product and the supplying or applying of any such dairy product in the conduct of any dairy establishment;

D. "dairy establishment" means a milk producing or milk processing facility;

E. "dairy product" means milk, whether fluid, dried, evaporated, stabilized, condensed or otherwise processed, cream, milk products, ice cream, frozen custard, French custard, ice milk, frozen dessert or any other food product derived principally from milk;

F. "department" means the New Mexico department of agriculture;

G. "director" means the director of agriculture;

H. "federal act" means the Federal Food, Drug and Cosmetic Act;

I. "immediate container" does not include package liners;

J. "label" means a display of written, printed or graphic matter upon the immediate container of any dairy product. A requirement made by or under authority of the New Mexico Dairy Product Act that any word, statement or other information appears on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of such dairy product or is easily legible through the outside container or wrapper;

K. "labeling" means all labels and other written, printed or graphic matter:

(l) upon a dairy product or any of its containers or wrappers; or

(2) accompanying such dairy product;

L. "milk" means the whole, clean, lacteal secretion obtained by the complete milking of one or more healthy cows or goats, properly fed and kept, delivered from the dairy farm to any receiving or distributing establishment or factory within a reasonable time, excluding that obtained within fifteen days before or five days after calving or such longer period as may be necessary to render milk practically colostrum-free; and

M. "person" includes individual, partnership, corporation and association.

Section 3

Section 3. PROHIBITED ACTS.--The following acts and the causing of these acts within the state by any dairy establishment are prohibited:

A. the manufacture, sale or delivery or holding or offering for sale of any dairy product that is adulterated or misbranded;

B. the adulteration or misbranding of any dairy product;

C. the receipt in commerce of any dairy product that is adulterated or misbranded and the delivery or proffered delivery of the adulterated or misbranded dairy product for pay or otherwise;

D. the sale, delivery for sale, holding for sale or offering for sale of any article in violation of Section 12 of the New Mexico Dairy Product Act;

E. the dissemination of any false advertisement related to a dairy product;

F. the refusal to permit entry or inspection or to permit the taking of a sample as authorized by Section 16 of the New Mexico Dairy Product Act;

G. the giving of a guarantee or undertaking, which guarantee or undertaking is false, except by a person who relied on a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the state from whom he received the dairy product in good faith;

H. the removal or disposal of a detained or embargoed dairy product in violation of Section 6 of the New Mexico Dairy Product Act;

I. the alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a dairy product if such act is done while the dairy product is held for sale and results in the dairy product being misbranded; and

J. forging, counterfeiting, simulating or falsely representing or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of the New Mexico Dairy Product Act.

Section 4

Section 4. POWER TO ENJOIN VIOLATIONS.--In addition to the other remedies provided in the New Mexico Dairy Product Act, the department is authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for such cause shown to grant, a temporary or permanent injunction restraining any person from

violating any provision of Section 3 of the New Mexico Dairy Product Act, irrespective of whether there exists an adequate remedy at law.

Section 5

Section 5. PENALTIES--EXCEPTIONS.--

A. The board shall establish a system of administrative penalties for violations of the New Mexico Dairy Product Act. The administrative penalties may be assessed by the director in lieu of or in addition to other penalties provided by statute. In establishing the system of administrative penalties, the board, after public notice and public hearing, shall adopt regulations that meet the following minimum requirements:

(1) the maximum amount of any administrative penalty shall not exceed one thousand dollars ($1,000) for any one violation of the New Mexico Dairy Product Act by any person; and

(2) violations for which administrative penalties may be assessed shall be clearly defined, along with a scale of administrative penalties relating the amount of the administrative penalty to the severity and frequency of the violation.

B. No person shall be subject to the penalties of Subsection A of this section for having violated Subsection A or C of Section 3 of the New Mexico Dairy Product Act if he establishes a guarantee or undertaking, signed by and containing the name and address of the person residing in the state from whom he received in good faith the dairy product, to the effect that such dairy product is not adulterated or misbranded within the meaning of the New Mexico Dairy Product Act, designating that act.

C. No publisher, radio-broadcast licensee or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor or seller of the dairy product to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement unless he has refused, on the request of the director, to furnish to the director the name and post office address of the manufacturer, packer, distributor, seller or advertising agency residing in the state who causes him to disseminate such advertisement.

Section 6

Section 6. DETENTION OF DAIRY PRODUCTS AT A DAIRY ESTABLISHMENT BELIEVED ADULTERATED OR MISBRANDED--CONDEMNATION--DESTRUCTION OR CORRECTION OF DEFECT.--

A. Whenever the director finds or has probable cause to believe that any dairy product within a dairy establishment is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of the New Mexico Dairy Product Act, he

shall affix to such dairy product a tag or other appropriate marking giving notice that the dairy
product is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of the dairy product by sale or otherwise until permission for removal or disposal is given by the director or the court. It is unlawful for any person to remove or dispose of the detained or embargoed dairy product by sale or otherwise without such permission.

B. When a dairy product detained or embargoed under Subsection A of this section has been found by the director to be adulterated or misbranded, he shall petition the judge of the district court in whose jurisdiction the dairy product is detained or embargoed for a libel for condemnation of the dairy product. When the director has found that a dairy product so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

C. If the court finds that a detained or embargoed dairy product is adulterated or misbranded, the dairy product shall, after entry of the decree, be destroyed at the expense of the claimant of the dairy product under the supervision of the director, and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of the dairy product or his agent; provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the dairy product, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond, conditioned that the dairy product shall be so labeled or processed, has been executed, may by order direct that the dairy product be delivered to the claimant for such labeling or processing under the supervision of the director. The expense of such supervision shall be paid by the claimant. The bond shall be returned to the claimant of the dairy product on representation to the court by the director that the dairy product is no longer in violation of the New Mexico Dairy Product Act and that the expenses of supervision have been paid.

D. Whenever the director finds in any room, building or vehicle of transportation at a dairy establishment any dairy product that is unsound or contains any filthy, decomposed or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, he shall condemn or destroy the dairy product or in any other manner render it unsaleable as human food.

Section 7

Section 7. ATTORNEY GENERAL OR DISTRICT ATTORNEY TO INSTITUTE PROSECUTION--RIGHT TO HEARING BEFORE DIRECTOR PRIOR TO CRIMINAL PROSECUTIONS.--It is the duty of the attorney general or the various district attorneys of this state to whom the director reports any violation of the New Mexico Dairy Product Act to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of the New

Mexico Dairy Product Act is reported to any such districtattorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the director, either orally or in writing, in person or by attorney with regard to the contemplated proceeding.

Section 8

Section 8. MINOR VIOLATIONS--WARNING AUTHORIZED.--Nothing in the New Mexico Dairy Product Act shall be construed as requiring the director to report, for the institution of proceedings under the New Mexico Dairy Product Act, minor violations of that act whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Section 9

Section 9. PROMULGATION OF DEFINITIONS AND STANDARDS BY THE BOARD.--Whenever in the judgment of the board such action will promote honesty and fair dealing in the interest of consumers, the board shall after public hearing promulgate regulations fixing and establishing for any dairy product or class of dairy products a reasonable definition and standard of identity or reasonable standard of quality or fill of container or any combination of such requirements. In prescribing a definition and standard of identity for a dairy product or class of dairy products in which optional ingredients are permitted, the board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients that shall be named on the label. The definitions and standards promulgated shall conform so far as practicable to the definitions and standards promulgated under the authority of the federal act.

Section 10

Section 10. DAIRY PRODUCTS--ADULTERATED.--A dairy product shall be deemed to be adulterated if:

A. it bears or contains any poisonous or deleterious substance that may render it injurious to health, but, in case the substance is not an added substance, the dairy product shall not be considered adulterated under this subsection if the quantity of the substance in the dairy product does not ordinarily render it injurious to health;

B. it bears or contains any added poisonous or added deleterious substance that is unsafe within the meaning of Section 13 of the New Mexico Dairy Product Act;

C. it consists in whole or in part of a diseased, contaminated, filthy, impure or infested ingredient, putrid or decomposed substance or is otherwise unfit for food;

D. it has been produced, prepared, packed or held under unsanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered diseased, unwholesome or injurious to health;

E. it is the product of a diseased animal or an animal that has died otherwise than by slaughter or that has been fed upon the uncooked offal from a slaughterhouse;

F. its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health;

G. any valuable constituent has been, in whole or in part, omitted or abstracted therefrom;

H. any substance has been substituted wholly or in part therefor;

I. damage or inferiority has been concealed in any manner;

J. any substance has been added or mixed or packed therewith so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is; or

K. it bears or contains a coal-tar color other than one from a batch that has been certified under authority of the federal act.

Section 11

Section 11. MISBRANDED DAIRY PRODUCT.--A dairy product within a dairy establishment shall be deemed to be misbranded if:

A. its labeling is false or misleading in any particular manner;

B. it is offered for sale under the name of another dairy product;

C. it is an imitation of another dairy product, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the dairy product imitated;

D. its container is so made, formed or filled as to be misleading;

E. in package form, unless it bears a label containing:

(1) the name and place of business of the manufacturer, packer or distributor; or

(2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided that under this paragraph reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the board;

F. any word, statement or other information required by or under authority of the New Mexico Dairy Product Act to appear on the label or labeling is not prominently placed with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

G. it purports to be or is represented as a dairy product for which a definition and standard of identity has been prescribed by regulations as provided by Section 9 of the New Mexico Dairy Product Act unless:

(1) it conforms to such definition and standard; and

(2) its label bears the name of the dairy product specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring and coloring, present in such dairy product;

H. it purports to be or is represented as:

(1) a dairy product for which a standard of quality has been prescribed by regulations as provided by Section 9 of the New Mexico Dairy Product Act and its quality falls below that standard unless its label bears in such manner and form as the regulations specify a statement that it falls below the standard; or

(2) a food for which a standard of fill of container has been prescribed by regulation as provided by Section 9 of the New Mexico Dairy Product Act and it falls below the standard of fill of container applicable to it, unless its label bears in such manner and form as the regulations specify a statement that it falls below the standard;

I. it is not subject to the provisions of Subsection G of this section, unless it bears labeling clearly giving:

(1) the common or usual name of the dairy product, if any; and

(2) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient, except that spices, flavorings and colorings, other than those sold as such, may be designated as spices, flavorings and colorings without naming each; provided that to the extent that compliance with the requirements

of this paragraph is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the board;

J. it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the board determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses; and

K. it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the board.

Section 12

Section 12. MANUFACTURING, PACKING AND PROCESSING PERMITS FOR CERTAIN CLASSES OF DAIRY PRODUCTS--SUSPENSION--INSPECTIONS.--

A. Whenever the board finds after investigation that the distribution in New Mexico of any class of dairy product may, by reason of contamination with microorganisms during manufacture, processing or packing in any locality, be injurious to health and that such injurious nature cannot be adequately determined after the dairy product has entered commerce, it then and in such case only shall promulgate regulations providing for the issuance, by the director to manufacturers, processors or packers of such class of dairy product in such locality, of permits to which shall be attached such conditions governing the manufacture, processing or packing of such class of dairy product for such temporary period of time as may be necessary to protect the public health, and after the effective date of the regulations and during the temporary period, no dairy establishment shall introduce or deliver for introduction into commerce any such dairy product manufactured, processed or packed by any such manufacturer, processor or packer unless the manufacturer, processor or packer holds a permit issued by the director as provided by such regulations.

B. The director is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of the permit, and the director shall, immediately after prompt hearing and an inspection of the establishment, reinstate the permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

C. The director shall have access to any factory or establishment, the operator of which holds a permit from the director, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for inspection shall be ground for suspension of the permit until access is freely given by the operator.

Section 13

Section 13. PROMULGATING REGULATIONS GOVERNING THE ADDITION OF ANY POISONOUS OR DELETERIOUS SUBSTANCES IN DAIRY PRODUCTS.--Any poisonous or deleterious substance added to any dairy product, except where the substance is required in production or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of Subsection B of Section 10 of the New Mexico Dairy Product Act; but when the substance is required or cannot be avoided, the board shall promulgate regulations limiting the quantity therein or thereon to such extent as the board finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of Subsection B of Section 10 of the New Mexico Dairy Product Act. While such a regulation is in effect limiting the quantity of any such substance in the case of any dairy product, the dairy product shall not, by reason of bearing or containing any added amount of the substance, be considered to be adulterated within the meaning of Subsection A of Section 10 of the New Mexico Dairy Product Act. In determining the quantity of the added substance to be tolerated in or on different dairy products, the board shall take into account the extent to which the use of the substance is required or cannot be avoided in the production of each diary product and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

Section 14

Section 14. FALSE ADVERTISING.--

A. An advertisement of a dairy product is deemed to be false if it is false or misleading in any particular manner.

B. If a dairy product is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the dairy product to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

Section 15

Section 15. PROMULGATING REGULATIONS--PROCEDURE.--The authority to promulgate regulations after public hearing for the efficient enforcement of the New Mexico Dairy Product Act is vested in the board. The board is authorized to make the regulations promulgated under the federal act.

Section 16

Section 16. POWER TO MAKE INSPECTIONS AND SECURE SAMPLES WITHIN DAIRY ESTABLISHMENTS.--The director shall have free access at all reasonable hours to any dairy establishment in which dairy products are manufactured, processed, packed or held for introduction into commerce or to enter any vehicle being used to transport or hold such dairy products in commerce for the purpose:

A. of inspecting the dairy establishment or vehicle to determine if any provision of the New Mexico Dairy Product Act is being violated; and

B. to secure samples or specimens of any dairy product after paying or offering to pay for the sample. The director may make or cause to be made examinations of samples secured under the provisions of this section to determine whether any provision of the New Mexico Dairy Product Act is being violated.

Section 17

Section 17. POWER OF DIRECTOR TO PUBLISH REPORTS AND DISSEMINATE INFORMATION.--

A. The director may cause to be published from time to time reports summarizing all judgments, decrees and court orders that have been rendered under the New Mexico Dairy Product Act, including the nature of the charge and the disposition of the charge.

B. The director may also cause to be disseminated such information regarding dairy products as he deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the director from collecting, reporting and illustrating the results of his investigations.

Section 18

Section 18. COOPERATION.--The department may cooperate, receive grants-in-aid and enter into cooperative agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state.

Section 19

Section 19. SCIENTIFIC LABORATORY TO SERVE AS TESTING LABORATORY.--The scientific laboratory division of the department of health shall serve as the testing laboratory for samples collected for examination pursuant to the provisions of the New Mexico Dairy Product Act.

Section 20

Section 20. SHORT TITLE.--Sections 20 through 30 of this act may be cited as the "Dairy Establishment Sanitation Act".

Section 21

Section 21. PURPOSE.--The purpose of the Dairy Establishment Sanitation Act is to protect the public health by establishing standards and provisions for the regulation of dairy establishments and by appropriate delegations of authority to the department to adopt and enforce regulations covering the environmental health aspects of dairy establishments to assure that consumers are not exposed to adverse environmental health conditions arising out of the operations of dairy establishments.

Section 22

Section 22. DEFINITIONS.--As used in the Dairy Establishment Sanitation Act:
A. "board" means the board of regents of New Mexico state university;

B. "dairy establishment" means a milk producing or milk processing facility;

C. "dairy product" means milk, whether fluid, dried, evaporated, stabilized, condensed or otherwise processed, cream, milk products, ice cream, frozen custard, French custard, ice milk, frozen dessert or any other food product derived principally from milk;

D. "department" means the New Mexico department of agriculture;

E. "director" means the director of agriculture;

F. "milk" means the whole, clean, lacteal secretion obtained by the complete milking of one or more healthy cows or goats, properly fed and kept, delivered from the dairy farm to any receiving or distributing establishment or factory within a reasonable time, excluding that obtained within fifteen days before or five days after calving or such longer period as may be necessary to render milk practically colostrum-free; and

G. "person" includes an individual, partnership, corporation and association.

Section 23

Section 23. BOARD--REGULATIONS--DEPARTMENT--POWERS AND DUTIES.--The board shall promulgate procedural and substantive regulations to provide:

A. for the preparation of dairy products at dairy establishments in a manner safe for human consumption, free from adulteration, spoilage, contamination and unwholesomeness. The regulations shall provide for:

(1) disease control;

(2) employee hygiene and sanitation at dairy establishments;

(3) dairy establishment premises sanitation;

(4) all aspects of dairy establishment construction relating to sanitation;

(5) control of pests and infestation by pests at dairy establishments;

(6) lavatory and toilet facility placement and sanitation at dairy establishments;

(7) lavatory hygiene at dairy establishments;

(8) dairy equipment and utensil design and construction at dairy establishments;

(9) dairy equipment and utensil storage and handling at dairy establishments;

(10) dairy establishment ventilation; and

(11) any other facet of dairy establishment operations that reasonably may be considered to pose an existing or potential hazard to the health of the consuming public;

B. the issuance, suspension and revocation of permits required under the Dairy Establishment Sanitation Act, which regulations shall provide for prior notice to and a hearing for any applicant for or holder of a permit when the department-proposed action is to deny an application for or suspend or revoke a permit, except in those specified instances under the provisions of the Dairy Establishment Sanitation Act when the department is authorized to take any of the foregoing actions without prior notice and hearing;

C. establishing requirements for inspections of dairy establishments, which shall include provisions for inspections at a frequency of at least once every twelve months; and

D. for permitting fees for permits issued pursuant to the Dairy Establishment Sanitation Act.

Section 24

Section 24. DEPARTMENT--POWERS AND DUTIES.--

A. The department is authorized and has the duty to execute any provisions of the Dairy Establishment Sanitation Act delegated to it under that act and specifically is directed to administer and enforce the provisions of regulations adopted pursuant to that act.

B. The director may appoint an advisory council composed of dairy experts to assist in carrying out the objectives of the Dairy Establishment Sanitation Act.

Section 25

Section 25. PERMITS--PERMIT REQUIRED--APPLICATION--REVOCATION--SUSPENSION.--

A. No person may operate a dairy establishment unless he possesses a valid and unsuspended permit issued by the department in accordance with the Dairy Establishment Sanitation Act and the regulations adopted pursuant to that act. The permit shall be posted in a conspicuous place within the dairy establishment. No person may display a permit unless it has been issued to him by the department and has not been revoked and is not under suspension.

B. Any person desiring to operate a dairy establishment shall apply to the department for the issuance of a permit. Applications shall be made in a form and in accordance with procedures established by regulations of the department. The department shall issue a permit to any applicant that complies with the regulations of the department covering the issuance of permits and who demonstrates to the satisfaction of the department his ability to comply with all the provisions of the Dairy Establishment Sanitation Act and all regulations of the department.

C. The department shall promulgate regulations for the revocation or suspension of permits for those dairy establishments that fail to come into compliance with a provision of the Dairy Establishment Sanitation Act or regulation promulgated pursuant to that act. The hearing officer shall not be any person previously involved in the suspension or revocation action. No inspection made more than twenty-four months prior to the most recent such inspection shall be used as a basis for suspension or revocation.

Section 26

Section 26. INSPECTION BY DEPARTMENT.--

A. The department shall inspect dairy establishments to determine compliance or lack of compliance with the Dairy Establishment Sanitation Act and regulations of the department. The procedures for inspection shall be in accordance with regulations of the department. Upon request by the department to a dairy establishment operator or to his employee or agent, he shall permit the department official, upon proper identification, to enter the premises, inspect all parts of the premises and inspect and copy any records of purchases by the dairy establishment. The operator or his employee or agent shall be given an opportunity to accompany the department official on his inspection and, as soon as possible after the inspection, a report of the inspection shall be furnished to him. Refusal to allow an inspection of a dairy establishment is grounds for revocation of the permit of the operator, provided that the department official has tendered proper identification prior to the refusal.

B. During an inspection, the department may take samples of dairy products and other substances found on the premises of a dairy establishment for the purpose of determining compliance with provisions of the Dairy Establishment Sanitation Act and regulations of the department.

Section 27

Section 27. IMMEDIATE SUSPENSION OF PERMIT BY DEPARTMENT.--The department may suspend a permit immediately without prior notice to the holder of the permit if it determines, after inspection, that conditions within a dairy establishment present a substantial danger of illness, serious physical harm or death to consumers who might use the products of the dairy establishment. A suspension action taken under this section is effective when communicated to the dairy establishment operator or any employee or agent of the operator who is in charge of the premises involved. If there is no designated employee or agent in charge of the premises, communication to any employee physically present on the premises is sufficient communication to make the suspension effective.

Section 28

Section 28. JUDICIAL REVIEW OF DEPARTMENT ACTIONS.--Any person to whom the department denies a permit or whose permit is suspended or revoked by the department may appeal to the court of appeals within thirty days of the final department action. Upon appeal, the court of appeals shall set aside the department action only if it is found to be:

A. arbitrary, capricious or an abuse of discretion; or

B. otherwise not in accordance with law.

Section 29

Section 29. ENFORCEMENT--ADMINISTRATIVE PENALTIES.--

A. The department may seek relief in district court to enjoin the operation of any dairy establishment not complying with the Dairy Establishment Sanitation Act or any regulation adopted under that act.

B. The board shall establish a system of administrative penalties for violations of the Dairy Establishment Sanitation Act. The administrative penalties may be assessed by the director in lieu of or in addition to other penalties provided by statute. In establishing the system of administrative penalties, the board, after public notice and public hearing, shall adopt regulations that meet the following minimum requirements:

(1) the maximum amount of any administrative penalty shall not exceed one thousand dollars ($1,000) for any one violation of the Dairy Establishment Sanitation Act by any person; and

(2) violations for which administrative penalties may be assessed shall be clearly defined, along with a scale of administrative penalties relating the amount of the administrative penalty to the severity and frequency of the violation.

Section 30

Section 30. DISEASE CONTROL.--The department shall promulgate regulations to ensure that a person with a disease that can reasonably be expected to be transmitted to other persons shall not work in a dairy establishment.

Section 31

Section 31. Section 25-1-2 NMSA 1978 (being Laws 1977, Chapter 309, Section 2, as amended) is amended to read:

"25-l-2. DEFINITIONS.--As used in the Food Service Sanitation Act:

A. "agency" or "division" means the department of environment;

B. "board" means the environmental improvement board;

C. "employee" means any individual employed in a food service establishment who transports food or food containers, who handles food during storage, preparation or serving, who comes in contact with any utensils or who is employed in a room in which food is stored, prepared or served;

D. "food" means any solid or liquid substance intended for human consumption by eating or drinking;

E. "general public" includes beneficiaries of governmental feeding programs and private charitable feeding programs and residents and employees of institutions that provide meals to their residents and employees either with or without direct payment to the institution by the residents or employees;

F. "temporary food service establishment" means a food service establishment that operates at a fixed location in conjunction with a single event or celebration for a short period of time not exceeding the event or celebration or not exceeding thirty days;

G. "person" means an individual or any other legal entity;

H. "food service establishment" means:

(1) any fixed or mobile place where food is served and sold for consumption on the premises;

(2) any fixed or mobile place where food is prepared for sale to or consumption by the general public either on or off the premises, including any place where food is manufactured for ultimate sale in a sealed original package, but "prepared" as used in this paragraph does not include the preparation of raw fruits and vegetables for display and sale in a grocery store or similar operation. "Food service establishment" does not mean a dairy establishment; and

(3) meat markets, whether or not operated in conjunction with a grocery store;

I. "utensil" means any implement used in the storage, preparation, transportation or service of food; and

J. "dairy establishment" means a milk processing or milk producing facility."

Section 32

Section 32. A new section of the New Mexico Food Act is enacted to read:

"DAIRY ESTABLISHMENTS EXEMPT.--The purposes and provisions of the New Mexico Food Act shall not apply to dairy establishments."

Section 33

Section 33. Section 25-2-2 NMSA 1978 (being Laws 1951, Chapter 169, Section 2, as amended) is amended to read:

"25-2-2. DEFINITIONS.--For the purpose of the New Mexico Food Act:

A. "board" means the environmental improvement board;

B. "dairy establishment" means a milk processing or milk producing facility;

C. "division" means the department of environment;

D. "director" means the secretary of environment or his authorized representative;

E. "person" includes individual, partnership, corporation and association;

F. "food" means:

(l) articles used for food or drink for man or animals;

(2) chewing gum; and

(3) articles used for components of food or drink or chewing gum for man or animals;

G. "label" means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made by or under authority of the New Mexico Food Act that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of such article or is easily legible through the outside container or wrapper;

H. "immediate container" does not include package liners;

I. "labeling" means all labels and other written, printed or graphic matter:

(l) upon an article or any of its containers or wrappers; or

(2) accompanying such article;

J. if an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound or in any combination thereof, but also the

extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual;

K. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food;

L. "contaminated with filth" applies to any food not securely protected from dust, dirt and, so far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or any food found to contain any dust, dirt, foreign or injurious contamination or infestation;

M. the provisions shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article and the supplying or applying of any such articles in the conduct of any food establishment; and

N. "federal act" means the Federal Food, Drug and Cosmetic Act, 21 USC § 301 et seq., the Federal Meat Inspection Act, 21 USC § 601 et seq. and the federal Poultry Products Inspection Act, 21 USC § 451 et seq."HB471

CHAPTER 189

RELATING TO FISH; PROVIDING FOR FISHING LICENSES AND FEES; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 17-3-2 NMSA 1978 (being Laws 1964, (1st S.S.) Chapter 17, Section 2, as amended) is amended to read:

"17-3-2. CLASSES OF LICENSES.--

A. As used with reference to licenses in Chapter 17 NMSA 1978:

(1) "fishing" entitles the licensee to fish for game fish during the open seasons for each species;

(2) "small game" entitles the licensee to hunt game birds, other than wild turkey, and squirrel during the open seasons for each;

(3) "deer" entitles the licensee to hunt deer during the open season;

(4) "general hunting" entitles the licensee

to hunt deer, squirrel and game birds during the open seasons for each;

(5) "general hunting and fishing" entitles the licensee to hunt deer, squirrel and game birds and to fish for game fish during the open seasons for each;

(6) "antelope" entitles the licensee to hunt antelope during the open season;

(7) "elk" entitles the licensee to hunt elk during the open season;

(8) "bighorn sheep" entitles the licensee to hunt bighorn sheep during the open season;

(9) "Barbary sheep" entitles the licensee to hunt Barbary sheep during the open season;

(10) "javelina" entitles the licensee to hunt javelina during the open season;

(11) "bear" entitles the licensee to hunt bear during the open season;

(12) "nongame" entitles the licensee to hunt or take any animal or bird not protected by law;

(13) "temporary fishing" entitles the licensee to fish for game fish during a specific period of time indicated on the license;

(14) "bison" entitles the licensee to hunt bison during the open season;

(15) "oryx" entitles the licensee to hunt oryx during the open season;

(16) "ibex" entitles the licensee to hunt ibex during the open season;

(17) "cougar" entitles the licensee to hunt cougar during the open season;

(18) "turkey" entitles the licensee to hunt turkey during the open season;

(19) "special season turkey" entitles the licensee to hunt turkey during special seasons designated by the state game commission;

(20) "class A trout stamp" or validation entitles the holder of a valid resident fishing license or a resident general hunting and fishing license to fish in waters designated by the state game commission as trout waters;

(21) "class B trout stamp" or validation entitles the holder of a valid nonresident fishing license to fish in waters designated by the state game commission as trout waters;

(22) "class C trout stamp" or validation entitles the holder of a resident junior-senior fishing license to fish in waters designated by the state game commission as trout waters;

(23) "class D trout stamp" or validation entitles the holder of a valid nnresident junior fishing license to fish in waters designated by the state game commission as trout waters; and

(24) "gazelle" entitles the licensee to hunt gazelle during the open season.

B. No hunting license entitles the licensee to hunt, kill or take game animals or birds within or upon any park or enclosure licensed or posted as provided by law, or within or upon any privately owned enclosure without consent of the owner, or within or upon any game refuge or game management area.

C. No fishing license entitles the licensee to fish for, or take, fish within or upon any park or enclosure licensed or posted as provided by law, or within or upon any privately owned enclosure without consent of the owner, or in or on any closed waters.

D. A junior-senior fishing license may be purchased by any resident who has reached his twelfth birthday but has not reached his fifteenth birthday or by any resident who has reached his sixty-fifth birthday. A junior-senior fishing license entitles the licensee to fish for game fish during the open season for each species.

E. A nonresident junior fishing license may be purchased by any nonresident who has reached his twelfth birthday but has not reached his fifteenth birthday. A nonresident junior fishing license entitles the licensee to fish for game fish during the open season for each species.

F. None of the classes of trout stamps provided for in Subsection A of this section is required of any person fishing on lands of any Indian pueblo or tribe.

G. A senior general hunting license may be purchased by any resident who has reached his sixty-fifth birthday. A senior general hunting license entitles the

licensee to hunt for deer, squirrel and game birds during the open seasons for each species.

H. A handicapped fishing license may be purchased by any resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license may be purchased by any resident who has a developmental disability as defined in Subsection H of Section 43-1-3 NMSA 1978 and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license entitles the licensee to fish for game fish during the open season for each species; provided, however, the class C trout stamp would apply.

I. A handicapped general hunting license may be purchased by any resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped general hunting license entitles the licensee to hunt for deer, squirrel and game birds during the open season for each species."

Section 2

Section 2. Section 17-3-13 NMSA 1978 (being Laws 1964, (1st. S.S.) Chapter 17, Section 5, as amended) is amended to read:

"17-3-13. LICENSE FEES.--

A. The director of the department of game and fish shall keep a record of all money received and licenses and permits issued by him, numbering each class separately. Upon satisfactory proof that any license or permit has been lost before its expiration, he may issue a duplicate and collect a just and reasonable fee for it as determined by regulation of the state game commission.

B. The director of the department of game and fish shall collect the following fees for each license of the class indicated:

Resident, fishing.....	$8.00
Resident, small game	9.00
Resident, deer.....	18.50
Resident, general hunting.....	21.50
Resident, general hunting and fishing.....	25.00
Resident, antelope.....	20.00

Resident, elk.....	35.00
Resident, bighorn or Barbary sheep.....	35.00
Resident, bear.....	10.00
Resident, turkey.....	10.00
Resident, cougar.....	10.00
Resident, bison.....100.00	
Resident, oryx.....	35.00
Resident, ibex.....	25.00
Resident, gazelle.....25.00	
Resident, javelina.....	20.00
Resident, fur dealer.....	10.00
Resident, furbearer.....	10.00
Resident, junior furbearer.....	5.00
Nonresident, fishing.....	28.00
Nonresident, junior fishing.....	12.00
Nonresident, small game.....	75.00
Nonresident, deer.....	180.00
Nonresident, bear.....	150.00
Nonresident, cougar.....	200.00
Nonresident, turkey.....	75.00
Nonresident, antelope.....	186.00
Nonresident, elk	350.00
Nonresident, bighorn sheep	1,500.00

Nonresident, Barbary sheep.....	300.00
Nonresident, bison.....	200.00
Nonresident, oryx.....	1,500.00
Nonresident, ibex.....	1,500.00
Nonresident, gazelle.....	300.00
Nonresident, javelina.....	140.00
Nonresident, fur dealer.....	100.00
Nonresident, furbearer.....	300.00
Nonresident, nongame.....	50.00
Resident, junior-senior fishing.....	1.25
Temporary fishing, one day.....	8.00
Temporary fishing, five days.....	16.00
Resident, special season turkey.....10.00	
Trout stamp or validation, class A.....	5.50
Trout stamp or validation, class B.....	12.00
Trout stamp or validation, class C.....	3.00
Trout stamp or validation, class D.....	6.00
Resident, senior general hunting.....	10.50
Resident, handicapped fishing.....	1.25
Resident, handicapped general hunting.....	10.50
Nonresident, special season turkey.....	100.00.

C. The state game commission may annually adjust the fees for nonresident licenses set forth in this section; provided the fees shall remain just and reasonable and shall not exceed the fees provided in this section by more than twenty

percent. Fees shall not be increased more than five percent per year in any consecutive two-year period."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is April 1, 1994. ____ HB 475

CHAPTER 190

RELATING TO TRANSPORTATION; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-24A-3 NMSA 1978 (being Laws 1978, Chapter 182, Section 3, as amended) is amended to read:

"7-24A-3. USE OF PROCEEDS.--

A. The proceeds of the county or municipal gasoline tax shall be used for bridge and road projects on transit routes or public transportation related trails and for expenses of purchasing, maintaining and operating transit operations and facilities, for the operation of a transit authority established by the Municipal Transit Law or as provided in the County and Municipal Gasoline Tax Act, for operation of a vehicle emission inspection program or for road, street or highway construction, repair or maintenance on transit routes in the county or municipality. A county or municipality may engage in the business of transportation of passengers and property within the political subdivision by whatever means it may decide and may acquire cars, motor buses and other equipment necessary for carrying on the business. It may acquire land and erect buildings and equip them with all necessary machinery and facilities for operation, maintenance, modification, repair and storage of any buses, cars, trucks or other equipment needed. It may do all things necessary for the acquisition and conduct of the business of public transportation.

B. The governing body may enact ordinances and resolutions and promulgate rules and regulations as it may deem necessary and proper for the conduct of the business of transportation and for fixing and collecting all fares, rates and charges for services rendered.

C. Any county or municipality engaging in the business of transportation may extend any system of transportation to points outside its boundaries where necessary and incidental to furnishing efficient transportation to points within the county or municipality.

D. The governing body may lease any system of transportation in whole or in part to any person who will contract to operate it according to the rules, time tables and other requirements established by the governing body.

E. Any county or municipality may furnish transportation service to areas located outside its boundaries provided that prior contracts have been entered into with the county or municipality in which the areas are located covering the schedules, rates, service and other pertinent matters before initiation of such service.

F. The power of eminent domain is granted to a participating county or municipality for the purpose of acquiring lands and buildings necessary to provide efficient public transit or a vehicle emission inspection program to be exercised in themanner provided by law.

G. The county or municipality, as an operating entity, may enter into contracts for special transportation service, charter buses, advertising and any other function that a private enterprise operating a public transit facility could do or perform for revenue.

H. The governing body may spend any public funds to pay the costs of operation of public transit or a vehicle emission inspection program if revenues of the system prove to be insufficient.

I. A county or municipality is authorized to enter into binding agreements with the United States or any of its officers or agencies or the state or any of its officers or agencies or any combination of agencies, departments or officers of both the United States and the state of New Mexico for planning, developing, modernizing, studying, improving, financing, operating or otherwise affecting public transit; to accept any loans, grants or payments from any of these agencies; and to make any commitments or assume any obligations required by any of these agencies as a condition of receiving the benefits thereof." HB 476

CHAPTER 191

RELATING TO HEALTH CARE; ENACTING THE PHARMACIST PRESCRIPTIVE AUTHORITY ACT.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Pharmacist Prescriptive Authority Act".

Section 2

Section 2. DEFINITIONS.--As used in the Pharmacist Prescriptive Authority Act:

A. "board" means the board of pharmacy;

B. "dangerous drug" means a drug that, because of any potentiality for harmful effect or the methods of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and the drug prior to dispensing is required by federal law and state law to bear the manufacturer's legend "Caution: Federal law prohibits dispensing without a prescription";

C. "guidelines or protocol" means a written agreement between a pharmacist clinician or group of pharmacist clinicians and a practitioner or group of practitioners that delegates prescriptive authority;

D. "monitor dangerous drug therapy" means to review the dangerous drug therapy regimen of patients by a pharmacist clinician for the purpose of evaluating and rendering advice to the prescribing practitioner regarding adjustment of the regimen. "Monitor dangerous drug therapy" includes:

(1) collecting and reviewing patient dangerous drug histories;

(2) measuring and reviewing routine patient vital signs including pulse, temperature, blood pressure and respiration; and

(3) ordering and evaluating the results of laboratory tests relating to dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy levels, blood, urine, tissue or other body fluids, culture and sensitivity tests when performed in accordance with guidelines or protocols applicable to the practice setting;

E. "pharmacist" means a person duly licensed by the board of pharmacy to engage in the practice of pharmacy pursuant to the Pharmacy Act;

F. "pharmacist clinician" means a pharmacist with additional training, at least equivalent to the training received by a physician assistant, required by regulations adopted by the board in consultation with the New Mexico board of medical examiners and the New Mexico academy of physician assistants, who exercises prescriptive authority in accordance with guidelines or protocol;

G. "practitioner" means a physician duly authorized by law in New Mexico to prescribe controlled substances; and

H. "prescriptive authority" means the authority to prescribe or modify dangerous drug therapy.

Section 3

Section 3. PHARMACIST CLINICIAN PRESCRIPTIVE AUTHORITY.--

A. A pharmacist clinician planning to exercise prescriptive authority in his practice shall have on file at his place of practice written guidelines or protocol. The guidelines or protocol shall authorize a pharmacist clinician to exercise prescriptive authority and shall be established and approved by a practitioner in accordance with regulations adopted by the board. A copy of the written guidelines or protocol shall be on file with the board. The practitioner who is a party to the guidelines or protocol shall be in active practice and the prescriptive authority that he grants to a pharmacist clinician shall be within the scope of the practitioner's current practice.

B. The guidelines or protocol required by Subsection A of this section shall include:

(1) a statement identifying the practitioner authorized to prescribe dangerous drugs and the pharmacist clinician who is a party to the guidelines or protocol;

(2) a statement of the types of prescriptive authority decisions that the pharmacist clinician is authorized to make which may include:

(a) a statement of the types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case; and

(b) a general statement of the procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(3) a statement of the activities the pharmacist clinician is to follow in the course of exercising prescriptive authority, including documentation of decisions made and a plan for communication or feedback to the authorizing practitioner concerning specific decisions made. Documentation may occur on the prescriptive record, patient profile, patient medical chart or in a separate log book; and

(4) a statement that describes appropriate mechanisms for reporting to the practitioner monitoring activities and results.

C. The written guidelines or protocol shall be reviewed and shall be revised every two years if necessary.

D. A pharmacist clinician planning to exercise prescriptive authority in his practice shall be authorized to monitor dangerous drug therapy.

E. The board shall adopt regulations to carry out the provisions of the Pharmacist Prescriptive Authority Act.

F. For the purpose of the Pharmacist Prescriptive Authority Act the board of medical examiners shall adopt regulations concerning the guidelines and protocol for practitioners defined in Subsection C of Section 2 of that act.HB 478

CHAPTER 192

RELATING TO REAL ESTATE; RESTRICTING USE OF POWERS OF ATTORNEY; PROVIDING CIVIL PENALTIES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 61-29-2 NMSA 1978 (being Laws 1959, Chapter 226, Section 2, as amended) is amended to read:

"61-29-2. DEFINITIONS AND EXCEPTIONS.--

A. A real estate "broker", within the meaning of Chapter 61, Article 29 NMSA 1978, is a person, business association or corporation who for a salary, fee, commission or valuable consideration lists, sells or offers for sale, buys or offers to buy or negotiates the purchase or sale or exchange of real estate or who leases or offers to lease or rents or offers for rent or auctions or offers or attempts or agrees to auction real estate or who buys or offers to buy, sell or offers to sell or otherwise deals in options on real estate or advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning or dealing with options on any real estate or the improvement thereon for others, as a whole or partial vocation. The term "broker" also includes any person employed by or on behalf of the owner of real estate to conduct the sale, leasing or other disposition thereof at a salary or fee, commission or any other consideration. It also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for such purpose or for referral of information concerning such real estate to brokers, or both. The term "real estate", as used in Chapter 61, Article 29 NMSA 1978, shall include leaseholds and other interest less than leaseholds, including rights to use property. Resident managers of apartment buildings are not required to be licensed, provided they do not carry on any other real estate activity and do not serve as a resident manager for more than one employer.

B. A real estate "salesperson", within the meaning of Chapter 61, Article 29 NMSA 1978, is any person who for a compensation or valuable consideration is associated with or engaged under contract either directly or

indirectly by or on behalf of a licensed broker to participate in any activity included in Subsection A of this section or in the pursuance of such broker's business, as a whole or partial vocation.

C. Any one act of a person, business association or corporation in performing or attempting to perform an activity set forth in this section shall constitute the person, business association or corporation a real estate broker or real estate salesperson.

D. The provisions of Chapter 61, Article 29 NMSA 1978 shall not apply to, be construed to include, held to include or apply to:

(1) any person, business association or corporation who as owner or lessor performs any of the activities included in this section with reference to property owned or leased by him, the employees of the owner or lessor or the employees of a real estate broker acting on behalf of the owner or lessor, with respect to the property owned or leased, where the acts are performed in the regular course of or incident to the management of the property and the investments, except where the sale or offering for sale or the lease or offering for lease of the property constitutes a subdivision containing one hundred or more parcels;

(2) isolated or sporadic transactions not exceeding two transactions annually where a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner authorizing the person to finally consummate and to perform under any contract the sale, leasing or exchange of real estate on behalf of the owner; and the owner or attorney-in-fact have not used a power of attorney for the purpose of evading the provisions of Chapter 61, Article 29 NMSA 1978;

(3) transactions where a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner related to the attorney-in-fact, by up to the fourth degree of consanguinity, authorizing the person to finally consummate and to perform under any contract for the sale, leasing or exchange of real estate on behalf of the owner;

(4) the services rendered by an attorney at law in the performance of his duties as an attorney at law;

(5) a person acting in the capacity of a receiver, trustee in bankruptcy, administrator or executor, a person selling real estate pursuant to an order of any court, or a trustee acting under a trust agreement, deed of trust or will or the regular salaried employee of a trustee;

(6) the activities of a salaried employee of a governmental agency acting within the scope of his employment; or

(7) persons who deal exclusively in mineral leases or the sale or purchase of mineral rights or royalties in any case in which the fee to the land or the surface rights are in no way involved in the transaction."

Section 2

Section 2. Section 61-29-17 NMSA 1978 (being Laws 1965, Chapter 304, Section 8) is amended to read:

"61-29-17. PENALTY--INJUNCTIVE RELIEF.--

A. Any person who violates any provision of Chapter 61, Article 29 NMSA 1978 is guilty of a misdemeanor and shall be punished by a fine of no more than five hundred dollars ($500) or by imprisonment for not more than six months or both; any corporation or business association which violates any provision of Chapter 61, Article 29 NMSA 1978 shall be punished by a fine of not more than one thousand dollars ($1,000).

B. In the event any person, business association or corporation has engaged or proposes to engage in any act or practice violative of a provision of Chapter 61, Article 29 NMSA 1978, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or will occur shall, upon application of the commission, maintain an action in the name of the state to prosecute the violation or to enjoin the proposed act or practice.

C. In any action brought under Subsection B of this section, if the court finds that a person is engaged or has willfully engaged in any act or practice violative of a provision of Sections 61-29-1 through 61-29-18 NMSA 1978, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or is occurring shall upon petition to the court recover on behalf of the state of New Mexico a civil penalty not exceeding five thousand dollars ($5,000) per violation and attorneys' fees and
costs." HB 485

CHAPTER 193

RELATING TO WORKERS' COMPENSATION; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 52-1-1.2 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 28) is amended to read:

"52-1-1.2. ADVISORY COUNCIL ON WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE DISABLEMENT--FUNCTIONS AND DUTIES--INDEPENDENT MEDICAL EXAMINATIONS COMMITTEE.--

A. There is created in the workers' compensation administration an advisory council on workers' compensation and occupational disease disablement. Members of the council shall be appointed by the governor. There shall be six voting members of the council with three members representing employers and three members representing workers. No member representing employers or workers shall be an attorney. Three of the original appointees shall serve for terms of two years, and three shall serve for four years. The members shall determine by lot which members shall serve for four years and which shall serve for two. Thereafter, each member shall be appointed for a term of four years. The council shall elect a chairman from its membership. The director shall be an ex-officio, nonvoting member of the council.

B. Members of the council shall not be paid but shall receive per diem and mileage pursuant to the Per Diem and Mileage Act.

C. The council shall meet at least twice each year. It shall annually review workers' compensation and occupational disease disablement in New Mexico and shall issue a report of its findings and conclusions on or before January l of each year. The annual report shall be sent to the governor, the superintendent of insurance, the speaker of the house of representatives, the president pro tempore of the senate, the minority leaders of both houses and the chairmen of all appropriate committees of each house that review the status of the workers' compensation and occupational disease disablement system. In performing these responsibilities, the council's role shall be strictly advisory, but it may:

(l) make recommendations relating to the adoption of rules and legislation;

(2) make recommendations regarding the method and form of statistical data collections; and

(3) monitor the performance of the workers' compensation and occupational disease disablement system in the implementation of legislative directives.

D. The advisory council on workers' compensation and occupational disease disablement shall appoint a committee composed of three members representing workers and three members representing employers to designate an approved list of health care providers who are authorized to conduct independent medical examinations. The committee shall, to the greatest extent possible, designate only health care providers whose judgments are respected, or not objected to, by recognized representatives of both employer and worker interests and whose judgments are not perceived to favor any particular interest group. Members of the committee shall be immune from personal liability for any official action taken in

establishing the approved list of health care providers. The committee shall review and revise the list annually. The terms of the original members shall be two years, and thereafter the terms of the members shall be staggered so that each year the committee appoints one member who represents workers and one member who represents employers. The members shall annually elect a chairman. No member representing employers or workers shall be an attorney.

E. The workers' compensation administration shall cooperate with the council and shall provide information and staff support as reasonably necessary and required by the council and by the committee appointed pursuant to Subsection D of this section."

Section 2

Section 2. Section 52-1-7 NMSA 1978 (being Laws 1975, Chapter 284, Section 4, as amended) is amended to read:

"52-1-7. APPLICATION OF PROVISIONS OF ACT TO CERTAIN EXECUTIVE EMPLOYEES OR SOLE PROPRIETORS.--

A. Notwithstanding any provisions to the contrary in the Workers' Compensation Act, an executive employee of a professional or business corporation employed by the professional or business corporation as a worker as defined in the Workers' Compensation Act, or a sole proprietor, may affirmatively elect not to accept the provisions of the Workers' Compensation Act.

B. Each executive employee or sole proprietor desiring to affirmatively elect not to accept the provisions of the Workers' Compensation Act may do so by filing an election in the office of the director.

C. Each executive employee or sole proprietor desiring to revoke his affirmative election not to accept the provisions of the Workers' Compensation Act may do so by filing a revocation of the affirmative election with the workers' compensation insurer and in the office of the director. The revocation shall become effective thirty days after filing. An executive employee shall cause a copy of the revocation to be mailed to the board of directors of the professional or business corporation.

D. The filing of an affirmative election not to accept the provisions of the Workers' Compensation Act shall create a conclusive presumption that an executive employee or sole proprietor is not covered by the Workers' Compensation Act until the effective date of a revocation filed pursuant to this section. The filing of an affirmative election not to accept the provisions of the Workers' Compensation Act shall apply to all corporations in which the executive employee has a financial interest.

E. In determining the number of workers of an employer to determine who comes within the act, an executive employee who has filed an affirmative election not to

be subject to the Workers' Compensation Act shall be counted for determining the number of workers employed by such employer.

F. For purposes of this section:

(1) "executive employee" means the chairman of the board, president, vice president, secretary, treasurer or other executive officer, if he owns ten percent or more of the outstanding stock, of a professional or business corporation; and

(2) "sole proprietor" means a single individual who owns all the assets of a business, is solely liable for its debts and employs in the business no person other than himself."

Section 3

Section 3. Section 52-1-30 NMSA 1978 (being Laws 1987, Chapter 235, Section 14) is amended to read:

"52-1-30. PAYMENT OF COMPENSATION BENEFITS--INSTALLMENTS.--Compensation shall be paid by the employer to the worker in installments. The first installment shall be paid not later than fourteen days after the filing of the report required in Section 52-1-58 NMSA 1978. Remaining installments shall be paid twice a month at intervals not more than sixteen days apart in sums as nearly equal as possible."

Section 4

Section 4. Section 52-1-41 NMSA 1978 (being Laws 1959, Chapter 67, Section 20, as amended) is amended to read:

"52-l-41. COMPENSATION BENEFITS--TOTAL DISABILITY.--

A. For total disability, the worker shall receive, during the period of that disability, sixty-six and two-thirds percent of his average weekly wage, not to exceed a maximum compensation of ninety dollars ($90.00) a week, effective July l, 1975; and not to exceed a maximum compensation of sixty-six and two-thirds percent of the average weekly wage in the state, a week, effective January l, 1976; and not to exceed a maximum compensation of seventy-eight percent of the average weekly wage in the state, a week, effective July l, 1976; and not to exceed a maximum compensation of eighty-nine percent of the average weekly wage in the state, a week, effective July l, 1977; and not to exceed a maximum compensation of one hundred percent of the average weekly wage in the state, a week, effective July l, 1978; and not to exceed a maximum compensation of eighty-five percent of the average weekly wage in the state, a week, effective July l, 1987; and to be not less than a minimum compensation of thirty-six dollars ($36.00) a week. Except as provided in Subsections B and C of this section, the worker shall receive compensation benefits for the remainder of his life.

B. For disability resulting from primary mental impairment, the maximum period of compensation is one hundred weeks. For disability resulting in secondary mental impairment, the maximum period of compensation is the maximum period allowable for the disability produced by the physical impairment or one hundred weeks, whichever is greater.

C. For the purpose of paying compensation benefits for death, pursuant to Section 52-l-46 NMSA 1978, the worker's maximum disability recovery shall be deemed to be seven hundred weeks.

D. Where the worker's average weekly wage is less than thirty-six dollars ($36.00) a week, the compensation to be paid the worker shall be his full weekly wage.

E. For the purpose of the Workers' Compensation Act, the average weekly wage in the state shall be determined by the employment security division of the labor department on or before June 30 of each year and shall be computed from all wages reported to the employment security division from employing units, including reimbursable employers, in accordance with the regulations of the division for the preceding calendar year, divided by the total number of covered employees divided by fifty-two.

F. The average weekly wage in the state, determined as provided in Subsection E of this section, shall be applicable for the full period during which compensation is payable when the date of the occurrence of an accidental injury falls within the calendar year commencing January l following the June 30 determination.

G. Unless the computation provided for in Subsection E of this section results in an increase or decrease of two dollars ($2.00) or more, raised to the next whole dollar, the statewide average weekly wage determination shall not be changed for any calendar year."

Section 5

Section 5. Section 52-1-54 NMSA 1978 (being Laws 1987, Chapter 235, Section 24, as amended) is amended to read:

"52-l-54. FEE RESTRICTIONS--APPOINTMENT OF ATTORNEYS BY THE DIRECTOR OR WORKERS' COMPENSATION JUDGE--DISCOVERY COSTS--OFFER OF JUDGMENT--PENALTY FOR VIOLATIONS.--

A. It is unlawful for any person to receive or agree to receive any fees or payment directly or indirectly in connection with any claim for compensation under the Workers' Compensation Act except as provided in this section.

B. In all cases where the jurisdiction of the workers' compensation administration is invoked to approve a settlement of a compensation claim under the

Workers' Compensation Act, the director or workers' compensation judge, unless the claimant is represented by an attorney, may in his discretion appoint an attorney to aid the workers' compensation judge in determining whether the settlement should be approved and, in the event of an appointment, a reasonable fee for the services of the attorney shall be fixed by the workers' compensation judge, subject to the limitation of Subsection I of this section.

C. In all cases where the urisdiction of the workers' compensation administration is invoked to approve a
settlement of a compensation claim under the Workers' Compensation Act and the claimant is represented by an attorney, the total amount paid or to be paid by the employer in settlement of the claim shall be stated in the settlement papers. The workers' compensation judge shall determine and fix a reasonable fee for the claimant's attorney, taking into account any sum previously paid, and the fee fixed by the workers' compensation judge shall be the limit of the fee received or to be received by the attorney in connection with the claim, subject to the limitation of Subsection I of this section.

D. The cost of discovery shall be borne by the party who requests it. If, however, the claimant requests any discovery, the employer shall advance the cost of paying for discovery up to a limit of one thousand dollars ($l,000). If the claimant substantially prevails on the claim, as determined by a workers' compensation judge, any discovery cost advanced by the employer shall be paid by that employer. If the claimant does not substantially prevail on the claim, as determined by a workers' compensation judge, the employer shall be reimbursed for discovery costs advanced according to a schedule for reimbursement approved by a workers' compensation judge.

E. In all cases where compensation to which any person is entitled under the provisions of the Workers' Compensation Act is refused and the claimant thereafter collects compensation through proceedings before the workers' compensation administration or courts in an amount in excess of the amount offered in writing by an employer five business days or more prior to the informal hearing before the administration, then the compensation to be paid the attorney for the claimant shall be fixed by the workers' compensation judge hearing the claim or the courts upon appeal in the amount the workers' compensation judge or courts deem reasonable and proper, subject to the limitation of Subsection I of this section. In determining and fixing a reasonable fee, the workers' compensation judge or courts shall take into consideration:

(1) the sum, if any, offered by the employer:

(a) before the worker's attorney was employed;

(b) after the attorney's employment but before proceedings were commenced; and

(c) in writing five business days or more prior to the informal hearing;

(2) the present value of the award made in the worker's favor; and

(3) any failure of a party to participate in a good-faith manner in informal claim resolution methods adopted by the director.

F. After a recommended resolution has been issued and rejected, but more than ten days before a trial begins, the employer or claimant may serve upon the opposing party an offer to allow a compensation order to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued, subject to the following:

(1) if, within ten days after the service of the offer, the opposing party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof, and thereupon that compensation order may be entered as the workers' compensation judge may direct. An offer not accepted shall be deemed withdrawn, and evidence thereof is not admissible except in a proceeding to determine costs. If the compensation order finally obtained by the party is not more favorable than the offer, that party must pay the costs incurred by the opposing party after the making of the offer. The fact that an offer has been made but not accepted does not preclude a subsequent offer;

(2) when the liability of one party to another has been determined by a compensation order, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ten days prior to the commencement of hearings to determine the amount or extent of liability;

(3) if the employer's offer was greater than the amount awarded by the compensation order, the employer shall not be liable for his fifty-percent share of the attorneys' fees to be paid the worker's attorney and the worker shall pay one hundred percent of the attorney's fees due to the workers' attorney; and

(4) if the worker's offer was less than the amount awarded by the compensation order, the employer shall pay one hundred percent of the attorneys' fees to be paid the worker's attorney, and the worker shall be relieved from any responsibility for paying any portion of the worker's fees.

G. In all actions arising under the provisions of Section 52-l-56 NMSA 1978 where the jurisdiction of the workers' compensation administration is invoked to determine the question whether the claimant's disability has increased or diminished and the claimant is represented by an attorney, the workers' compensation judge or courts upon appeal shall determine and fix a reasonable fee for the services of the

claimant's attorney only if the claimant is successful in establishing that his disability has increased or if the employer is unsuccessful in establishing that the claimant's disability has diminished. The fee when fixed by the workers' compensation judge or courts upon appeal shall be the limit of the fee received or to be received by the attorney for services in the action, subject to the limitation of Subsection I of this section.

H. In determining reasonable attorneys' fees for a claimant, the workers' compensation judge shall consider only those benefits to the worker that the attorney is responsible for securing. The value of future medical benefits shall not be considered in determining attorneys' fees.

I. Attorneys' fees, including, but not limited to, the costs of paralegal services, legal clerk services and any other related legal services costs on behalf of a claimant or an employer for a single accidental injury claim, including representation before the workers' compensation administration and the courts on appeal, shall not exceed twelve thousand five hundred dollars ($12,500). This limitation applies whether the claimant or employer has one or more attorneys representing him and applies as a cumulative limitation on compensation for all legal services rendered in all proceedings and other matters directly related to a single accidental injury to a claimant. The workers' compensation judge may exceed the maximum amount stated in this subsection in awarding a reasonable attorneys' fee if he finds that a claimant, an insurer or an employer acted in bad faith with regard to handling the injured worker's claim and the injured worker or employer has suffered economic loss as a result. However, in no case shall this additional amount exceed two thousand five hundred dollars ($2,500). As used in this subsection, "bad faith" means conduct by the claimant, insurer or employer in the handling of a claim that amounts to fraud, malice, oppression or willful, wanton or reckless disregard of the rights of the worker or employer. Any determination of bad faith shall be made by the workers' compensation judge through a separate fact-finding proceeding.

J. Except as provided for in Paragraphs (3) and (4) of Subsection F of this section, the payment of claimant's attorneys' fees determined under this section shall be shared equally by the worker and the employer.

K. It is unlawful for any person except a licensed attorney to receive or agree to receive any fee or payment for legal services in connection with any claim for compensation under the Workers' Compensation Act.

L. Nothing in this section applies to agents, excluding attorneys, representing employers, insurance carriers or the subsequent injury fund in any matter arising from a claim under the Workers' Compensation Act.

M. No attorneys' fees shall be paid until the claim has been settled or adjudged.

N. Every person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars ($50.00) or more than five hundred dollars ($500), to which may be added imprisonment in the county jail for a term not exceeding ninety days.

O. Nothing in this section shall restrict a claimant from being represented before the workers' compensation administration by a nonattorney as long as that nonattorney receives no compensation for that representation from the claimant."

Section 6

Section 6. Section 52-3-20 NMSA 1978 (being Laws 1965, Chapter 299, Section 7, as amended) is amended to read:

"52-3-20. PAYMENT OF BENEFITS IN INSTALLMENTS.--Benefits shall be paid by the employer to the worker in installments. The first installment shall be paid not later than fourteen days after the filing of the report required in Section 52-3-51 NMSA 1978. Remaining installments shall be paid twice a month at intervals not more than sixteen days apart, in sums as nearly equal as possible."

Section 7

Section 7. Section 52-3-47 NMSA 1978 (being Laws 1987, Chapter 235, Section 41, as amended) is amended to read:

"52-3-47. FEE RESTRICTIONS--APPOINTMENT OF ATTORNEYS BY THE DIRECTOR OR WORKERS' COMPENSATION JUDGE--DISCOVERY COSTS--OFFER OF JUDGMENT--PENALTY FOR VIOLATIONS.--

A. It is unlawful for any person to receive or agree to receive any fees or payment directly or indirectly in connection with any claim for compensation under the New Mexico Occupational Disease Disablement Law except as provided in this section.

B. In all cases where the jurisdiction of the workers' compensation administration is invoked to approve a settlement of a compensation claim under the New Mexico Occupational Disease Disablement Law, the director or workers' compensation judge, unless the claimant is represented by an attorney, may in his discretion appoint an attorney to aid the workers' compensation judge in determining whether the settlement should be approved. In the event of such an appointment, a reasonable fee for the services of the attorney shall be fixed by the workers' compensation judge, subject to the limitation of Subsection I of this section.

C. In all cases where the jurisdiction of the workers' compensation administration is invoked to approve a settlement of a compensation claim under the New Mexico Occupational Disease Disablement Law and the claimant is represented by an attorney, the total amount paid or to be paid by the employer in settlement of the

claim shall be stated in the settlement papers, and the workers' compensation judge shall determine and fix a reasonable fee for the claimant's attorney, taking into account any sum previously paid. The fee fixed by the workers' compensation judge shall be the limit of the fee received or to be received by the attorney in connection with the claim, subject to the limitation of Subsection I of this section.

D. The cost of discovery shall be borne by the party who requests it. If, however, the claimant requests any discovery, the employer shall advance the cost of paying for discovery up to a limit of one thousand dollars ($l,000). If the claimant substantially prevails on the claim, as determined by a workers' compensation judge, any discovery cost advanced by the employer shall be paid by that employer. If the claimant does not substantially prevail on the claim, as determined by a workers' compensation judge, the employer shall be reimbursed for discovery costs advanced according to a schedule for reimbursement approved by a workers' compensation judge.

E. In all cases where compensation to which any person is entitled under the provisions of the New Mexico Occupational Disease Disablement Law is refused and the claimant thereafter collects compensation through proceedings before the workers' compensation administration or courts in an amount in excess of the amount offered in writing by an employer five business days or more prior to the informal hearing before the administration, then the compensation to be paid the attorney for the claimant shall be fixed by the workers' compensation judge hearing the claim or the courts upon appeal in the amount the workers' compensation judge or courts deem reasonable and proper, subject to the limitation of Subsection I of this section. In determining and fixing a reasonable fee, the workers' compensation judge or courts shall take into consideration:

(1) the sum, if any, offered by the employer:

(a) before the employee's attorney was employed;

(b) after the attorney's employment but before proceedings were commenced; and

(c) in writing five business days or more prior to the informal hearing;

(2) the present value of the award made in the employee's favor; and

(3) the failure of a party to participate in a good-faith manner in informal claim resolution methods adopted by the director.

F. After a recommended resolution has been issued and rejected, but more than ten days before a trial begins, the employer or claimant may serve upon the

opposing party an offer to allow a compensation order to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued, subject to the following:

(1) if, within ten days after the service of the offer, the opposing party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof, and thereupon that compensation order may be entered as the workers' compensation judge may direct. An offer not accepted shall be deemed withdrawn, and evidence thereof is not admissible except in a proceeding to determine costs. If
the compensation order finally obtained by the party is not more favorable than the offer, that party must pay the costs incurred by the opposing party after the making of the offer. The fact that an offer has been made but not accepted does not preclude a subsequent offer;

(2) when the liability of one party to another has been determined by a compensation order, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ten days prior to the commencement of hearings to determine the amount or extent of liability;

(3) if the employer's offer was greater than the amount awarded by the compensation order, the employer shall not be liable for his fifty-percent share of the attorneys' fees to be paid the worker's attorney and the worker shall pay one hundred percent of the attorneys' fees due to the worker's attorney; and

(4) if the worker's offer was less than the amount awarded by the compensation order, the employer shall pay one hundred percent of the attorneys' fees to be paid the worker's attorney, and the worker shall be relieved from any responsibility for paying any portion of the worker's fees.

G. In all actions arising under the provisions of Section 52-3-35 NMSA 1978, where the jurisdiction of the workers' compensation administration is invoked to determine the question of whether the claimant's disablement has terminated and the claimant is represented by an attorney, the workers' compensation judge or courts upon appeal shall determine and fix a reasonable fee for the services of the claimant's attorney only if the employer is unsuccessful in establishing that the claimant's disablement has terminated. The fee when fixed by the workers' compensation judge or courts upon appeal shall be taxed as part of the costs against the employer and shall be the limit of the fee received or to be received by the attorney for services in the action, subject to the limitation of Subsection I of this section.

H. In determining reasonable attorneys' fees for a claimant, the workers' compensation judge shall consider only those benefits to the employee that the attorney

is responsible for securing. The value of future medical benefits shall not be considered in determining attorneys' fees.

I. Attorneys' fees, including, but not limited to, the costs of paralegal services, legal clerk services and any other related legal services costs on behalf of a claimant or an employer for a single disablement claim, including representation before the workers' compensation administration and the courts on appeal, shall not exceed twelve thousand five hundred dollars ($12,500). This limitation applies whether the claimant or employer has one or more attorneys representing him and applies as a cumulative limitation on compensation for all legal services rendered in all proceedings and other matters directly related to a single occupational disease of a claimant. The workers' compensation judge may exceed the maximum amount stated in this subsection in awarding a reasonable attorneys' fee if he finds that a claimant, an insurer or an employer acted in bad faith with regard to handling the disabled employee's claims and the employer or disabled employee has suffered economic loss as a result thereof. However, in no case shall this additional amount exceed two thousand five hundred dollars ($2,500). As used in this subsection, "bad faith" means conduct by the claimant, insurer or employer in the handling of a claim that amounts to fraud, malice, oppression or willful, wanton or reckless disregard of the rights of the employee or employer. Any determination of bad faith shall be made by the workers' compensation judge through a separate fact-finding proceeding.

J. Except as provided for in Paragraphs (3) and (4) of Subsection F of this section, the payment of claimant's attorneys' fees determined under this section shall be shared equally by the employee and the employer.

K. It is unlawful for any person except a licensed attorney to receive or agree to receive any fee or payment for legal services in connection with any claim for compensation under the New Mexico Occupational Disease Disablement Law.

L. Nothing in this section applies to agents, excluding attorneys, representing employers, insurance carriers or the subsequent injury fund in any matter arising from a claim under the New Mexico Occupational Disease Disablement Law.

M. No attorneys' fees shall be paid until the claim has been settled or adjudged.

N. Every person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars ($50.00) or more than five hundred dollars ($500), to which may be added imprisonment in the county jail for a term not exceeding ninety days.

O. Nothing in this section shall restrict a claimant from being represented before the workers' compensation administration by a nonattorney as long as that nonattorney receives no compensation for representation from the claimant."

Section 8

Section 8. Section 52-4-2 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 50) is amended to read:

"52-4-2. UTILIZATION REVIEW--PENALTIES.--

A. The director shall establish a system of peer group utilization review of selected outpatient and inpatient health care provider services to workers claiming benefits under the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law. Subject to the provisions of this section, the decisions issued pursuant to the utilization review system shall be binding on the affected health care providers, workers, employers, insurers and their representatives.

B. As used in this section, "utilization review" means an evaluation of the necessity, appropriateness, efficiency and quality of health care services provided to an injured or disabled worker based on medically accepted standards and an objective evaluation of the health care services provided.

C. The director shall also establish a system of pre-admission review of all hospital admissions, except for emergency services. Utilization review shall commence within one working day of all emergency hospital admissions.

D. The director may contract with an independent utilization review organization to provide utilization review, including peer review.

E. Nothing in this section shall prevent an employer from electing to provide his own utilization review; however, if the worker, provider or any other party not contractually bound to the employer's utilization review program disagrees with that employer's utilization review, then that worker, provider or other party shall have recourse to the workers' compensation administration's utilization review program.

F. Pursuant to utilization review conducted by the director, including providing an opportunity for a hearing, any health care provider who imposes excessive charges or renders inappropriate services shall be subject to:

(1) a forfeiture of the right to payment for those services that are found to be excessive or inappropriate or payment of excessive charges;

(2) a fine of not less than one hundred dollars ($100) or more than one thousand dollars ($l,000); or

(3) a temporary or permanent suspension of the right to provide health care services for workers' compensation or occupational disease disablement claims if the health care provider has established a pattern of violations."

Section 9

Section 9. Section 52-4-5 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 52) is amended to read:

"52-4-5. FEE SCHEDULE.--

A. The director shall adopt and promulgate regulations establishing a schedule of maximum charges as deemed necessary for treatment or attendance, service, devices, apparatus or medicine provided by a health care provider. The rates in the schedules of maximum charges shall not fall below the sixtieth percentile or above the eightieth percentile of current rates for health care providers. In determining current rates for health care providers, the director shall utilize a variety of health care provider charges, including the charges of those providers serving low income, medicare and medicaid patients.

B. A health care provider shall be paid his usual and customary fee for services rendered or the maximum charge established pursuant to Subsection A of this section, whichever is less. However, in no case shall the usual and customary fee exceed the maximum charge allowable.

C. The fee schedule shall be revised annually by the director.

D. No amount in excess of the amount required by Subsection B of this section for a service shall be paid by the employer, the employer's insurer, the worker, a representative of the worker or any other person to a health care provider for rendering that service in connection with an injury or disablement within the purview of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law.

E. If it is determined by the person primarily responsible for payment that the charges of a health care provider exceed the amount established pursuant to Subsection B of this section or that a health care provider over-utilized or otherwise rendered or ordered inappropriate health care or health care services, and payment is withheld on those grounds, the health care provider may appeal to the director regarding that determination. The director shall establish by regulation procedures for an appeal by a health care provider.

F. The director shall establish an advisory committee that shall:

(1) be appointed and serve at the pleasure of the director;

(2) consist of members, a majority of whom represent health care providers;

(3) reflect the diversity of authorized licensed health care providers available for workers' compensation and occupational disease disablement cases;

(4) assist in establishing the schedules of maximum charges under Subsection A of this section for any fees that are payable to health care providers;

(5) assist the director in adopting regulations for employers' utilization review procedures and the establishment and conduct of utilization review boards; and

(6) report its findings, upon request, to the director and the advisory council on workers' compensation.

G. The schedule of maximum charges specified in this section shall not apply to hospital charges. The director shall establish a separate schedule of maximum charges for hospital charges no later than April 1, 1991.

H. Nothing in this section shall prevent an employer from contracting with a health care provider for fees less than the maximum charges allowable."

Section 10

Section 10. Section 52-5-5 NMSA 1978 (being Laws 1986, Chapter 22, Section 31, as amended) is amended to read:

"52-5-5. CLAIMS--INFORMAL CONFERENCES.--

A. When a dispute arises under the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law, any party ay file a claim with the director no sooner than thirty-one days from the date of injury or the occurrence of the disabling disease. The director shall assist workers and employees not represented by counsel in the preparation of the claim document.

B. The director shall prepare a form of claim which shall be available to all parties. The claim shall state concisely in numbered paragraphs the questions at issue or in dispute which the claimant expects to be determined with sufficient particularity that the responding or opposing party may be notified adequately of the claim and its basis, including, if applicable, the specific benefit which is due and not paid.

C. Upon receipt, every claim shall be evaluated by the director or his designee, who shall then contact all parties and attempt to informally resolve the dispute. Within sixty days after receipt of the claim, the director shall issue his recommendations for resolution and provide the parties with a copy by certified mail, return receipt requested. Within thirty days of receipt of the recommendation of the director, each party shall notify the director on a form provided by him of the acceptance or rejection of the recommendation. A party failing to notify the director waives any right

to reject the recommendation and is bound conclusively by the director's recommendation unless, upon application made to the director within thirty days after the foregoing deadline, the director finds that the party's failure to notify was the result of excusable neglect. If either party makes a timely rejection of the director's recommendation, the claim shall be assigned to a workers' compensation judge for hearing.

D. Each party to a dispute shall have a peremptory right to disqualify one workers' compensation judge; provided that:

(1) the employer and his insurer shall constitute a single party for purposes of this subsection;

(2) this peremptory right to disqualify one worker's compensation judge shall not apply to the judge appointed pursuant to Section 52-1-49 NMSA 1978 to render a decision within seven days on a request for a different health care provider; and

(3) no party shall be required to disqualify a workers' compensation judge until a judge has been assigned to a case."

Section 11

Section 11. Section 52-5-7 NMSA 1978 (being Laws 1986, Chapter 22, Section 33, as amended) is amended to read:

"52-5-7. HEARING PROCEDURE.--

A. When matters in dispute cannot be resolved by informal conference or other techniques, the director shall transmit a copy of the claim to the other parties with notice to respond by written answer. The other parties shall respond with a written answer within twenty days after receiving a notice or within such extension of that time as the director may allow. If no timely answer is filed by a party after notice, a workers' compensation judge may, if he determines it to be appropriate, grant the relief sought against that party. However, if, in order to enable the workers' compensation judge to enter an order and carry out its effect, it is necessary to take an account, determine the amount of benefits due, establish the truth of any claims by evidence or make an investigation of any matter, the workers' compensation judge may conduct such hearings as he deems necessary and proper.

B. A hearing shall be held for determining the questions at issue within sixty days of the filing of the answer. All parties in interest shall be given at least twenty days' notice of the hearing and of the issues to be heard, served personally or by mail. Following the presentation of the evidence, the workers' compensation judge shall determine the questions at issue and file the decision with the director within thirty days, unless the time for filing the decision is extended by the mutual agreement of the

parties. At the time of filing, a certified copy of the decision shall be sent by first class mail to all interested parties at the last known address of each. The decision of the workers' compensation judge shall be made in the form of a compensation order, appropriately titled to show its purpose and containing a report of the case, findings of fact and conclusions of law and, if appropriate, an order for the payment of benefits under the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law.

C. The decision of the workers' compensation judge shall be final and conclusive as to all matters adjudicated by him upon the expiration of the thirtieth day after a copy of the decision has been mailed to the parties, unless prior to that day a party in interest seeks judicial review of the decision pursuant to Section 52-5-8 NMSA 1978.

D. All hearings before the workers' compensation judge shall be open to the public. The director shall by regulation provide for the preparation of a record of each hearing.

E. The director may authorize a workers' compensation judge or his duly authorized representative to enter at any reasonable time the premises where an injury or death has occurred and to make such examination of any tool, appliance, process, machinery or environmental or other condition as may be relevant to a determination of the cause and circumstances of the injury, disablement or death.

F. The testimony of any witness may be taken by deposition or interrogatories according to the rules of civil procedure for the district courts and may be taken before any workers' compensation judge or any person authorized to take testimony, but discovery procedure shall be conducted only upon the workers' compensation judge's findings that good cause exists. The cost and expense of any discovery procedure allowed by the workers' compensation judge shall be paid as provided in Section 52-1-54 NMSA 1978. No costs shall be charged, taxed or collected by the workers' compensation judge except fees for witnesses who testify under subpoena. The witnesses shall be allowed the same fee for attendance and mileage as is fixed by the law in civil actions, except that the workers' compensation judge may assess against the employer the fees allowed any expert witness, as provided in Section 38-6-4 NMSA 1978, whose examination of the claimant, report or hearing attendance the workers' compensation judge deems necessary for resolution of matters at issue."

Section 12

Section 12. Section 52-5-12 NMSA 1978 (being Laws 1986, Chapter 22, Section 38, as amended) is amended to read:

"52-5-12. PAYMENT--PERIODIC OR LUMP SUM.--

A. It is stated policy for the administration of the Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law that it is in the best interest of the injured worker or disabled employee that he receive benefit payments on a periodic basis. Except as provided in Subsections B, C and D of this section, lump-sum payments in exchange for the release of the employer from liability for future payments of compensation or medical benefits shall not be allowed.

B. With the approval of the workers' compensation judge, a worker may elect to receive compensation benefits to which he is entitled in a lump sum if he has returned to work for at least six months, earning at least eighty percent of the average weekly wage he earned at the time of injury or disablement. If a worker receives his benefit income in a lump sum, he is not entitled to any additional benefit income for the compensable injury or disablement and he shall only receive that portion of the benefit income that is attributable to the impairment rating as determined in Section 52-l-24 NMSA 1978. In making lump-sum payments, the payment due the worker shall not be discounted at a rate greater than a sum equal to the present value of all future payments of compensation computed at a five-percent discount compounded annually.

C. After maximum medical improvement and with the approval of the workers' compensation judge, a worker may elect to receive a partial lump-sum payment of workers' compensation benefits for the sole purpose of paying debts that may have accumulated during the course of the injured or disabled worker's disability.

D. If an insurer pays a lump-sum payment to an injured or disabled worker without the approval of a workers' compensation judge and if at a later date benefits are due for the injured or disabled worker's claim, the insurer alone shall be liable for that claim and shall not in any manner, including rate determinations and the employer's experience modifier, pass on the cost of the benefits due to the employer.

E. If the compensation benefit to which a worker is entitled is less than twenty-five dollars ($25.00) per week, any party may petition the workers' compensation judge to consolidate that payment into quarterly installments.

F. Periodic compensation payments under the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law for disability arising from primary mental impairments or secondary mental impairments shall be paid as incurred and shall not be included in any lump-sum payments."

Section 13

Section 13. Section 60-13-23 NMSA 1978 (being Laws 1967, Chapter 199, Section 26, as amended) is amended to read:

"60-13-23. REVOCATION OR SUSPENSION OF LICENSE BY THE COMMISSION--CAUSES.--Any license issued by the division shall be revoked or suspended by the commission for any of the following causes:

A. if the licensee or qualifying party of the licensee willfully or by reason of incompetence violates any provision of the Construction Industries Licensing Act or any rule or regulation adopted pursuant to that act by the division;

B. knowingly contracting or performing a service beyond the scope of the license;

C. misrepresentation of a material fact by the applicant in obtaining a license;

D. failure to maintain proof of responsibility as required by the Construction Industries Licensing Act;

E. unjustified abandonment of any contract as determined by a court of competent jurisdiction;

F. conversion of funds or property received for prosecution or completion of a specific contract or for a specified purpose in the prosecution or completion of any contract, obligation or purpose, as determined by a court of competent jurisdiction;

G. departure from or disregard of plans or specifications that result in code violations;

H. willful or fraudulent commission of any act by the licensee as a contractor in consequence of which another is substantially injured, as determined by a court of competent jurisdiction;

I. failure to maintain workers' compensation insurance as required by the Workers' Compensation Act;

J. aiding, abetting, combining or conspiring with a person to evade or violate the provisions of the Construction Industries Licensing Act by allowing a contractor's license to be used by an unlicensed person, or acting as agent, partner, associate or otherwise in connection with an unlicensed person, with the intent to evade the provisions of the Construction Industries Licensing Act; or

K. acting in the capacity of a licensee under any other name than is set forth upon the license."

Section 14

Section 14. REPEAL.--Section 20-5-12 NMSA 1978 (being Laws 1987, Chapter 318, Section 43) is repealed. HB 533

CHAPTER 194

RELATING TO INSURANCE; PROVIDING REFUNDS OR CREDITS FOR CERTAIN MOTOR VEHICLE INSURANCE PREMIUMS.

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

Section 1

Section 1. Section 59A-32-19 NMSA 1978 (being Laws 1987, Chapter 18, Section 6, as amended) is amended to read:

"59A-32-19. DISCOUNTS OR REDUCTIONS IN PREMIUMS.--Nothing in Sections 59A-32-14 through 59A-32-18 NMSA 1978 shall prohibit an insurer offering private passenger motor vehicle insurance to New Mexico residents from providing a minimum twenty percent premium discount for bodily injury liability, property damage liability and collision coverages.

Section 2

Section 2. TEMPORARY PROVISION--REFUND OR CREDIT FOR CERTAIN MOTOR VEHICLE PREMIUMS.--A person whose private passenger motor vehicle insurance premium was increased as a result of application of the provisions of Laws 1991, Chapter 135, Section 1 shall be refunded the amount of the increased premum or receive a credit for that amount against a renewal premium. If a refund is due to a policyholder who is no longer insured by the insurer, the insurer may satisfy the provisions of this section by making a good faith effort to deliver the refund to the policyholder at his last known
address. HB547

CHAPTER 195

RELATING TO TORTS; AMENDING A SECTION OF THE TORT CLAIMS ACT TO PROVIDE COVERAGE UNDER THAT ACT TO CERTAIN PERSONS WHO WORK WITH COURT APPOINTED SPECIAL ADVOCATE PROGRAMS.

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

Section 1

Section 1. Section 41-4-3 NMSA 1978 (being Laws 1976, Chapter 58, Section 3, as amended) is amended to read:

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

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

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

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

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

E. "maintenance" does not include:

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

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

F. "public employee" means any officer, employee or servant of a governmental entity, excluding independent contractors except for individuals defined in Paragraphs (6) and (7) of this subsection, and including:

(1) elected or appointed officials;

(2) law enforcement officers;

(3) persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;

(4) licensed foster parents providing care for children in the custody of the human services department, corrections department or department of health, but not including foster parents certified by a licensed child placement agency;

(5) members of state or local selection panels established pursuant to the Adult Community Corrections Act;

(6) licensed medical, psychological or dental arts practitioners providing services to the corrections department pursuant to contract;

(7) members of the board of directors of the New Mexico comprehensive health insurance pool;

(8) individuals who are members of medical review boards, committees or panels established by the board of the educational retirement association or the board of the public employees retirement association; and

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

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

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

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 549

CHAPTER 196

RELATING TO BUSINESS LICENSES; PROVIDING FOR STAGGERED PERIODS FOR RENEWAL OF BUSINESS LICENSES AND REGISTRATIONS; ALLOWING BUSINESS REGISTRATION FEES TO BE PRORATED.

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

Section 1

Section 1. Section 3-38-3 NMSA 1978 (being Laws 1981, Chapter 37, Section 3, as amended) is amended to read:

"3-38-3. AUTHORIZATION FOR BUSINESS REGISTRATION FEE.--

A. In addition to the licensing authority contained in Section 3-38-1 NMSA 1978, a municipality shall, by ordinance, charge a business registration fee on each place of business conducted within a municipality that is not licensed by the municipality under Section 3-38-1 NMSA 1978. The business registration fee shall not be more than thirty-five dollars ($35.00) a year and may be prorated for businesses conducted for a portion of the year.

B. Notwithstanding the provisions of this section and Section 3-38-1 NMSA 1978:

(1) no license fee or business registration fee shall be imposed on any sanctioned and registered athletic official who officiates for any association or organization which regulates any public school activity and whose rules and regulations are approved by the state board of education; and

(2) a municipality may exempt from the business regulation fee imposed by the municipality any part-time artist whose income from sales of his artwork in the prior taxable year did not exceed one thousand dollars ($1,000)."

Section 2

Section 2. Section 3-38-4 NMSA 1978 (being Laws 1981, Chapter 37, Section 4) is amended to read:

"3-38-4. BUSINESS LICENSING--BUSINESS REGISTRATION--APPLICATION TO DO BUSINESS--ISSUANCE OF LICENSE OR REGISTRATION--PRORATION OF LICENSE FEE--RENEWAL OF REGISTRATION--STAGGERED PERIODS FOR BUSINESS REGISTRATION.--

A. Prior to engaging in any business, any person proposing to engage in a business shall pay to the
municipality any applicable business registration fee or any applicable business license fee. A municipality may provide by ordinance for the prorating of the business license fee and the issuing of a business license for the remainder of the calendar year in which the business is to be operated.

B. Each year, any person engaging in a business within a municipality shall apply for the renewal of any applicable business license as authorized in Section 3-38-1 NMSA 1978 or any applicable business registration as authorized in Section 3-38-3 NMSA 1978 with the municipal clerk. A municipality may provide by ordinance for a staggered system of business registration.

C. Any person filing an application for issuance or renewal of any business license as authorized in Section
3-38-1 NMSA 1978 or any business registration as authorized in Section 3-38-3 NMSA 1978 shall include on the application his current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number. No municipality shall issue or renew a business license or a business registration authorizing the conduct of a business to any person who has not furnished to the municipality the information required in this section." HB 567

CHAPTER 197

RELATING TO ADMINISTRATION OF GOVERNMENT; ENACTING THE INFORMATION AND COMMUNICATION MANAGEMENT ACT; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 15-1-1 NMSA 1978 (being Laws 1986, Chapter 81, Section 1) is amended to read:

"15-1-1. SHORT TITLE.--Chapter 15, Article 1 NMSA 1978 may be cited as the "Information and Communication Management Act"."

Section 2

Section 2. Section 15-1-3 NMSA 1978 (being Laws 1986, Chapter 81, Section 3) is amended to read:

"15-1-3. PURPOSE.--The purpose of the Information and Communication Management Act is to coordinate the central and individual state agency information and communication services, resources and systems in a manner that ensures that the most cost-effective and efficient information and communication management tools are being used by executive agencies. Coordination will be achieved through the development of a five-year strategic plan for information and communication management that is developed and updated annually by the commission on information and communication management. The plan shall include an inventory of current services, resources and systems."

Section 3

Section 3. Section 15-1-4 NMSA 1978 (being Laws 1986, Chapter 81, Section 4) is repealed and a new Section 15-1-4 NMSA 1978 is enacted to read:

"15-1-4. DEFINITIONS.--As used in the Information and Communication Management Act:

A. "commission" means the commission on information and communication management;

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

C. "secretary" means the secretary of general services; and

D. "executive agency" means those state agencies that are exclusive of the judicial branch and legislative branch of state government, state educational institutions and local political subdivisions."

Section 4

Section 4. Section 15-1-5 NMSA 1978 (being Laws 1986, Chapter 81, Section 5) is repealed and a new Section 15-1-5 NMSA 1978 is enacted to read:

"15-1-5. COMMISSION ON INFORMATION AND COMMUNICATION MANAGEMENT CREATED--COMPOSITION--STAFFING--ADMINISTRATIVE ATTACHMENT.--

A. The "commission on information and communication management" is created and administratively attached to the general services department pursuant to the provisions of the Executive Reorganization Act. The commission shall consist of eight members appointed by the governor as follows:

(1) two representatives from the major information and communication units of Los Alamos national laboratory and Sandia national laboratories;

(2) two cabinet secretaries from executive agencies, one of whom represents a large information systems user and one a medium or small information systems user and who shall serve on a rotating basis for terms not to exceed two years;

(3) two public members who shall not be employees of the state or its political subdivisions and shall not contract with the state but who shall have experience in information and communication technology and management;

(4) the secretary of finance and administration, who shall serve ex officio; and

(5) the secretary of general services who shall be chairman of the commission and who shall not vote on any question or action before the commission.

B. After the initial appointments of the laboratory representatives and public members, succeeding appointments shall be for five-year terms and any vacancy filled shall be for the balance of the unexpired term. Public members shall be reimbursed for per diem and mileage expenses in accordance with the Per Diem and Mileage Act.

C. Executive agencies represented on the commission shall provide staff for their respective members of the commission. In addition, the commission is authoized to hire the following permanent staff:

(1) a director;

(2) three information and communication management analysts with responsibilities for a certain set of assigned agencies, agency plans and emerging technologies;

(3) two performance auditors to conduct performance audits of all executive agency information management and technology resources; and

(4) one support staff."

Section 5

Section 5. Section 15-1-6 NMSA 1978 (being Laws 1986, Chapter 81, Section 6) is repealed and a new Section 15-1-6 NMSA 1978 is enacted to read:

"15-1-6. POWERS AND DUTIES OF CHAIRMAN AND COMMISSION.--

A. The chairman, with the advice of the commission, shall develop and update annually a detailed five-year strategic plan on information and communication management to be presented to the governor and the legislative finance committee. The plan shall include the development of policies, standards and procedures for the management of information and communication technology for all executive agencies. The annual updates of the plan shall be based upon the details of the individual agency plans submitted pursuant to Section 8 of the Information and Communication Management Act.

B. The first strategic plan developed under the provisions of the Information and Communication Management Act shall provide the framework from which to develop, analyze and approve individual executive agency information management plans and resource allocations. The strategic plan shall define the strategic policy direction for executive agencies and the responsibilities of those agencies in the acquisition and use of information and communication management and technologies."

Section 6

Section 6. Section 15-1-7 NMSA 1978 (being Laws 1986, Chapter 81, Section 7) is repealed and a new Section 15-1-7 NMSA 1978 is enacted to read:

"15-1-7. POWERS AND DUTIES OF COMMISSION.--The commission shall:

A. coordinate the preparation and facilitate the implementation of executive agency plans for information management and technology;

B. review and approve such plans and document the approval to the governor and legislature;

C. monitor information and communication systems development and conduct performance audits of information management and technological resources;

D. advise the governor and legislature on information management and technology matters;

E. develop a strategic information management annual plan review policy and process that requires each executive agency to develop an acceptable information management annual plan no later than July 1 of each year for review and approval by the commission no later than September 1 of each year to ensure appropriate input into the executive and legislative budget processes;

F. review and evaluate the agency plans against a specific set of criteria, set forth in Section 8 of the Information and Communication Management Act;

G. review and approve all rate structures for information and communication services in the review and evaluation of the plan for the general services department; provided, however, that the approval authority will allow the secretary of general services the flexibility in rate designs for a variation of plus or minus five percent without commission approval; and

H. approve the acquisition of information and communication services, resources and systems, including services relating to project or contract management."

Section 7

Section 7. Section 15-1-8 NMSA 1978 (being Laws 1986, Chapter 81, Section 8) is repealed and a new Section 15-1-8 NMSA 1978 is enacted to read:

"15-1-8. PURCHASING--INFORMATION AND COMMUNICATION SERVICES, RESOURCES AND SYSTEMS.--

A. The state purchasing agent shall serve as the central purchasing agency for all information and communication services, resources and systems. The state purchasing agent shall seek advice and support from the commission concerning system procurements and price agreements.

B. All information system services and professional services contracts shall be processed in accordance with appropriate rules and regulations of the department of finance and administration; provided, however, that the commission shall review and approve all information system services and professional service contracts for management of information and communication system projects prior to final approval by the department of finance and administration."

Section 8

Section 8. A new section of the Information and Communication Management Act is enacted to read:

"POWERS AND DUTIES OF COMMISSION AND EXECUTIVE AGENCIES PURSUANT TO DEVELOPMENT OF AGENCY PLANS.--

A. The commission shall ensure, through the development of specific policies, procedures and guidelines, that agency plans include strategic and operational assessments; provide a formal linkage between information management planning and department strategies and processes; use standard formats when appropriate; allow for stratification of projects to require less detail for smaller projects and an increasingly detailed level of analysis and justification as project size, cost and risk increase; and have an increased and enhanced emphasis on evaluation of the economics of all information and communication systems investments.

B. The commission shall specifically ensure the following:

(1) that the plan is the product of a continuous institutional process;

(2) that the primary responsibility for general supervision of information and communication management resides within each department;

(3) that each executive agency establishes a strategic planning process closely linked to its program planning activities;

(4) that rigorous management processes are applied to ensure that implementation of information and communication systems and resources represents an investment for the state that yields specific, measurable services and financial objectives;

(5) that efficient and judicious incorporation of information and communication technology innovations supports executive agency operations to control expenses, increase productivity, improve service and improve controls; and

(6) that the requirement for prudent risk management practices preserves the integrity and security of information and information management facilities and ensures timely resumption of operations following a disaster.

C. The commission shall require each executive agency's plan to include the following:

(1) an executive agency overview;

(2) an information systems unit baseline analysis;

(3) a strategic information systems plan, including cost and benefit analyses;

(4) a tactical information systems plan, including specific budget data prepared;

(5) a method for revising and reporting on the plan;

(6) the requirement for a feasibility study to be included in the plan for all projects with a total cost equal to or greater than five hundred thousand dollars ($500,000) or for any ongoing project the scope of which will exceed five hundred thousand dollars ($500,000) as well as include a detailed assessment of project management; and

(7) contingency planning and disaster recovery.

D. Each executive agency plan shall be evaluated against the following criteria:

(1) the agency has created a discernible direction for information services as represented by improving the level of services to citizens, establishing pragmatic measurements, identifying cost and benefit estimates, demonstrating concern for quality products and performance, establishing feasible, relevant, attainable and measurable objectives;

(2) the plan demonstrates a consistent, interrelated action plan of the executive agency's mission and strategic objectives in conjunction and coordination with its information services projects;

(3) the plan puts forth a demonstrated leadership or management factor as represented by awareness of training needs, recognition of and response to issues and challenges, successful completion of projects, consideration of alternative courses of action and development of strategies that are results oriented for executive agency programs;

(4) the plan identifies sound technical direction based on proven technology, with current technical resources leveraged to gain maximum value, and the plan demonstrates a comprehensive knowledge of the potential limits of current and proposed technology;

(5) the plan focuses on effective and efficient use of available resources, including staff, funds, existing capital and time;

(6) the plan clearly isolates risks and recognizes and mitigates risks by providing for a realistic assessment of risks, careful evaluation of alternative action,

flexibility to respond to changes and opportunities, application of new concepts and techniques and systematic evaluation of options in terms of results;

(7) the plan clearly demonstrates value of projects to the agency, state government and the citizens of the state as well as other customers and associates in the form of costs, tangible benefits and intangible benefits;

(8) the plan specifically details communities of interest, internal and external, for potential duplication of effort and data sharing;

(9) conformance to planning processes as set forth by the commission; and

(10) the plan demonstrates conformance to the direction of the plans and policies of the overall strategic plan, including, but not limited to, conformance for methods and procedures for disaster recovery, provision of management information from each system, provision that information and communication bases are designed to work with communities of interest to facilitate the sharing of information across agencies and system conformance to overall information and communication management and technology strategies."

Section 9

Section 9. Section 15-1-13 NMSA 1978 (being Laws 1986, Chapter 81, Section 13) is repealed and a new Section 15-1-13 NMSA 1978 is enacted to read:

"15-1-13. TERMINATION OF COMMISSION LIFE.--The commission on information and communication management is terminated on July 1, 1995 pursuant to the provisions of the Sunset Act. The commission shall continue to operate until July 1, 1996. Effective July 1, 1996, the Information and Communication Management Act is repealed."

Section 10

Section 10. Section 12-9-13 NMSA 1978 (being Laws 1981, Chapter 241, Section 3) is amended to read:

"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 thanatopractice of the state of New exico or its successor board;

E. the state board of registration for professional engineers and 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;

J. the construction industries committee and division and its trade bureaus or their successors; and

K. the commission on information and communication management or its successor board."

Section 11

Section 11. Section 15-1-9 NMSA 1978 (being Laws 1986, Chapter 81, Section 9) is amended to read:

"15-1-9. RECORDS OF STATE AGENCIES--PUBLIC RECORDS--COPY FEES--COMPUTER DATA BASES--CRIMINAL PENALTY.--

A. Except as otherwise provided by federal or state law, information contained in information systems data bases shall be a public record and shall be subject to disclosure in printed or typed format by the state agency that has inserted that information into the data base, in accordance with the Public Records Act, upon the payment of a reasonable fee for the service.

B. The secretary shall recommend to the state commission of public records the procedures, schedules and technical standards for the retention of computer data bases.

C. The state agency that has inserted data in a data base, with the approval of the secretary, may authorize a copy to be made of a computer tape or other medium containing a computerized data base of a public record for any person if the person agrees:

(1) not to make unauthorized copies of the data base;

(2) not to use the data base for any political or commercial purpose unless the purpose and use is approved in writing by the secretary and the state agency that created the data base;

(3) not to use the data base for solicitation or advertisement when the data base contains the name, address or telephone number of any person unless such use is otherwise specifically authorized by law;

(4) not to allow access to the data base by any other person unless the use is approved in writing by the commission and the state agency that created the data base; and

(5) to pay a royalty or other consideration to the state as may be agreed upon by the secretary and the state agency that created the data base.

D. If more than one state agency is responsible for the information inserted in the data base, a single state agency shall be designated by the secretary to carry out the responsibilities set forth in this section.

E. Subject to any confidentiality provisions of law, any state agency may permit another state agency access to all or any portion of a computerized data base created by a state agency.

F. If information contained in a data base is searched, manipulated or retrieved or a copy of the data base is made for any private or nonpublic use, a fee to be prescribed by rule of the secretary shall be charged by the state agency permitting access or use of the data base.

G. Except as authorized by law or rule of the secretary, any person who reveals to any unauthorized person information contained in a computer data base or who uses or permits the unauthorized use or access of any computer data base is guilty of a misdemeanor, and upon conviction the court shall sentence that person to jail for a definite term not to exceed one year or to payment of a fine not to exceed five thousand dollars ($5,000) or both. That person shall not be employed by the state for a period of five years after the date of conviction."

Section 12

Section 12. Section 15-1-10 NMSA 1978 (being Laws 1986, Chapter 81, Section 10, as amended) is amended to read:

"15-1-10. DATA PROCESSING EQUIPMENT REVOLVING FUND CREATED--DISBURSEMENT.--

A. There is created in the state treasury the "data processing equipment revolving fund". The balances
remaining in the fund at the end of any fiscal year shall not revert to the general fund.

B. Expenditures from the data processing equipment revolving fund shall be made for the purpose of acquiring and replacing data processing equipment. Such expenditures shall be made only upon vouchers approved by the director of the information systems division of the general services department and shall be disbursed pursuant to a five-year plan prepared by the division and approved by the commission and presented annually to the department of finance and administration and the legislature.

C. When changes in the five-year plan are necessary, justification for such changes shall be presented to the commission for approval, with copies to the department of finance and administration and the legislative finance committee."

Section 13

Section 13. Section 15-1-11 NMSA 1978 (being Laws 1986, Chapter 81, Section 11, as amended) is amended to read:

"15-1-11. COMMUNICATIONS EQUIPMENT REVOLVING FUND CREATED--DISBURSEMENT.--

A. There is created in the state treasury the "communications equipment revolving fund". The balances remaining in the fund at the end of any fiscal year shall not revert to the general fund.

B. Expenditures from the communications equipment revolving fund shall be made for the purpose of acquiring and replacing communications equipment. Such expenditures shall be made only upon vouchers approved by the director of the information systems division of the general services department and shall be disbursed pursuant to a five-year plan prepared by the division and approved by the commission and presented annually to the department of finance and administration and the legislature.

C. When changes in the five-year plan are necessary, justification for such changes shall be presented to the commission for approval, with copies to the department of finance and administration and the legislative finance committee."

Section 14

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 576

CHAPTER 198

RELATING TO CHIROPRACTIC PRACTICE; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 61-4-1 NMSA 1978 (being Laws 1968, Chapter 3, Section 1) is amended to read:

"61-4-1. SHORT TITLE.--Chapter 61, Article 4 NMSA 1978 may be cited as the "Chiropractic Physician Practice Act"."

Section 2

Section 2. Section 61-4-2 NMSA 1978 (being Laws 1968, Chapter 3, Section 2) is amended to read:

"61-4-2. DEFINITIONS.--As used in the Chiropractic Physician Practice Act:

A. "chiropractic" means the science, art and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the articulations and adjacent structures, more especially those of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. It shall include, but not be limited to, the use of all natural agencies to assist in the healing act, such as food, water, heat, cold, electricity, mechanical appliances, herbs, nutritional supplements, homeopathic remedies and any necessary diagnostic procedure, excluding invasive procedures, except as provided by the board by rule and regulation. It shall exclude operative surgery and prescription or use of controlled or dangerous drugs;

B. "board" means the New Mexico board of chiropractic;

C. "chiropractic physician" includes doctor of chiropractic, chiropractor and chiropractic physician and means a person who practices chiropractic as defined in the Chiropractic Physician Practice Act; and

D. "chiropractic assistant" means a person who practices under the on-premises supervision of a licensed chiropractic physician."

Section 3

Section 3. Section 61-4-3 NMSA 1978 (being Laws 1968, Chapter 3, Section 3, as amended) is amended to read:

"61-4-3. BOARD CREATED--APPOINTMENT--OFFICERS--DUTIES--COMPENSATION.--

A. There is created the "chiropractic board". The board shall consist of six persons. Four shall have been continuously engaged in the practice of chiropractic in New Mexico for five years immediately prior to their appointment. Two persons shall represent the public and shall not have practiced chiropractic in this state or any other jurisdiction. No person shall be appointed to the board who is an officer or employee of or who is financially interested in any school or college of chiropractic, medicine, surgery or osteopathy.

B. Members of the board shall be appointed by the governor for staggered terms; one of the members shall be appointed for a term ending July 1, 1980, one for a term ending July 1, 1981, one for a term ending July 1, 1982, one for a term ending July 1, 1983 and one for a term ending July 1, 1984. Thereafter, appointments shall be made for terms of five years or less and be made in such a manner that the term of one board member expires on July 1 of each year. A list of five names for each professional member vacancy shall be submitted by the New Mexico chiropractic associations to the governor for his consideration in the appointment of board members. A vacancy shall be filled by appointment for the unexpired term. Board members shall serve until their successors have been appointed and qualified.

C. The board shall annually elect a chairman and a secretary-treasurer. A majority of the board constitutes a quorum. The board shall meet quarterly. Special meetings may be called by the chairman and shall be called upon the written request of two members of the board. Notification of special meetings shall be made by certified mail unless such notice is waived by the entire board and the action noted in the minutes. Notice of all regular meetings shall be made by regular mail at least ten days prior to the meeting, and copies of the minutes of all meetings shall be mailed to each board member within thirty days after any meeting.

D. Any board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board.

E. The board shall adopt a seal.

F. The board shall promulgate and file, in accordance with the State Rules Act, all rules and regulations necessary for the implementation and enforcement of the provisions of the Chiropractic Physician Practice Act, including educational requirements for a chiropractic assistant.

G. The board shall cause examinations to be held at least twice a year, and all applicants shall be notified in writing of each examination.

H. The board, for the purpose of protecting the health and well-being of the citizens of this state and maintaining and continuing informed professional knowledge and awareness, shall establish by regulations adopted in accordance with the provisions of the Uniform Licensing Act mandatory continuing education requirements for chiropractors licensed in this state.

I. Failure to comply with the rules and regulations adopted by the board shall be grounds for investigation, which may lead to revocation of license.

J Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance for each day necessarily spent in the discharge of their duties."

Section 4

Section 4. Section 61-4-4 NMSA 1978 (being Laws 1968, Chapter 3, Section 4, as amended) is amended to read:

"61-4-4. APPLICATION REQUIREMENTS.--Each applicant for a license to practice chiropractic shall:

A. make application on forms furnished by the board;

B. submit evidence on oath satisfactory to the board that the applicant has reached the age of majority, has completed a preliminary education equal to the requirements for graduation from high school, is of good moral character and, after January 1, 1976, except for any student presently enrolled in a college of chiropractic, has completed two years of college-level study in an accredited institution of higher learning and is a graduate of a college of chiropractic which meets the standards of professional education prescribed in Section 61-4-5 NMSA 1978; and

C. pay in advance to the board fees:

(1) for examination;

and

(2) for issuance of a license."

Section 5

Section 5. Section 61-4-5 NMSA 1978 (being Laws 1975, Chapter 176, Section 1) is amended to read:

"61-4-5. EVIDENCE OF GRADUATION--CREDITATION OF COLLEGE.--In addition to the requirements prescribed in Section 61-4-4 NMSA 1978, all applicants for licensure who have matriculated at a chiropractic college after October 1, 1975 shall

present evidence of having graduated from a chiropractic college having status with the accrediting commission of the council on chiropractic education or the equivalent criterion thereof."

Section 6

Section 6. Section 61-4-6 NMSA 1978 (being Laws 1968, Chapter 3, Section 6, as amended) is amended to read:

"61-4-6. EXAMINATION--SUBJECTS--METHOD OF TREATMENT--RECORDING LICENSE.--

A. The board shall recognize successful completion of all parts of the national board examination.

B. The board shall examine each applicant in the act of chiropractic adjusting, procedures and methods as shall reveal the applicant's qualifications.

C. The board shall issue a license to all applicants whose applications have been filed with and approved by the board and who have paid the required fees and passed the board-administered examination with a general average of not less than seventy-five percent with no subject below sixty-five percent. A license shall be refused to any applicant who fails to make application as provided in this section, fails the examination or fails to pay the required fees.

D. The license, when granted by the board, carries with it the title of doctor of chiropractic and entitles the holder to diagnose using any necessary diagnostic procedures, excluding invasive procedures, except as provided by the board by rule and regulation, and treat injuries, deformities or other physical or mental conditions relating to the basic concepts of chiropractic by the use of any or all methods as provided in this section, including but not limited to palpating, diagnosing, adjusting and treating injuries and defects of human beings by the application of manipulative, manual and mechanical means, including all natural agencies imbued with the healing act, such as food, water, heat, cold, electricity and mechanical appliances, herbs, nutritional supplements and homeopathic remedies, but excluding operative surgery and prescription or use of controlled or dangerous drugs. The holder may also supervise the use of any or all natural agencies imbued with the healing act, such as food, water, heat, cold, electricity, mechanical appliances, herbs, nutritional supplements and homeopathic remedies administered by a chiropractic assistant.

E. Failure to display the license shall be grounds for the suspension of the license to practice chiropractic until so displayed and shall subject the licensee to the penalties for practicing without a license."

Section 7

Section 7. Section 61-4-7 NMSA 1978 (being Laws 1968, Chapter 3, Section 7) is amended to read:

"61-4-7. DISPOSITION OF FUNDS--CHIROPRACTIC FUND CREATED--METHOD OF PAYMENT--BOND.--

A. There is created the "chiropractic fund".

B. All funds received by the board and money collected under the Chiropractic Physician Practice Act shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the chiropractic fund.

C. Payments out of the chiropractic fund shall be made on vouchers issued and signed by the secretary of the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department of finance and administration.

D. All amounts paid into the chiropractic fund shall be subject to the order of the board and shall only be used for the purpose of meeting necessary expenses incurred in the performance of the purposes of the Chiropractic Physician Practice Act, the duties imposed by that act and the promotion of chiropractic education and standards in this state. All money unused at the end of the fiscal year shall remain in the chiropractic fund for use in accordance with the provisions of the Chiropractic Physician Practice Act to further its purpose.

E. All funds that may have accumulated to the credit of the board under any previous act shall be continued for use by the board in the administration of the Chiropractic Physician Practice Act.

F. The treasurer of the board shall give bond in the amount of five thousand dollars ($5,000) for the faithful discharge of his duties, in such form as meets the approval of the board. The treasurer shall make, at the first meeting after July 1 of each year, an itemized report of all receipts and disbursements of the board for the prior year.

G. The board shall, by rule, designate a portion of the annual licensing fee for the exclusive purposes of investigating and funding hearings regarding complaints against doctors of chiropractic."

Section 8

Section 8. Section 61-4-9 NMSA 1978 (being Laws 1968, Chapter 3, Section 9) is amended to read:

"61-4-9. PRIVILEGES AND OBLIGATIONS.--

A. Licensed chiropractic physicians shall observe all health and hygiene laws and regulations of the state and its political subdivisions and shall report births and deaths to the proper authorities. Reports rendered by chiropractors shall be accepted by officers of departments or agencies to which they are made.

B. It is the purpose of the Chiropractic Physician Practice Act to grant to chiropractors the right to practice chiropractic as taught and practiced in standard colleges of chiropractic and to entitle the holder of a license the right to diagnose, palpate and treat injuries, deformities and other physical or mental conditions relating to the basic concepts of chiropractic by use of any methods provided in the Chiropractic Physician Practice Act, as provided in rules and regulations established and monitored by the board, but excluding operative surgery and prescription or use of controlled or dangerous drugs as provided in rules and regulations established and monitored by the board."

Section 9

Section 9. Section 61-4-10 NMSA 1978 (being Laws 1968, Chapter 3, Section 10, as amended) is amended to read:

"61-4-10. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE.--

A. The board may refuse to issue or may suspend or revoke any license in accordance with the procedures as contained in the Uniform Licensing Act upon the grounds that the licensee or applicant:

(1) is convicted of a felony; a copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of such conviction;

(2) is guilty of fraud or deceit in procuring or attempting to procure a license in the chiropractic profession or in connection with applying for or procuring license renewal;

(3) is guilty of incompetence;

(4) is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice chiropractic;

(5) is guilty of practicing or attempting to practice under an assumed name or fails to use the title "doctor of chiropractic", chiropractic physician or the initials "D.C." in connection with his practice or advertisements;

(6) is guilty of failing to comply with any of the provisions of the Chiropractic Physician Practice Act or rules and regulations promulgated by the board and filed in accordance with the State Rules Act;

(7) is guilty of willfully or negligently practicing beyond the scope of chiropractic practice as defined in the Chiropractic Physician Practice Act;

(8) is guilty of advertising by means of knowingly false statements;

(9) has been declared mentally incompetent by regularly constituted authorities or is manifestly incapacitated to practice chiropractic;

(10) advertises or attempts to attract patronage in any unethical manner prohibited by the rules and regulations of the board;

(11) is guilty of obtaining any fee by fraud or misrepresentation;

(12) is guilty of making false or misleading statements regarding his skill or the efficacy or value of treatment or remedy prescribed or administered by him or at his direction;

(13) is guilty of aiding or abetting the practice of chiropractic by a person not licensed by the board;

(14) has incurred a prior suspension or revocation in another state where the suspension or revocation of a license to practice chiropractic was based upon acts by the licensee similar to acts described in this section and by board rules promulgated pursuant to Paragraph (6) of this subsection a certified copy of the record of suspension or revocation of the state making such suspension or revocation is conclusive evidence thereof;

(15) is guilty of making a false, misleading or fraudulent claim; or

(16) is guilty of unprofessional conduct that includes but is not limited to the following:

(a) procuring, aiding or abetting a criminal abortion;

(b) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;

(c) willfully or negligently divulging a professional confidence;

(d) conviction of any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;

(e) impersonating another person licensed in the practice of chiropractic or permitting or allowing any person to use his license;

(f) gross negligence in the practice of chiropractic;

(g) fee splitting;

(h) conduct likely to deceive, defraud or harm the public;

(i) repeated similar negligent acts;

(j) employing abusive billing practices;

(k) failure to repor to the board any adverse action taken against him by: 1) another licensing jurisdiction; 2) any peer review body; 3) any health care entity; 4) any governmental agency; or 5) any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(l) failure to report to the board surrender of a license or other authorization to practice chiropractic in another state or jurisdiction or surrender of membership on any chiropractic staff or in any chiropractic or professional association or society following, in lieu of, and while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(m) failure to furnish the board, its investigators or representatives with information requested by the board;

(n) abandonment of patients;

(o) failure to adequately supervise, as provided by board regulation, a chiropractic assistant or technician or professional licensee who renders care;

(p) intentionally engaging in sexual contact with a patient other than his spouse during the doctor-patient relationship; and

(q) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public.

B. The board may at its discretion hire investigators to investigate complaints made to the board regarding chiropractic physicians.

C. Licensees shall bear all costs of disciplinary proceedings unless exonerated."

Section 10. Section 61-4-11 NMSA 1978 (being Laws 1974, Chapter 78, Section 13) is amended to read:

"61-4-11. CRIMINAL OFFENDER'S CHARACTER EVALUATION.--The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted by the Chiropractic Physician Practice Act."

Section 11

Section 11. Section 61-4-12 NMSA 1978 (being Laws 1968, Chapter 3, Section 11, as amended) is amended to read:

"61-4-12. PENALTIES.--

A. Each of the following acts constitutes a misdemeanor punishable upon conviction by a fine of not less than fifty dollars ($50.00) or more than one thousand dollars ($1,000) or by imprisonment not to exceed one year, or both:

(1) practice of chiropractic or an attempt to practice chiropractic without a license;

(2) obtaining or attempting to obtain a license or practice in the profession for money or any other thing of value by fraudulent misrepresentation;

(3) willfully falsifying any oath or affirmation required by the Chiropractic Physician Practice Act;

(4) practicing or attempting to practice under an assumed name; or

(5) advertising or attempting to attract patronage in any unethical manner prohibited by the rules and regulations of the board.

B. Any second violation of the act constitutes a fourth degree felony."

Section 12

Section 12. Section 61-4-13 NMSA 1978 (being Laws 1968, Chapter 3, Section 12, as amended) is amended to read:

"61-4-13. ANNUAL RENEWAL OF LICENSE--FEE--NOTICE.--

A. Any person licensed to practice chiropractic in this state shall, on or before July 1 of each year, pay to the board an annual fee set by regulation and shall submit proof of completion of continuing education requirements as required by the board. The board shall send written notice to every person holding a license prior to June 1 of each year, directed to the last known address of the licensee, notifying him

that it is necessary for him to pay the renewal fee as provided in the Chiropractic Physician Practice Act. Proper forms shall accompany the notice upon which the licensee shall make application for the renewal of his license. The licensee is responsible for renewal of the license even if the licensee does not receive the renewal notice.

B. The board shall establish a schedule of reasonable fees for applications, licenses, renewals, placement or inactive status and administrative fees."

Section 13

Section 13. Section 61-4-15 NMSA 1978 (being Laws 1968, Chapter 3, Section 14) is amended to read:

"61-4-15. EXEMPTIONS.--The Chiropractic Physician Practice Act does not apply to:

A. any commissioned officer of the armed forces of the United States in the discharge of his official duties;

B. a chiropractor who is legally qualified to practice in the state or territory in which he resides, when in actual consultation with a licensed chiropractor of this state; or

C. any bona fide student of any standard chiropractic college chiropractically analyzing and adjusting the human body under supervision of a licensed chiropractor." Section 14. Section 61-4-16 NMSA 1978 (being Laws 1968, Chapter 3, Section 15) is amended to read:

"61-4-16. EXISTING LICENSEES.--Any person licensed as a chiropractor under any prior law of this state whose license is valid on the effective date of the Chiropractic Physician Practice Act shall be deemed as licensed under the provisions of the Chiropractic Physician Practice Act."HB 696

CHAPTER 199

RELATING TO THE CHILDREN'S TRUST FUND; PROVIDING FOR A DELAY IN THE AMOUNT OF FUND MONEY DEEMED INCOME; AMENDING A SECTION OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 24-19-4 NMSA 1978 (being Laws 1986, Chapter 15, Section 4, as amended) is amended to read:

"24-19-4. CHILDREN'S TRUST FUND CREATED--EXPENDITURE LIMITATIONS.--

A. There is created in the state treasury the "children's trust fund". The children's trust fund may be used for any purpose enumerated in Section 24-19-2 NMSA 1978. All income received from investment of the fund shall be credited to the fund. No money appropriated to the fund or otherwise accruing to it shall be disbursed in any manner except as provided in the Children's Trust Fund Act.

B. The children's trust fund shall be administered by the department for the purpose of funding children's projects from the income received from investment of the fund; provided that none of the income shall be used for capital expenditures. All income from investment of the fund is appropriated to the department for that purpose or for administrative costs as provided in Subsection C of this section. Grants, appropriations and transfers of money from the fund shall be made only from the income received from investment of the fund.

C. Up to ten percent of the income received from investment of the children's trust fund may be expended for costs of administration of the fund and administration of the children's projects undertaken with fund money. Administrative costs include per diem and mileage, staff salaries and expenses related to administration of the fund.

D. Disbursements from income credited to the children's trust fund and appropriated to the department shall be made only upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of children, youth and families or his designated representative for the purpose of funding children's projects approved by the board.

E. Until June 30, 1997, one-half of the money transferred to the children's trust fund pursuant to Section 40-1-11 NMSA 1978 shall be deemed income received from investment of the fund."SB 144

CHAPTER 200

RELATING TO CREMATION; PROVIDING A RIGHT TO AUTHORIZE CREMATION; RELIEVING CERTAIN PERSONS FROM LIABILITY REGARDING CREMATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. RIGHT TO AUTHORIZE CREMATION--DEFINITIONS.--

A. Any adult may authorize his own cremation and the lawful disposition of his cremated remains by:

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

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

B. A personal representative acting pursuant to a will or Article 3 of Chapter 45 NMSA 1978 or a funeral establishment, a commercial establishment, a direct disposition establishment or a crematory shall comply with a statement made in conformance with the provisions of Subsection A of this section. A statement that conforms to the provisions of Subsection A of this section is authorization to a personal representative, funeral establishment, commercial establishment, direct disposition establishment or crematory that the remains of the decedent are to be cremated. Statements dated prior to the effective date of this act are to be given effect if they meet the requirements of Subsection A of this section.

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

D. No funeral establishment, commercial establishment, direct disposition establishment, crematory or employee of a funeral establishment, commercial establishment, direct disposition establishment or crematory or other person that relies in good faith on a statement written pursuant to this section shall be subject to liability for cremating the remains in accordance with the express instructions of a decedent. The written document is a complete defense to a cause of action by any person against any other person acting in accordance with the instructions of the decedent.

E. As used in this section:

(1) "commercial establishment" means an office, premises or place of business that provides for the practice of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments;

(2) "cremate" means to reduce a dead human body by direct flame to a residue that may include bone fragments; and

(3) "direct disposition establishment" means an office, premises or place of business that provides for the disposition of a dead human body as quickly as possible, without a funeral, graveside service, committal service or memorial service,

whether public or private, and without embalming of the body unless embalming is required by the place of disposition.

Section 2

Section 2. NO WRITTEN INSTRUCTIONS--PRIORITY OF OTHERS TO DECIDE DISPOSITION.--If a decedent has left no written instructions regarding the disposition of his remains, the following persons in the order listed shall determine the means of disposition, not to be limited to cremation, of the remains of the decedent:

A. the surviving spouse;

B. a majority of the surviving children of the decedent;

C. the surviving parents of the decedent;

D. a majority of the surviving siblings of the decedent;

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

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

Section 3

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.SB 415

CHAPTER 201

RELATING TO INSURANCE; ADJUSTING THE WORKERS' COMPENSATION ASSIGNED RISK POOL COVERAGE OF COMMERCIAL LINE INSURERS; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 59A-33-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 535, as amended) is amended to read:

"59A-33-3. PURPOSE.--It is the purpose of the Workers' Compensation Assigned Risk Pool Law to provide for the insurance of workers' compensation insurance risks that have, in good faith but without success, sought insurance in the usual manner from any two or more insurers authorized to transact in New Mexico the business of workers' compensation insurance and to provide for the equitable distribution of risks among commercial line insurers."

Section 2

Section 2. Section 59A-33-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 536, as amended) is amended to read:

"59A-33-4. DEFINITIONS.--As used in the Workers' Compensation Assigned Risk Pool Law:

A. "board" means the governing board of the pool;

B. "commercial line insurer" means any foreign, alien or domestic stock or mutual insurer, or reciprocal or interinsurance exchange, or association or other corporation or organization authorized to transact workers' compensation insurance, commercial multiple peril insurance or commercial general liability insurance in this state. The superintendent may adopt rules and regulations to define commercial multiple peril insurance or commercial general liability insurance. For policy years beginning on or after January 1, 1994, "commercial line insurer" shall apply to workers' compensation only and shall not include commercial multiple peril insurance or commercial general liability insurance;

C. "person" means an individual, firm, association, corporation or a public or private agency or institution;

D. "policyholder" means a person or entity insured through or by the pool; E. "pool" means the New Mexico workers' compensation assigned risk pool established pursuant to Section 59A-33-5 NMSA 1978;

F. "rejected risk" means an employer who is in good faith entitled to insurance but is unable to procure or retain insurance through ordinary methods in the voluntary market as evidenced by at least two written rejections. The term includes any legal entities that may be combined for experience-rating purposes according to the rules of the superintendent; and

G. "servicing carrier" means a person designated by the superintendent to issue a policy that evidences the insurance coverages provided to a rejected risk and to service the policyholder as provided in the Workers' Compensation Assigned Risk Pool Law."

Section 3

Section 3. Section 59A-33-8 NMSA 1978 (being Laws 1984, Chapter 127, Section 540, as amended) is amended to read:

"59A-33-8. ISSUANCE OF POLICY--ANNUAL REPORT.--

A. The servicing carriers to which the pool assigns a workers' compensation insurance risk shall issue a policy, upon the payment of the premiums, in a form and for those limits of liability that are approved by the superintendent in accordance with the Workers' Compensation Assigned Risk Pool Law; but the undertakings of any issued policy shall be fully reinsured by all of the members of the pool, and the liability of the member issuing the policy shall be limited to its liability as a reinsurer. On any workers' compensation policy so issued, all members of the pool shall be reinsurers, as among themselves, in proportion to the amount that the net direct commercial line premiums on the insurance written in this state during the corresponding calendar year by the issuing member bears to the total of commercial line premiums written in this state during the corresponding calendar year by all members of the agency, and each policy may be endorsed to reflect the plan of reinsurance described in this section.

B. The superintendent may by regulation establish an incentive program for commercial line insurers to voluntarily write small employers outside of the assigned risk pool. In establishing the program, the superintendent may provide for credits or adjustments to the net direct commercial line premium for the purposes of determining the reinsurance share described in Subsection A of this section."

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SB 527

CHAPTER 202

RELATING TO WORKERS' COMPENSATION; PROVIDING FOR A CHILD SUPPORT LIEN TO BE FILED AGAINST ANY PROCEEDS OWED TO A CLAIMANT.

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

Section 1

Section 1. Section 52-1-60 NMSA 1978 (being Laws 1937, Chapter 92, Section 16, as amended) is amended to read:

"52-l-60. NOTICE TO DIRECTOR OF DATE OF PAYMENT.--

A. Every employer's workers' compensation insurance carrier shall notify the director of the date on which the initial payment of any claim for benefits has been made within ten days of such payment.

B. The director shall provide on a quarterly basis to the child support enforcement division of the human services department the name, social security number, home address and employer of all injured workers reported.

C. A court order filed by the child support enforcement division of the human services department in the claim of the workers' compensation administration stating that the claimant owes past due or ongoing support shall constitute a notice that lump sum and partial-lump sum payment of benefits to a claimant are barred contingent on satisfaction of the child support arrearage. No order approving a lump sum or partial-lump sum payment to a claimant pursuant to Section 52-5-12 NMSA 1978 shall be executed or entered until:

(1) the arrearage has been satisfied;

(2) provision has been made in the order for lump sum or partial-lump sum settlement for direct payment of sufficient funds to the child support enforcement division to satisfy the arrearage; or

(3) the workers' compensation judge makes a specific written finding of extreme hardship to the worker excusing the satisfaction of the arrearages from those funds." HB 519

CHAPTER 203

RELATING TO TORT CLAIMS; AMENDING A SECTION OF THE TORT CLAIMS ACT TO EXPAND THE DEFINITION OF PUBLIC EMPLOYEE.

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

Section 1

Section 1. Section 41-4-3 NMSA 1978 (being Laws 1976, Chapter 58, Section 3, as amended) is amended to read:

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

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

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

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

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

E. "maintenance" does not include:

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

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

F. "public employee" means any officer, employee or servant of a governmental entity, excluding independent contractors except for individuals defined in Paragraphs (7), (8) and (10) of this subsection, or of a corporation organized pursuant to the Educational Assistance Act or the Mortgage Finance Authority Act and including:

(1) elected or appointed officials;

(2) law enforcement officers;

(3) persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;

(4) licensed foster parents providing care for children in the custody of the human services department, corrections department or department of health, but not including foster parents certified by a licensed child placement agency;

(5) members of state or local selection panels established pursuant to the Adult Community Corrections Act;

(6) members of state or local selection panels established pursuant to the Juvenile Community Corrections Act;

(7) licensed medical, psychological or dental arts practitioners providing services to the corrections department pursuant to contract;

(8) members of the board of directors of the New Mexico comprehensive health insurance pool;

(9) individuals who are members of medical review boards, committees or panels established by the board of the educational retirement association or the retirement board of the public employees retirement association;

(10) licensed medical, psychological or dental arts practitioners providing services to the children, youth and families department pursuant to contract;

(11) members of the board of directors of the New Mexico educational assistance foundation;

(12) members of the board of directors of the New Mexico student loan corporation; and

(13) members of the New Mexico mortgage finance authority;

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

H. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions." SB 303

CHAPTER 204

RELATING TO LICENSING; ENACTING THE THANATOPRACTICE ACT; PROVIDING FOR LICENSURE OF FUNERAL SERVICE PRACTITIONERS AND OTHERS REGARDING DISPOSITION OF THE DEAD HUMAN BODY; CREATING THE THANATOPRACTICE FUND; PROVIDING PENALTIES; REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

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

Section 2

Section 2. PURPOSE.--In the interest of public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of the care and disposition of the dead human body, it is necessary to provide laws and regulations to govern the handlng and care of the dead and the sensitivities of those who survive, whether they wish or do not wish rites or ceremonies. The primary responsibility and obligation of the board of thanatopractice is to protect the public.

Section 3

Section 3. DEFINITIONS.--As used in the Thanatopractice Act:

A. "assistant funeral service practitioner" means a person licensed to engage in practice as an assistant funeral service practitioner as provided in the Thanatopractice Act;

B. "associate funeral service practitioner" means a person licensed to engage in practice as an associate funeral service practitioner as provided in the Thanatopractice Act;

C. "board" means the board of thanatopractice;

D. "cremains" means cremated remains;

E. "cremation" means the reduction of the dead body by direct flame to a residue, which may include bone fragments;

F. "crematory" means every place or premises that is devoted to or used for cremation and pulverization of the cremains;

G. "crematory authority" means the individual who is ultimately responsible for the operation of a crematory;

H. "department" means the regulation and licensing department;

I. "direct disposer" means a person licensed to engage solely in providing direct disposition as provided in the Thanatopractice Act;

J. "direct disposition" means only the disposition of a dead human body as quickly as possible, without a funeral, graveside service, committal service or memorial service, whether public or private, and without embalming of the body unless embalming is required by the place of disposition;

K. "direct supervision" means the supervisor is physically present with and in control of the person being supervised;

L. "disposition" means the final disposal of a dead human body, whether it be by earth interment, above-ground interment or entombment, cremation, burial at sea or delivery to a medical school when the medical school assumes complete responsibility for the disposal of the body following medical study, or release of custody of the body to the family or personal representative or other legal representative;

M. "embalming" means the disinfection, preservation and restoration, when possible, of a dead human body;

N. "establishment" means every office, premises or place of business where the practice of funeral service or direct disposition is conducted or advertised as being conducted and includes commercial establishments that provide for the practice

of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments, or a school of medicine;

O. "funeral" means a period following death in which there is an organized, purposeful, time-limited, group-centered ceremony or rite, whether religious or not, with the body of the deceased present;

P. "funeral merchandise" means that personal property offered for sale in connection with the transportation, funeralization or disposition of a dead human body, including the enclosure into which a dead human body is directly placed, and excluding mausoleum crypts and interment enclosures preset in a cemetery and columbarium niches;

Q. "funeral service intern" means a person licensed pursuant to the Thanatopractice Act who is in training for the practice of funeral service under the supervision and instruction of a funeral service practitioner;

R. "funeral service practitioner" means a person licensed by the board to engage in the practice of funeral service who may provide shelter, care and custody of human dead; prepare human dead by embalming or other methods for disposition; transport human dead, bereaved relatives and friends; make arrangements, financial or otherwise, to provide for a funeral or the sale of funeral merchandise; and perform other funeral directing or embalming practices;

S. "general supervision" means the supervisor is not necessarily physically present with the person being supervised, but is available for advice and assistance;

T. "graveside service" means a funeral held at the graveside only, excluding a committal service that follows a funeral conducted at another location;

U. "jurisprudence examination" means an examination prescribed and graded by the board on the statutes, rules and regulations pertaining to the practice of funeral service or direct disposition, including the Thanatopractice Act, the rules of the board, state health regulations governing human remains and the Vital Statistics Act;

V. "licensee in charge" means a funeral service practitioner who is ultimately responsible for the conduct of a funeral or commercial establishment and its employees, or a direct disposer who is ultimately responsible for the conduct of a direct disposition establishment and its employees;

W. "make arrangements" means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

X. "memorial service" means a gathering of persons for recognition of a death without the presence of the body of the deceased;

Y. "practice of funeral service" means those activities allowed under the Thanatopractice Act by a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner or a funeral service intern;

Z. "pulverization" means the process that reduces cremains to a granular substance; and

AA. "thanatopractice" means those immediate post-dead activities related to the dead human body, its care and disposition, whether with or without rites or ceremonies, but not including disposition of the body by a school of medicine following medical study.

Section 4

Section 4. LICENSE REQUIRED.--Unless licensed to practice under the Thanatopractice Act, no person shall:

A. practice as a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner, funeral service intern or direct disposer;

B. use the title or represent himself as a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner, funeral service intern or direct disposer or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as a funeral service practitioner, associate funeral service practitioner, funeral service intern or direct disposer; or

C. maintain, manage or operate a funeral establishment, a commercial establishment, direct disposition establishment or a crematory.

Section 5

Section 5. BOARD CREATED.--

A. There is created the "board of thanatopractice".

B. The board is administratively attached to the department.

C. The board consists of six members. Three members shall be funeral service practitioners who have been licensed in the state for at least five years; two members shall represent the public and shall not have been licensed for the practice of funeral service or direct disposition in this state or any other jurisdiction and shall not

ever have
had any financial interest, direct or indirect, in any funeral, commercial or direct disposition establishment or crematory; and one member shall be a licensed direct disposer or health care practitioner who has been licensed in the state for at least five years.

D. Members of the board shall be appointed by the governor for staggered terms of four years; except that members of the board appointed and serving under prior law at the effective date of the Thanatopractice Act shall serve out the terms for which they were appointed as members of the board created by this section. Each member shall hold office until his successor is duly qualified and appointed. Vacancies shall be filled for any unexpired term in the same manner as original appointments.

E. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

F. A simple majority of the board members currently serving constitutes a quorum.

G. The board shall hold at least two regular meetings each year and shall meet at such other times as it deems necessary.

H. No board member shall serve more than two full consecutive terms, and any member failing to attend, after proper notice, three meetings shall automatically be recommended for removal as a board member unless excused for reasons set forth in board regulations.

I. The board shall elect a chairman and other officers as deemed necessary to administer its duties.

Section 6

Section 6. BOARD POWERS.--

A. In addition to any other authority provided by law, the board has the power to:

(1) adopt, in accordance with the provisions of the Uniform Licensing Act, and file, in accordance with the State Rules Act, rules and regulations necessary to carry out the provisions of the Thanatopractice Act;

(2) adopt rules implementing continuing education requirements;

(3) conduct hearings upon charges relating to the discipline of licensees and take administrative actions, including license denial, suspension or revocation, or the issuance of a fine, reprimand or other remedial action;

(4) establish reasonable fees to carry out the provisions of the Thanatopractice Act;

(5) provide for investigations necessary to determine violations of the Thanatopractice Act;

(6) establish committees as the board deems necessary for carrying out the provisions of the Thanatopractice Act;

(7) apply for injunctive relief to enforce the provisions of the Thanatopractice Act or to restrain any violation of that act;

(8) take administrative action by issuing orders, instructions and reprimands, not inconsistent with law, to ensure implementation of and compliance with the Thanatopractice Act, and to enforce those orders, instructions and reprimands by appropriate administrative or court action; and

(9) impose a fine not to exceed five thousand dollars ($5,000), in addition to other administrative or disciplinary costs, and all fines shall be deposited in the thanatopractice fund.

B. No action or other legal proceedings for damages shall be instituted against the board, any board member or employee of the board for any act performed in good faith and in the intended performance of any power or duty granted under the Thanatopractice Act or for any neglect or default in the good faith performance or exercise of any such power or duty.

Section 7

Section 7. BOARD DUTIES.--The board shall:

A. administer the provisions of the Thanatopractice Act;

B. provide for the examination, licensing and renewal of applicants or licensees; and

C. provide for the inspection of establishments and crematories.

Sectin 8. INSPECTION--ACCESS--COUNSEL.--

A. Inspection of establishments and crematories, including all records, financial or otherwise, is authorized during regular business hours or through prior arrangement. Acceptance of a license shall include permission for the board, or its designee, to enter the premises without legal process.

B. The board shall be represented by the attorney general. The board may employ special counsel, whose services shall be paid by the board, upon the approval of the attorney general.

Section 9

Section 9. REQUIREMENTS FOR LICENSURE--FUNERAL SERVICE PRACTITIONER--FUNERAL SERVICE INTERN--DIRECT DISPOSER--ASSOCIATE FUNERAL SERVICE PRACTITIONER--ASSISTANT FUNERAL SERVICE PRACTITIONER.--

A. A license to practice as a funeral service practitioner shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period the applicant shall have assisted in the embalming of at least fifty bodies and assisted in the directing of at least fifty funerals;

(3) has successfully completed any examination to be a funeral service practitioner, including a jurisprudence examination, prescribed by board rules;

(4) has not been convicted of unprofessional conduct or incompetency;

(5) has graduated from an institution accredited by the American board of funeral service education or any other successor recognized by the United States office of education for funeral service education; and

(6) has successfully completed at least sixty semester hours of academic and professional instruction in an accredited college or university; provided, however, that an assistant funeral service practitioner need not satisfy the provisions of Paragraphs (5) and (6) of this subsection if the assistant funeral service practitioner has successfully completed examinations required by the board of thanatopractice for practice as an associate funeral service practitioner and a funeral service practitioner, and provided further that a funeral service intern need not satisfy the provisions of Paragraph (5) of this subsection if the funeral service intern has successfully completed examinations required by the board of thanatopractice for practice as an associate funeral service practitioner and a funeral service practitioner.

B. A license to practice as a funeral service intern shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has graduated from high school or the equivalent; and

(3) has submitted proof of employment and supervision as required by the board. Except as may be allowed by board rule, a license as a funeral service intern is not ambulatory and is issued for a specific funeral establishment only.

C. A license to practice as a direct disposer shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has graduated from high school or the equivalent;

(3) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and

(4) has not been convicted of unprofessional conduct or incompetency.

D. A license to practice as an assistant funeral service practitioner shall be issued to any person who, prior to the effective date of the Thanatopractice Act, held a valid license as an assistant funeral service practitioner and who was qualified to receive a renewal license on July 1, 1993.

E. A license to practice as an associate funeral service practitioner shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) has been licensed as an assistant funeral service practitioner; or

(2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period the applicant shall have assisted in the embalming of at least fifty bodies and assisted in the directing of at least fifty funerals; and

(3) has graduated from high school or the equivalent;

(4) has successfully completed at least sixty semester hours of academic and professional instruction in an accredited college or university; provided, however, that an assistant funeral service practitioner need not satisfy the provisions of this paragraph to become an associate funeral service practitioner;

(5) has successfully completed any examination, including a jurisprudence examination to be an associate funeral service practitioner, prescribed by board rules; and

(6) has not been convicted of unprofessional conduct or incompetency.

Section 10

Section 10. LICENSURE BY CREDENTIALS.--After successful completion of a jurisprudence examination, the board may license an applicant as a funeral service practitioner, provided the applicant possesses a valid license or its equivalent, for the practice of funeral service issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation, and provided the applicant has met educational requirements substantially equivalent to or exceeding those established pursuant to the Thanatopractice Act or has at least five consecutive years experience in another state or territory as a licensed funeral service practitioner or its equivalent.

Section 11

Section 11. LICENSURE OF ESTABLISHMENTS--FUNERAL ESTABLISHMENTS--COMMERCIAL ESTABLISHMENTS--DIRECT DISPOSITION ESTABLISHMENTS--CREMATORIES.--

A. Funeral establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice of funeral service and shall comply with the following minimum requirements:

(a) a chapel shall be present in which funerals may be conducted;

(b) a display room shall be present for displaying caskets and other funeral merchandise; and

(c) a preparation room shall be present with the necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition or transportation; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act and board rules, including specific sanitary or physical requirements for licensure.

B. Commercial establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice allowed for a commercial establishment and shall have a preparation room with the necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition and transportation; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act and board rules, including specific sanitary or physical requirements for licensure.

C. Direct disposition establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location, primarily devoted to the practice of direct disposition and shall maintain:

(a) a room equipped with a tile, cement or composition floor;

(b) necessary drainage and ventilation;

(c) a refrigeration unit thermodynamically controlled with a minimum storage area of twelve and one-half cubic feet per body, for sheltering prior to disposition; and

(d) necessary supplies for safely handling unembalmed dead human bodies; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act and board rules, including specific sanitary or physical requirements for licensure.

D. Crematory licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the crematory shall be maintained at a specific location, including a funeral, commercial or direct disposition establishment, and shall have appropriate facilities and equipment devoted to cremation and pulverization; and

(3) no license shall be issued or renewed by the board unless the crematory is in compliance with the Thanatopractice Act and board rules, including specific sanitary or physical requirements for licensure.

Section 12

Section 12. LICENSE--DISPLAY OF LICENSE.--

A. Initial licenses shall be issued for the remainder of the year in which the license is granted, as established by rule.

B. A license issued by the board shall at all times be posted in the establishment or crematory in a conspicuous place.

Section 13

Section 13. ESTABLISHMENTS--REQUIREMENTS.--

A. Each establishment shall have a full-time licensee in charge. The establishment license is a privilege granted to the person to whom it is issued and is not transferable to other owners or operators or to another location than that designated on the license.

B. The board may adopt by rule special requirements for multi-unit establishments that are located within fifty miles of each other and that wish to share a licensee in charge.

C. The board may adopt by rule the requirements for reapplication or reinspection.

Section 14

Section 14. FUNERAL SERVICE INTERN--SCOPE OF PRACTICE--LIMITATIONS.--

A. A funeral service intern does not have the rights and duties of a funeral service practitioner and is only subordinate to the funeral service practitioner. The scope of what a funeral service intern is permitted to do depends on the activity and the experience of the funeral service intern, provided that:

(1) a funeral service intern may make arrangements only under the direct supervision of a licensed funeral service practitioner. After the completion of fifty arrangements under direct supervision, the funeral service intern may request approval from the board to make arrangements under the general supervision of a licensed funeral service practitioner;

(2) a funeral service intern may embalm or otherwise prepare dead human bodies for disposition only under the direct supervision of a licensed funeral service practitioner. After the funeral service intern has assisted with the embalming of at least fifty bodies under direct supervision, the funeral service intern may request approval from the board to embalm under the general supervision of a licensed funeral service practitioner;

(3) a funeral service intern may direct a funeral, committal service, graveside service or memorial service only under the direct supervision of a licensed funeral service practitioner. After the funeral service intern has directed at least fifty services under direct supervision, the funeral service intern may request approval from the board to direct such services under the general supervision of a licensed funeral service practitioner; and

(4) a funeral service intern shall at no time act under the general supervision of a funeral service practitioner until he is notified in writing of board approval to so act.

B. A funeral service intern shall be employed by and receive training at only one establishment. The board may adopt rules that will allow training at more than one establishment under special circumstances.

C. Any funeral service intern's change of employment shall be reported to the board in writing within thirty days of the change. A change of employment that is not reported will cause the period worked at the new establishment not to count as time served toward completion of the internship. It is the responsibility of the funeral service intern and the licensee in charge to report changes of employment.

D. A funeral service intern may be under the supervision of more than one funeral service practitioner at the establishment at which he is employed, provided that the board has received notice in writing prior to any changes in supervision.

E. A funeral service intern shall be employed a minimum average of thirty hours per week by the establishment. Proof of employment hours shall be provided to the board upon request.

F. Each funeral service intern shall report to the board quarterly upon forms provided by the board showing the work that has been completed during the preceding three months. All quarterly reports are due in the board office within thirty days of the close of the quarter. If a report is not received by the date due, the work

completed during the reporting period shall not be counted when the board tabulates requirements for general supervision or for licensure as a funeral service practitioner.

G. Once a funeral service intern is under the general supervision of a funeral service practitioner, the funeral service intern need not submit to the board the quarterly reports required in this section.

Section 15

Section 15. ASSOCIATE FUNERAL SERVICE PRACTITIONER--LIMITATIONS.--An associate funeral service practitioner may engage in the practice of funeral service to the same extent and subject to the same limitations and grounds for disciplinary action as prescribed by the Thanatopractice Act and the rules of the board for the license of a funeral service practitioner; provided that an associate funeral service practitioner shall not be the licensee in charge of a funeral establishment or the supervisor of a funeral service intern, except as otherwise expressly permitted by the board in a particular circumstance upon the basis of public interest or need.

Section 16

Section 16. ASSISTANT FUNERAL SERVICE PRACTITIONER--SCOPE OF PRACTICE--LIMITATIONS.--An assistant funeral service practitioner may engage in the practice of funeral service to the same extent and subject to the same limitations and grounds for disciplinary action as prescribed by the Thanatopractice Act and the rules of the board for the license of a funeral service practitioner; provided that an assistant funeral service practitioner shall not embalm, be the licensee in charge of a funeral establishment or be the supervisor of a funeral service intern.

Section 17

Section 17. DIRECT DISPOSER--SCOPE OF PRACTICE--LIMITATIONS.--A direct disposer may only provide direct disposition of a dead human body as quickly as possible. In doing so, the direct disposer shall not provide or participate in a funeral, graveside service, committal service or memorial service, whether public or private, and the body shall not be embalmed prior to disposition unless embalming is required by the place of disposition.

Section 18

Section 18. COMMERCIAL ESTABLISHMENTS--SCOPE OF PRACTICE--LIMITATIONS.--

A. The scope of practice of a commercial establishment depends on the entity for whom the commercial establishment is acting as an agent and is subject to the following terms and conditions:

(1) when acting under the direction of a licensed funeral establishment, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation;

(b) embalm;

(c) provide minimum forwarding services;

(d) provide direct disposition; and

(e) arrange for identification of a dead human body by family members only, prior to disposition or transportation;

(2) when acting under the direction of a licensed direct disposition establishment, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation;

(b) embalm only when embalming is required by the place of disposition; and

(c) provide direct disposition; and

(3) when acting under the direction of a school of medicine, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation; and

(b) embalm.

B. A licensed commercial establishment shall not engage in any activity, or for any entity, not specifically permitted in this section.

C. The licensee in charge shall certify to the board that the establishment will not exceed the scope of practice allowed by law.

Section 19

Section 19. CREMATION--REQUIREMENTS--RIGHT TO AUTHORIZE CREMATION.--

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

B. Any adult may authorize his own cremation and the lawful disposition of his cremated remains by:

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

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

C. A personal representative acting pursuant to the Probate Code or an establishment or crematory shall comply with a statement made in accordance with the provisions of this section. A statement that conforms to the provisions of this section authorizes a personal representative, establishment or crematory to cremate a decedent's remains. Statements dated prior to the effective date of this section shall be given effect if they meet this section's requirements.

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

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

F. If a decedent has left no written instructions regarding the disposition of his remains, the following persons in the order listed shall determine the means of disposition, not to be limited to cremation, of the remains of the decedent:

(1) the surviving spouse;

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

(3) the surviving parents of the decedent;

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

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

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

G. A crematory authority shall keep an accurate record of all cremations performed, and the disposition of the cremains by the crematory, for a period of not less than five years.

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

I. Legal forms for cremation authorization shall provide that they will hold harmless a crematory authority or establishment from any liability for disposing of unclaimed cremains in a lawful manner after a period of one year.

Section 20

Section 20. EMBALMING.--

A. All dead human bodies not disposed of within twenty-four hours after death shall be embalmed in accordance with the Thanatopractice Act or stored under refrigeration as determined by board rule or regulation, unless otherwise required by regulation of the office of the medical investigator or the secretary of health, or by orders of an authorized official of the office of the medical investigator, a court of competent jurisdiction or other authorized official.

B. No dead human body shall be embalmed except by a funeral service practitioner, an associate funeral service practitioner or a funeral service intern under the supervision of a funeral service practitioner.

C. When embalming is not required under the provisions of this section, no dead human body shall be embalmed without express authorization by the:

(1) surviving spouse or next of kin;

(2) legal agent or personal representative of the deceased; or

(3) person assuming responsibility for final disposition.

D. When embalming is not required, and prior to obtaining authorization for the embalming, a dead human body may be washed and other health procedures, including closing of the orifices, may be performed without authorization.

E. When a dead human body is embalmed, the funeral service pactitioner or associate funeral service practitioner who embalms the body or the funeral service intern who embalms the body and the funeral service practitioner who supervises the embalming shall complete and sign an embalming case report. The embalming case report shall be kept on file at the establishment for a period of not less than five years following the embalming.

Section 21

Section 21. LICENSE RENEWAL.--

A. All licenses expire annually and shall be renewed by submitting a completed renewal application, accompanied by the required fees, on a form provided by the board.

B. The board may require proof of continuing education or other proof of competency as a requirement for renewal.

C. A license not renewed on or before the expiration date is considered lapsed and is no longer valid. A ninety-day grace period shall be allowed each licensee after the end of the licensing period, during which time licenses may be renewed upon payment of the renewal fee and a late fee as prescribed by the board and compliance with any other renewal requirements adopted by the board.

D. Any license not renewed at the end of the grace period shall be considered expired and the license holder shall be required to apply as a new applicant.

Section 22

Section 22. FUNERAL SERVICE PRACTITIONER--INACTIVE STATUS.--

A. A funeral service practitioner who has a current license may request that his license be placed on inactive status. The board shall approve each request for inactive status unless the practitioner is under investigation or disciplinary proceedings have been initiated.

B. A license placed on inactive status may be renewed within a period not to exceed five years following the date the board granted the inactive status.

C. Renewal of an inactive license requires payment of renewal and reinstatement fees as set forth by board rule or regulation and compliance with the following requirements:

(1) certification by the practitioner that he has not engaged in the practice of funeral service in this state during the inactive status;

(2) compliance with continuing education requirements established by board rule; and

(3) successful completion of an examination, which shall be administered at the discretion of the board, to certify continuing competency.

D. Disciplinary proceedings may be initiated against a licensee who has been granted inactive status.

Section 23

Section 23. FEES.--The board shall establish by regulation a schedule of reasonable fees for applications, examinations, licenses, inspections, renewals, penalties, reinstatements and necessary administrative fees, provided that no one fee shall exceed five hundred dollars ($500). All fees collected shall be deposited in the thanatopractice fund.

Section 24

Section 24. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW.--

A. The board, in accordance with the provisions of the Uniform Licensing Act, may refuse to issue or renew, or may suspend, revoke or impose a fine, or place on probation, any license of a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner, funeral service intern, direct disposer, establishment or crematory upon a finding by the board that the applicant or licensee is guilty of any of the following acts of commission or omission:

(1) conviction of an offense punishable by incarceration in a state penitentiary or federal prison, provided the board receives a copy of the record of conviction, certified to by the clerk of the court entering the conviction, which shall be conclusive evidence of the conviction;

(2) fraud or deceit in procuring or attempting to procure a license;

(3) gross negligence or incompetence;

(4) unprofessional or dishonorable conduct, which includes:

(a) misrepresentation or fraud;

(b) false or misleading advertising;

(c) solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether the solicitation occurs after death or while death is impending, provided that this shall not be deemed to prohibit general advertising;

(d) solicitation or acceptance by a licensee of any commission, bonus or rebate in consideration of recommending or causing a dead body to be disposed of in any cemetery, mausoleum or crematory;

(e) using any funeral merchandise previously purchased, in whole or in part, except for transportation purposes, without prior written permission of the person selecting or paying for the use of the merchandise; and

(f) failing to make disposition of a dead human body in the enclosure or container that was purchased for that purpose by the arrangers;

(5) violation of any of the provisions of the Thanatopractice Act or any rule or regulation of the board;

(6) violation of any local, state or federal ordinance, law or regulation affecting the practice of funeral service, direct disposition or cremation, including the Prearranged Funeral Plan Regulatory Law or any regulations ordered by the superintendent of insurance;

(7) willful or negligent practice beyond the scope of the license issued by the board;

(8) refusing to release properly a dead human body to the custody of the person or entity who has the legal right to effect the release, when the authorized cost has been paid;

(9) failure to secure a necessary permit required by law for removal from this state or cremation of a dead human body;

(10) knowingly making any false statement on a certificate of death;

(11) failure to give full cooperation to the board or one of its committees, staff, inspector, agent or attorney for the board in the performance of official duties;

(12) has had a license, certificate or registration to practice revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for actions of the licensee or applicant similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking the disciplinary action is conclusive evidence of the violation;

(13) failure to supervise adequately subordinate personnel; or

(14) conduct unbecoming a licensee or detrimental to the safety or welfare of the public.

B. In addition to the offenses listed in Subsection A of this section, the board, in accordance with the provisions of the Uniform Licensing Act, may refuse to issue or renew or may suspend, revoke, impose a fine or place on probation any funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner or funeral service intern upon finding the applicant or licensee guilty of any of the following acts of commission or omission:

(1) practicing funeral service without a license or aiding or abetting an unlicensed person to practice funeral service; or

(2) permitting an associate funeral service practitioner, assistant funeral service practitioner or a funeral service intern to exceed the limitations set forth in the provisions of the Thanatopractice Act or the regulations of the board.

C. In addition to the offenses listed in Subsection A of this section, the board, in accordance with the provisions of the Uniform Licensing Act, may refuse to issue or renew or may suspend, revoke, impose a fine or place on probation any direct disposer or direct disposition establishment upon finding the applicant or licensee guilty of any of the following acts of commission or omission:

(1) embalming, restoring, acting as a cosmetician or in any way altering the condition of a dead human body, except for washing and dressing;

(2) causing a body to be embalmed when embalming is not required by a place of disposition;

(3) engaging in any rites or ceremonies in association with the body, before or after the direct disposition;

(4) reclaiming, transporting or causing to be transported a body after written release for disposition; or

(5) practicing direct disposition without a license or aiding or abetting an unlicensed person to practice direct disposition.

D. In addition to the offenses listed in Subsection A of this section, the board, in accordance with the provisions of the Uniform Licensing Act, may refuse to issue or renew or may suspend, revoke, impose a fine or place on probation a crematory applicant or crematory authority upon finding the applicant or crematory authority guilty of any of the following acts of commission or omission:

(1) engaging or holding oneself out as engaging in the practice of funeral service or direct disposition, unless the applicant or crematory authority has a license to practice funeral service or direct disposition;

(2) operating a crematory without a license or aiding and abetting a crematory to operate without a license; or

(3) engaging in conduct or activities for which a license to engage in the practice of funeral service or direct disposition is required or aiding and abetting an unlicensed person to engage in conduct or activities for which a license to practice funeral service or direct disposition is required.

E. Unless exonerated by the board, persons who have been subjected to formal disciplinary sanctions by the board shall be responsible for the payment of costs of the disciplinary proceedings, which include costs for:

(1) court reporters;

(2) transcripts;

(3) certification or notarization;

(4) photocopies;

(5) witness attendance and mileage fees;

(6) postage for mailings required by law;

(7) expert witnesses; and

(8) depositions.

F. All fees, fines and costs imposed on an applicant, a licensee, establishment or crematory shall be paid in full to the board before an initial or renewal license may be issued.

Section 25

Section 25. ADDITIONAL PROHIBITIONS.--

A. No person licensed under the Thanatopractice Act shall advertise under any name that tends to mislead the public or that sufficiently resembles the professional or business name of another license holder or that may cause confusion or misunderstanding.

B. No person licensed under the Thanatopractice Act shall transport or cause to be transported by common carrier any dead human body out of this state when the licensee knows or had reason to believe that the dead human body carries any notifiable communicable disease or when the transportation would take place more than twenty-four hours after death, unless the body has been prepared or embalmed as provided in the Thanatopractice Act, unless approval for transportation has been given by the office of the medical investigator, the secretary of health, a court of competent jurisdiction or other authorized official or unless th body is placed in a sealed container.

C. No person licensed under the Thanatopractice Act shall remove, and no authorized person shall embalm, a dead human body when the authorized person has information indicating crime or violence of any sort in connection with the cause or manner of death, unless in accordance with instructions or regulations of the office of the medical investigator, or until permission has been obtained from the office of the medical investigator or other authorized official.

Section 26

Section 26. FUND ESTABLISHED.--

A. There is created in the state treasury the "thanatopractice fund".

B. All money received by the board under the Thanatopractice Act shall be deposited with the state treasurer for credit to the thanatopractice fund. The state treasurer shall invest the fund as other state funds are invested. All balances in the fund shall remain in the fund and shall not revert to the general fund.

C. Money in the thanatopractice fund is appropriated to the board and shall be used only for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Thanatopractice Act.

Section 27

Section 27. CRIMINAL OFFENDER EMPLOYMENT ACT.--The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted under the Thanatopractice Act.

Section 28

Section 28. COMMUNICATIONS--CONFIDENTIALITY.--All written and oral communications made to the board relating to potential disciplinary action shall be confidential. All data communication and information acquired by the board relating to complaints is confidential and shall not be disclosed unless formal disciplinary action is initiated under the Uniform Licensing Act or absent an order of a court of competent jurisdiction.

Section 29

Section 29. CONSTRUCTION.--Nothing in the Thanatopractice Act shall be construed to:

A. prohibit a funeral service practitioner, an associate funeral service practitioner, assistant funeral service practitioner or funeral service intern under the supervision of a funeral service practitioner from providing a direct disposition at a funeral or commercial establishment; or

B. govern or limit the authority of any personal representative, trustee or other person having a fiduciary relationship with the deceased.

Section 30

Section 30. CRIMINAL PENALTIES.--Any person who violates any provision of the Thanatopractice Act is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars ($1,000) or imprisonment, or both.

Section 31

Section 31. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of thanatopractice is terminated on July 1, 1999, pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Section 12-9-18 NMSA 1978 until July 1, 2000. Effective July 1, 2000, the Thanatopractice Act is repealed.

Section 32

Section 32. REPEAL.--Sections 61-32-1 through 61-32-25 NMSA 1978 (being Laws 1978, Chapter 185, Sections 1 through 14, Laws 1983, Chapter 137, Section 3, Laws 1978, Chapter 185, Sections 15 through 17, Laws 1983, Chapter 137, Section 4, Laws 1978, Chapter 185, Sections 18 through 24 and Laws 1981, Chapter 241, Section 34, as amended) are repealed.

Section 33

Section 33. SEVERABILITY.--If any part or application of the Thanatopractice Act is held invalid, the remainder or its application to other situations or persons shall not be affected. HB 554

CHAPTER 205

RELATING TO CAPITAL EXPENDITURES; EXPANDING THE PURPOSE OF THE APPROPRIATION FOR THE SALEM COMMUNITY FACILITIES LOCATED IN DONA ANA COUNTY.

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

Section 1

Section 1. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--EXPANDING THE PURPOSE.--The purpose for which the proceeds of the severance tax bonds authorized in Subsection NNN of Section 5 of Chapter 113 of Laws 1992 are used shall be expanded to include developing nine acres as the site for the Salem community facilities in Dona Ana county.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.SB 81

CHAPTER 206

RELATING TO UTILITIES; PROVIDING FOR LOW INCOME WATER, SEWER AND SOLID WASTE SERVICE ASSISTANCE.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Low Income Water, Sewer and Solid Waste Service Assistance Act".

Section 2

Section 2. PURPOSE.--It is the purpose of the Low Income Water, Sewer and Solid Waste Service Assistance Act:

A. to assure that water, sewer or solid waste user rate increases do not force many low-income individuals to discontinue necessary water, sewer or solid waste service; and

B. to increase the availability or affordability of basic water, sewer and solid waste service to low-income individuals by providing assistance to meet the cost of basic water, sewer and solid waste service.

Section 3

Section 3. DEFINITIONS.--As used in the Low Income Water, Sewer and Solid Waste Service Assistance Act:

A. "department" means the human services department; and

B. "utility" means any individual, firm, partnership, company, district, including but not limited to solid waste district, water and sanitation district and special district, cooperative, association, public or private corporation, lessee, trustee or receiver appointed by any court, municipality and municipal utility as defined in the Municipal Code, incorporated county or county that may or does own, operate, lease or control any plant, property or facility for:

(1) the supply, storage, distribution or furnishing of water to or for the public;

(2) the supply and furnishing of sanitary sewer service to or for the public; or

(3) the supply and furnishing of collection, transportation, treatment or disposal of solid waste to or for the public. "Utility" does not include a public utility subject to the jurisdiction of the New Mexico public service commission.

Section 4

Section 4. LOW INCOME ASSISTANCE RATES.--A utility may provide assistance in the form of reduced or subsidized rates to or on behalf of those individuals who meet the eligibility criteria of one or more need-based assistance programs administered by the department and who are not living in nursing homes or intermediate care facilities or not living in circumstances that do not require them to pay, directly or indirectly, for water, sewer or solid waste service.

Section 5

Section 5. DEPARTMENT COOPERATION.--Subject to state and federal statutes and regulations governing the sharing of confidential information, the department shall cooperate with a participating utility in identifying those persons eligible for assistance pursuant to the Low Income Water, Sewer and Solid Waste Service Assistance Act.SB 128

CHAPTER 207

RELATING TO CRIMINAL PROCEDURE; CLARIFYING PROCEDURES CONCERNING REPARATION FOR CRIME VICTIMS; AMENDING AND ENACTING SECTIONS OF THE CRIME VICTIMS REPARATION ACT; REPEALING LAWS 1990, CHAPTER 10, SECTION 5.

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

Section 1

Section 1. Section 31-22-1 NMSA 1978 (being Laws 1981, Chapter 325, Section 1) is amended to read:

"31-22-1. SHORT TITLE.--Chapter 31, Article 22 NMSA 1978 may be cited as the "Crime Victims Reparation Act"."

Section 2

Section 2. Section 31-22-3 NMSA 1978 (being Laws 1981, Chapter 325, Section 3, as amended) is amended to read:

"31-22-3. DEFINITIONS.--As used in the Crime Victims Reparation Act:

A. "child" means an unmarried person who is under the age of majority and includes a stepchild and an adopted child;

B. "collateral source" includes benefits for economic loss otherwise reparable under the Crime Victims Reparation Act which the victim or claimant has received, or which are readily available to him, from:

(1) the offender;

(2) social security, medicare and medicaid;

(3) workers' compensation;

(4) any program of any employer for continuation of wages in the event of the illness or injury of an employee;

(5) proceeds of a contract of insurance payable to the victim;

(6) a contract providing prepaid hospital and other health care services or benefits for disability, except for the benefits of any life insurance policy;

(7) applicable indigent funds; or

(8) cash donations;

C. "commission" means the crime victims reparation commission;

D. "dependents" means those relatives of the deceased or disabled victim who are more than fifty percent dependent upon the victim's income at the time of his death or disability and includes the child of a victim born after his death or disability;

E. "family relationship group" means any person related to another person within the fourth degree of consanguinity or affinity;

F. "injury" means actual bodily harm or disfigurement and includes pregnancy and extreme mental distress. For the purposes of this subsection, "extreme mental distress" means a substantial personal disorder of emotional processes, thought or cognition which impairs judgment, behavior or ability to cope with the ordinary demands of life;

G. "relative" means a person's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, minor brother, minor sister, minor half-brother, minor half-sister or spouse's parents; and

H. "victim" means:

(1) a person in New Mexico who is injured or killed by any act or omission of any other person that is a crime enumerated in Section 31-22-8 NMSA 1978; or

(2) a resident of New Mexico who is injured or killed by such a crime occurring in a state other than New Mexico if that state does not have an eligible crime victims compensation program."

Section 3

Section 3. Section 31-22-4 NMSA 1978 (being Laws 1981, Chapter 325, Section 4, as amended) is amended to read:

"31-22-4. CRIME VICTIMS REPARATION COMMISSION CREATED--MEMBERSHIP--REIMBURSEMENT.--

A. There is created in the executive branch of government a "crime victims reparation commission" which shall consist of five members appointed by the governor for staggered terms of four years each. Not more than three of the members shall belong to the same political party. One of the members shall be an attorney licensed to practice law in the state, one of the members shall be a physician licensed to practice medicine in the state and one of the members shall be a representative of a law enforcement agency. In making the initial appointments, the governor shall appoint three members for a term of two years each and two members for a term of four years each. Thereafter, appointments shall be for a term of four years. The governor may appoint a person to fill a vacancy for the balance of the unexpired term.

B. The members of the commission shall annually elect from their membership a chairman and vice chairman.

C. Members of the commission, while in the actual performance of their duties pursuant to the Crime Victims Reparation Act, shall be reimbursed as provided in the Per Diem and Mileage Act.

D. The commission may employ a director and such staff as is necessary to perform its functions."

Section 4

Section 4. Section 31-22-5 NMSA 1978 (being Laws 1981, Chapter 325, Section 5, as amended) is amended to read:

"31-22-5. CLAIMS--REVIEW--HEARINGS AND EVIDENCE.--

A. Where an application is made to the commission pursuant to the Crime Victims Reparation Act, the director of the commission shall determine if a claim for a reparation award is eligible for consideration pursuant to the provisions of the Crime Victims Reparation Act. All claims arising from the injury or death of a person as a direct result of a single crime shall be considered together by a single staff member. When the director determines that a claim for a reparation award is not eligible for consideration, the director shall notify the commission of his determination at the next regular meeting of the commission. If the commission concurs with the director's determination that a claim for a reparation award is not eligible for consideration, the claimant shall be notified that his claim was denied. When the director determines that a claim for a reparation award is eligible for consideration, the director shall order that the claim be processed and he shall assign the claim to a member of the commission staff.

B. The staff member to whom such claim is assigned shall examine the papers filed in support of the claim and shall cause an investigation to be conducted into the validity of the claim. The investigation may include, but not be limited to, an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury or death upon which the claim is based and other benefits received or to be received.

C. The staff member to whom a claim is assigned may make his recommendation regarding the claim on the basis of the papers filed in support thereof and the report of the investigation of the claim. If the staff member is unable to make a recommendation upon the basis of the papers and report, he shall present the claim to the commission without a recommendation.

D. When the claim has been processed, the director shall assign the claim to a commission member.

E. After examining the papers filed in support of the claim and the report of investigation and after a hearing, if any, the commission member to whom the claim was assigned shall make a recommendation to the entire commission either granting an award or denying the claim.

F. A quorum of the commission shall act upon the recommendation of the commission member. A quorum of the commission, by majority vote, may affirm, increase, decrease or deny the award.

G. Upon a request from a victim or claimant, the commission shall grant the victim or claimant an informal appearance at a commission meeting. The purpose of the informal appearance shall be for the victim or claimant to present any evidence or information in support of his claim.

H. A formal hearing may be called for by a majority of the commission. The purpose of the hearing shall be for the commission to hear evidence to assist it in making a determination regarding a claim.

I. At the hearing, the claimant and the commission's legal advisor shall be entitled to appear and be heard, and any other person may appear and be heard who has satisfied the commission member that he has a substantial interest in the proceedings. In any case in which the claimant is a child or is mentally incompetent, the application may be made on behalf of such claimant by his parent, guardian, custodian or any other person authorized to administer his estate.

J. Where any person is entitled to appear and be heard, that person may appear in person or by his attorney. All hearings shall be open to the public unless in a particular case the member of the commission assigned to the claim determines that the hearing or a portion thereof shall be held in private, having regard to the fact that the offender has not been convicted or in the interest of the victim of an alleged sexual offense.

K. Every person appearing under the provisions of this section shall have the right to produce evidence and to cross-examine witnesses. The commission member may receive in evidence any statement, document, information or matter that may, in his opinion, contribute to the functions of the hearing under the Crime Victims Reparation Act, whether or not such statement, document, information or other matter would be admissible in a court of law."

Section 5

Section 5. Section 31-22-7 NMSA 1978 (being Laws 1981, Chapter 325, Section 7) is amended to read:

"31-22-7. ELIGIBILITY FOR REPARATION.--

A. In the event any person is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the state after the effective date of the Crime Victims Reparation Act, which act or omission includes a crime enumerated in Section 31-22-8 NMSA 1978, and upon application for reparation, the commission may award reparation in accordance with the Crime Victims Reparation Act:

(1) to the victim;

(2) in the case of the victim's death, to or for the benefit of any one or more of the deceased victim's dependents; or

(3) to any individual who voluntarily assumes funeral or medical expenses of the victim.

B. For the purpose of the Crime Victims Reparation Act, a person shall be deemed to have intentionally committed an act or omission notwithstanding that by reason of age, insanity, drunkenness or otherwise he was legally incapable of forming a criminal intent.

C. In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant. The commission shall consider the behavior of the victim and whether, because of provocation or otherwise, the victim bears responsibility for the crime that caused his injury or death and shall reduce the amount of reparation in accordance with its assessment of the degree of responsibility attributable to the victim.

D. An order may be made under this section whether or not any person is prosecuted for or convicted of a crime enumerated in Section 31-22-8 NMSA 1978, provided an arrest has been made or the act or omission constituting such a crime has been reported to the police in a reasonable time. No order may be made under this section unless the commission finds that:

(1) the crime did occur;

(2) the injury or death of the victim resulted from the crime; and

(3) the claimant or victim fully cooperated with the appropriate law enforcement agencies.

E. Upon application from the district attorney of the appropriate district, the commission may suspend proceedings under the Crime Victims Reparation Act for such period as it deems desirable on the ground that a prosecution for the crime has commenced or is imminent."

Section 6

Section 6. Section 31-22-14 NMSA 1978 (being Laws 1981, Chapter 325, Section 14, as amended) is amended to read:

"31-22-14. LIMITATIONS ON AWARD--COLLATERAL RECOVERY--PRELIMINARY AWARD.--

A. No order for the payment of reparation shall be made unless application has been made within one year after the date of the injury or death and the injury or death was the result of a crime enumerated in Section 31-22-8 NMSA 1978 which had been reported to the police within thirty days after its occurrence, unless the commission, in its sole discretion upon good cause shown, allows application to be made. The commission shall enact regulations specifying circumstances constituting good cause pursuant to this provision. In no event shall reparation be given unless application has been made within two years after the injury or death, except for minors who are victims of criminal
activity under the provisions of Section 30-6-1 NMSA 1978, regarding abandonment or abuse of a child, Section 30-9-11 NMSA 1978, regarding criminal sexual penetration, or Section 30-9-13 NMSA 1978, regarding criminal sexual contact of a minor. The date of incident for minors who are victims of these types of criminal activity shall be the date the victim attains the age of eighteen years or the date that the criminal activity is reported to a law enforcement agency, whichever occurs first.

B. No award of reparation shall be in excess of twenty thousand dollars ($20,000) per victim.

C. Except as provided by Subsection D of this section, the commission shall deduct from any reparation awarded any payments received from a collateral source or from the United States, the state or any of its political subdivisions for injury or death subject to reparation under the Crime Victims Reparation Act. Where the claimant receives an award of reparation from the commission and also receives payment as set forth in the preceding sentence for which no deduction was made, the claimant shall refund to the state the lesser of the amount of reparation paid or the sums not so deducted.

D. If it appears that a final award of reparation will be made by the commission, a preliminary award not to exceed three thousand five hundred dollars ($3,500) may be authorized by the director of the commission or the commission's designee when the commission chairman concurs. The amount of the preliminary award shall be deducted from any final award made by the commission."

Section 7

Section 7. Section 31-22-18 NMSA 1978 (being Laws 1981, Chapter 325, Section 18) is amended to read:

"31-22-18. CONFIDENTIALITY OF RECORDS, REPORTS AND CLAIM FILES.--Any record or report acquired by the commission, the confidentiality of which is protected by law, rule or regulation, shall be disclosed only under the same terms and conditions which protected its confidentiality prior to such acquisition. The claim file, which contains the victim's name, address, telephone number and other personal information regarding the victim, shall not be released."

Section 8

Section 8. Section 31-22-19 NMSA 1978 (being Laws 1981, Chapter 325, Section 19, as amended) is amended to read:

"31-22-19. ANNUAL REPORT.--At least thirty days prior to the convening of each regular session of the legislature, the commission shall transmit to the governor, the department of finance and administration and the legislature a report of its activities under the Crime Victims Reparation Act. The department of finance and administration shall, within five days after the opening of the legislative session, transmit the report, together with a tabulation of the total amount awarded and the amount of any judgments collected, to the senate finance committee and to the house appropriations and finance committee or any successor committees."

Section 9

Section 9. REPEAL.--Laws 1990, Chapter 10, Section 5 is repealed.

Section 10

Section 10. A new section of the Crime Victims Reparation Act, Section 31-22-24 NMSA 1978, is enacted to read:

"31-22-24. TERMINATION OF COMMISSION LIFE--DELAYED REPEAL.--The crime victims reparation commission is terminated on July 1, 2000 pursuant to the provisions of the Sunset Act. The commission shall continue to operate according to the provisions of the Crime Victims Reparation Act until July 1, 2001. Effective July 1, 2001, Chapter 31, Article 22 NMSA 1978 is repealed."SB 198

CHAPTER 208

RELATING TO MUNICIPALITIES; ENACTING THE MUNICIPAL CABLE TELEVISION ACT; AUTHORIZING MUNICIPALITIES TO ACQUIRE, CONSTRUCT, OWN OR OPERATE CABLE TELEVISION SYSTEMS; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Municipal Cable Television Act".

Section 2

Section 2. PURPOSE.--The purpose of the Municipal Cable Television Act is to authorize municipalities to acquire, construct, own or operate cable television systems within the state.

Section 3

Section 3. DEFINITION.--As used in the Municipal Cable Television Act, "municipality" means a municipality with a population of more than thirty-three thousand people but less than thirty-five thousand people.

Section 4

Section 4. DELEGATION OF AUTHORITY.--Municipalities may acquire, construct, own, operate or manage cable television systems or related equipment or facilities.

Section 5

Section 5. SERVICE AREA.--A municipally owned or operated cable television system may operate anywhere within the municipal boundaries of the municipality or within an area not to exceed five miles from its boundaries. A municipally owned or operated cable television system may not operate within the municipal boundaries of another municipality without the consent of the other municipality.

Section 6

Section 6. SERVICE CHARGES.--A municipality owning or operating a cable television system may charge reasonable, nondiscriminatory usage fees to its cable system customers. A municipality may not charge fees based on whether the customer is located inside or outside the municipal boundaries of the municipality owning or operating the system.

Section 7

Section 7. Section 7-9-13 NMSA 1978 (being Laws 1969, Chapter 144, Section 6, as amended) is amended to read:

"7-9-13. EXEMPTION--GROSS RECEIPTS TAX--GOVERNMENTAL AGENCIES.--

A. Exempted from the gross receipts tax are the receipts of the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof.

B. Receipts from the sale of gas or electricity by a utility owned or operated by a county, municipality or other political subdivision of the state are not exempted from the gross receipts tax.

C. Receipts from the operation of a cable television system owned or operated by a municipality are not exempted from the gross receipts tax." SB 352

CHAPTER 209

RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING AND ENACTING SECTIONS OF THE UNEMPLOYMENT COMPENSATION LAW; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 51-1-4 NMSA 1978 (being Laws 1969, Chapter 213, Section 1, as amended) is amended to read:

"51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT GENERALLY.--

A. All benefits provided herein are payable from the unemployment compensation fund. All benefits shall be paid in accordance with such regulations as the secretary may prescribe through employment offices or other agencies as the secretary may by general rule approve.

B. Weekly benefits shall be as follows:

(1) an individual's "weekly benefit amount" is an amount equal to one twenty-sixth of the total wages for insured work paid to him in that quarter of his base period in which total wages were highest. No benefit as so computed may be less than ten percent or more than fifty percent of the state's average weekly wage for all insured work. The state's average weekly wage shall be computed from all wages reported to the department from employing units in accordance with regulations of the secretary for the period ending June 30 of each calendar year divided by the total number of covered employees divided by fifty-two, effective for the benefit years commencing on or after the first Sunday of the following calendar year. Any such

individual is not eligible to receive benefits unless his total base-period wages equal at least one and one-fourth times the wages for insured work in that quarter of his base period in which such wages are highest;

(2) each eligible individual who is unemployed in any week during which he is in a continued claims status shall be paid, with respect to such week, a benefit in an amount equal to his weekly benefit amount, less that part of the wages, if any, or earnings from self-employment, payable to him with respect to such week which is in excess of one-fifth of his weekly benefit amount. For purposes of this subsection only, "wages" includes all remuneration for services actually performed in any week for which benefits are claimed, vacation pay for any period for which the individual has a definite return-to-work date, wages in lieu of notice and back pay for loss of employment but does not include payments through a court for time spent in jury service;

(3) notwithstanding any other provision of this section, each eligible individual who, pursuant to a plan financed in whole or in part by a base-period employer of such individual, is receiving a governmental or other pension, retirement pay, annuity or any other similar periodic payment that is based on the previous work of such individual and who is unemployed with respect to any week ending subsequent to April 9, 1981 shall be paid with respect to such week, in accordance with regulations prescribed by the secretary, compensation equal to his weekly benefit amount reduced, but not below zero, by the prorated amount of such pension, retirement pay, annuity or other similar periodic payment that exceeds the percentage contributed to the plan by the eligible individual. The maximum benefit amount payable to such eligible individual shall be an amount not more than twenty-six times his reduced weekly benefit amount. If payments referred to in this section are being received by any individual under the federal Social Security Act, the division shall take into account the individual's contribution and make no reduction in the weekly benefit amount;

(4) in the case of a lump-sum payment of a pension, retirement or retired pay, annuity or other similar payment by a base-period employer that is based on the previous work of such individual, such payment shall be allocated, in accordance with regulations prescribed by the secretary, and shall reduce the amount of unemployment compensation paid, but not below zero, in accordance with Paragraph (3) of this subsection; and

(5) the retroactive payment of a pension, retirement or retired pay, annuity or any other similar periodic payment as provided in Paragraphs (3) and (4) of this subsection attributable to weeks during which an individual has claimed or has been paid unemployment compensation shall be allocated to such weeks and shall reduce the amount of unemployment compensation for such weeks, but not below zero, by an amount equal to the prorated amount of such pension. Any overpayment of unemployment compensation benefits resulting from the application of the provisions of this paragraph shall be recovered from the claimant in accordance with the provisions of Section 51-1-38 NMSA 1978.

C. Any otherwise eligible individual is entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of twenty-six times his weekly benefit amount or sixty percent of his wages for insured work paid during his base period.

D. Any benefit as determined in Subsection B or C of this section, if not a multiple of one dollar ($1.00), shall be rounded to the next lower multiple of one dollar ($1.00).

E. The secretary may prescribe regulations to provide for the payment of benefits that are due and payable to the legal representative, dependents, relatives or next of kin of claimants since deceased. These regulations need not conform with the laws governing successions, and the payment shall be deemed a valid payment to the same extent as if made under a formal administration of the succession of the claimant.

F. The division, on its own initiative, may reconsider a monetary determination whenever it is determined that an error in computation or identity has occurred or that wages of the claimant pertinent to such determination but not considered have been newly discovered or that the benefits have been allowed or denied on the basis of misrepresentation of fact, but no redetermination shall be made after one year from the date of the original monetary determination. Notice of a redetermination shall be given to all interested parties and shall be subject to an appeal in the same manner as the original determination. In the event that an appeal involving an original monetary determination is pending at the time a redetermination is issued, the appeal, unless withdrawn, shall be treated as an appeal from such redetermination."

Section 2

Section 2. Section 51-1-5 NMSA 1978 (being Laws 1969, Chapter 213, Section 2, as amended) is amended to read:

"5l-l-5. BENEFIT ELIGIBILITY CONDITIONS.--

A. An unemployed individual shall be eligible to receive benefits with respect to any week only if he:

(1) has made a claim for benefits with respect to such week in accordance with such regulations as the secretary may prescribe;

(2) has registered for work at, and thereafter continued to report at, an employment office in accordance with such regulations as the secretary may prescribe, except that the secretary may, by regulation, waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes

of the Unemployment Compensation Law. No such regulation shall conflict with Subsection A of Section 5l-l-4 NMSA 1978;

(3) is able to work and is available for work and is actively seeking permanent and substantially full-time work in accordance with the terms, conditions and hours common in the occupation or business in which the individual is seeking work, except that the secretary may, by regulation, waive this requirement for individuals who are on temporary layoff status from their regular employment with an assurance from their employer that the layoff shall not exceed four weeks or who have an express offer in writing of substantially full-time work which will begin within a period not exceeding four weeks;

(4) has been unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purposes of this paragraph:

(a) unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

(b) if benefits have been paid with respect thereto; and

(c) unless the individual was eligible for benefits with respect thereto as provided in this section and Section 5l-l-7 NMSA 1978, except for the requirements of this subsection and of Subsection E of Section 5l-l-7 NMSA 1978;

(5) has, during his base period, been paid wages for insured work totaling not less than one and one-fourth his high-quarter wages; and

(6) has reported to an office of the division in accordance with the regulations of the secretary for the purpose of an examination and review of the individual's availability for and search for work, for employment counseling, referral and placement and for participation in a job finding or employability training and development program. No individual shall be denied benefits under this section for any week that he is participating in a job finding or employability training and development program.

B. A benefit year as provided in Section 5l-l-4 NMSA 1978 and Subsection P of Section 5l-l-42 NMSA 1978 may be established; provided no individual may receive benefits in a benefit year unless, subsequent to the beginning of the immediately preceding benefit year during which he received benefits, he performed service in "employment", as defined in Subsection F of Section 5l-l-42 NMSA 1978, and earned remuneration for such service in an amount equal to the lesser of three-thirteenths of the individual's high-quarter wages and six times his weekly benefit amount.

C. Benefits based on service in employment defined in Paragraph (8) of Subsection F of Section 5l-l-42 and Section 5l-l-43 NMSA 1978 are to be paid in the same amount, on the same terms and subject to the same conditions as compensation

payable on the basis of other services subject to the Unemployment Compensation Law; except that:

(1) benefits based on services performed in an instructional, research or principal administrative capacity for an educational institution shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms or, when an agreement provides for a similar period between two regular but not successive terms, during such period or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(2) benefits based on services performed for an educational institution other than in an instructional, research or principal administrative capacity shall not be paid for any week of unemployment commencing during a period between two successive academic years or terms if such services are performed in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services for any educational institution in the second of such academic years or terms. If compensation is denied to any individual under this paragraph and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a claim and certified for benefits in accordance with the regulations of the division and for which benefits were denied solely by reason of this paragraph;

(3) benefits shall be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if such individual performs any services described in Paragraphs (1) and (2) of this subsection in the period immediately before such period of vacation or holiday recess and there is a reasonable assurance that such individual will perform any such services in the period immediately following such vacation period or holiday recess;

(4) benefits shall not be payable on the basis of services specified in Paragraphs (1) and (2) of this subsection during the periods specified in Paragraphs (1), (2) and (3) of this subsection to any individual who performed such services in or to or on behalf of an educational institution while in the employ of a state or local governmental educational service agency or other governmental entity or nonprofit organization; and

(5) for the purpose of this subsection, to the extent permitted by federal law, "reasonable assurance" means a reasonable expectation of employment in a similar capacity in the second of such academic years or terms based upon a consideration of all relevant factors, including the historical pattern of reemployment in such capacity, a reasonable anticipation that such employment will be available and a

reasonable notice or understanding that the individual will be eligible for and offered employment in a similar capacity.

D. Paragraphs (1), (2), (3), (4) and (5) of Subsection C of this section shall apply to services performed for all educational institutions, public or private, for profit or nonprofit, which are operated in this state or subject to an agreement for coverage under the Unemployment Compensation Law of this state, unless otherwise exempt by law.

E. Notwithstanding any other provisions of this section or Section 5l-l-7 NMSA 1978, no otherwise eligible individual is to be denied benefits for any week because he is in training with the approval of the division nor is such individual to be denied benefits by reason of application of provisions in Paragraph (3) of Subsection A of this section or Subsection C of Section 5l-l-7 NMSA 1978 with respect to any week in which he is in training with the approval of the division. The secretary shall provide, by regulation, standards for approved training and the conditions for approving such training for claimants, including any training approved or authorized for approval pursuant to Section 236(a)(1) and (2) of the Trade Act of 1974, as amended, or required to be approved as a condition for certification of the state's Unemployment Compensation Law by the United States secretary of labor.

F. Notwithstanding any other provisions of this section, benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purposes of performing such services or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act; provided that:

(1) any information required of individuals applying for benefits to determine their eligibility for benefits under this subsection shall be uniformly required from all applicants for benefits; and

(2) no individual shall be denied benefits because of his alien status except upon a preponderance of the evidence.

G. Notwithstanding any other provision of this section, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate for any week that commences during the period between two successive sport seasons, or similar periods, if such individual performed such services in the first of such seasons, or similar periods, and there is a reasonable assurance that such individual will perform such services in the latter of such seasons or similar periods.

H. Students who are enrolled in a full-time course schedule in an educational or training institution or program, other than those persons in an approved vocational training program in accordance with Subsection E of this section, shall not be eligible for unemployment benefits except as provided by regulations promulgated by the secretary.

I. As used in this subsection, "seasonal ski employee" means an employee who has not worked for a ski area operator for more than six consecutive months of the previous twelve months or nine of the previous twelve months. Any employee of a ski area operator who has worked for a ski area operator for six consecutive months of the previous twelve months or nine of the previous twelve months shall not be considered a seasonal ski employee. The following benefit eligibility conditions apply to a seasonal ski employee:

(1) except as provided in Paragraphs (2) and (3) of this subsection, a seasonal ski employee employed by a ski area operator on a regular seasonal basis shall be ineligible for a week of unemployment benefits that commences during a period between two successive ski seasons unless such individual establishes to the satisfaction of the secretary that he is available for and is making an active search for permanent full-time work;

(2) a seasonal ski employee who has been employed by a ski area operator during two successive ski seasons shall be presumed to be unavailable for permanent new work during a period after the second successive ski season that he was employed as a seasonal ski employee; and

(3) the presumption described in Paragraph (2) of this subsection shall not arise as to any seasonal ski employee who has been employed by the same ski area operator during two successive ski seasons and has resided continuously for at least twelve successive months and continues to reside in the county in which the ski area facility is located.

J. Notwithstanding any other provision of this section, an otherwise eligible individual shall not be denied benefits for any week by reason of the application of Paragraph (3) of Subsection A of this section because he is before any court of the United States or any state pursuant to a lawfully issued summons to appear for jury duty."

Section 3

Section 3. Section 51-1-8 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 6, as amended) is amended to read:

"51-1-8. CLAIMS FOR BENEFITS.--

A. Claims for benefits shall be made in accordance with such regulations as the secretary may prescribe. Each employer shall post and maintain printed notices, in places readily accessible to employees, concerning their rights to file claims for unemployment benefits upon termination of their employment. Such notices shall be supplied by the division to each employer without cost to him.

B. A representative designated by the secretary as a claims examiner shall promptly examine the application and each weekly claim and, on the basis of the facts found, shall determine whether the claimant is unemployed, the week with respect to which benefits shall commence, the weekly benefit amount payable, the maximum duration of benefits, whether the claimant is eligible for benefits pursuant to Section 51-1-5 NMSA 1978 and whether the claimant shall be disqualified pursuant to Section 51-1-7 NMSA 1978. With the approval of the secretary, the claims examiner may refer, without determination, claims or any specified issues involved therein which raise complex questions of fact or law to a hearing officer for the division for a fair hearing and decision in accordance with the procedure described in Subsection D of this section. The claims examiner shall promptly notify the claimant and any other interested party of the determination and the reasons therefor. Unless the claimant or any such interested party, within fifteen calendar days after the date of notification or mailing of such determination, files an appeal from such determination, such determination shall be the final decision of the division; provided that the claims examiner may reconsider a nonmonetary determination if additional information not previously available is provided or obtained or whenever he finds an error in the application of law has occurred, but no redetermination shall be made more than twenty days from the date of the initial nonmonetary determination. Notice of a nonmonetary redetermination shall be given to all interested parties and shall be subject to appeal in the same manner as the original nonmonetary determination. If an appeal is pending at the time a redetermination is issued, the appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

C. In the case of a claim for waiting period credit or benefits, "interested party", for purposes of determinations and adjudication proceedings and notices thereof, means:

(1) in the event of an issue concerning a separation from work for reasons other than lack of work, the claimant's most recent employer or most recent employing unit;

(2) in the event of an issue concerning a separation from work for lack of work, the employer or employing unit from whom the claimant separated for reasons other than lack of work if he has not worked and earned wages in insured work or bona fide employment other than self-employment in an amount equal to or exceeding five times his weekly benefit amount; or

(3) in all other cases involving the allowance or disallowance of a claim, the secretary, the claimant and any employing unit directly involved in the facts at issue.

D. Upon appeal by any party, a hearing officer designated by the secretary shall afford the parties reasonable opportunity for a fair hearing to be held de novo, and the hearing officer shall issue findings of fact and a decision which affirms, modifies or reverses the determination of the claims examiner or tax representative on the facts or the law, based upon the evidence introduced at such hearing, including the documents and statements in the claim records of the department. All hearings shall be held in accordance with regulations of the secretary and decisions issued promptly in accordance with time lapse standards promulgated by the secretary of the United States department of labor. The parties shall be duly notified of the decision, together with the reasons therefor, which shall be deemed to be the final decision of the department, unless within fifteen days after the date of notification or mailing of such decision further appeal is initiated pursuant to Subsection H of this section.

E. Except with the consent of the paries, no hearing officer or members of the board of review, established in Subsection F of this section, or secretary shall sit in any administrative or adjudicatory proceeding in which:

(1) either of the parties is related to him by affinity or consanguinity within the degree of first cousin;

(2) he was counsel for either party in that action; or

(3) he has an interest which would prejudice his rendering an impartial decision.

The secretary, any member of the board of review or appeal tribunal hearing officer shall withdraw from any proceeding in which he cannot accord a fair and impartial hearing. Any party may request a disqualification of any appeal tribunal hearing officer or board of review member by filing an affidavit with the board of review or appeal tribunal promptly upon 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. If a member of the board of review is disqualified or withdraws from any proceeding, the remaining members of the board of review may appoint an appeal tribunal hearing officer to sit on the board of review for the proceeding involved.

F. There is established within the department for the purpose of providing higher level administrative appeal and review of determinations of a claims examiner or decisions issued by a hearing officer pursuant to Subsection B or D of this section a "board of review" consisting of three members. Two members shall be appointed by the governor with the consent of the senate. The members so appointed shall hold office at

the pleasure of the governor for terms of four years. One member appointed by the governor shall be a person who, on account of his previous vocation, employment or affiliation, can be classed as a representative of employers, and the other member appointed by the governor shall be a person who, on account of his previous vocation, employment or affiliation, can be classed as a representative of employees. The third member shall be an employee of the department appointed by the secretary who shall serve as chairman of the board. Either member of the board of review appointed by the governor who has missed two consecutive meetings of the board may be removed from the board by the governor. Actions of the board shall be taken by majority vote. If a vacancy on the board in a position appointed by the governor occurs between sessions of the legislature, the position shall be filled by the governor until the next regular legislative session. The board shall meet at the call of the secretary. Members of the board appointed by the governor shall be paid per diem and mileage in accordance with the Per Diem and Mileage Act for necessary travel to attend regularly scheduled meetings of the board of review for the purpose of conducting the board's appellate and review duties.

G. The board of review shall hear and review all cases appealed in accordance with Subsection H of this section. The board of review may modify, affirm or reverse the decision of the hearing officer or remand any matter to the claims examiner, tax representative or hearing officer for further proceedings. Each member appointed by the governor shall be compensated at the rate of five dollars ($5.00) for each case reviewed up to a maximum compensation of five thousand dollars ($5,000) in any one fiscal year.

H. Any party aggrieved by a final decision of a hearing officer may file, in accordance with regulations prescribed by the secretary, an application for appeal and review of such decision with the secretary. The secretary shall review the application and shall, within fifteen days after receipt of the application, either affirm the decision of the hearing officer, remand the matter to the hearing officer for an additional hearing or refer the decision to the board of review for further review and decision on the merits of the appeal. If the secretary affirms the decision of the hearing officer, that decision shall be the final administrative decision of the department and any appeal therefrom must be taken to the district court in accordance with the provisions of Subsections M and N of this section. If the secretary remands a matter to a hearing officer for an additional hearing, judicial review shall be permitted only after issuance of a final administrative decision. If the secretary refers the decision of the hearing officer to the board of review for further review, the board's decision on the merits of the appeal will be the final administrative decision of the department which may be appealed to the district court in accordance with the provisions of Subsections M and N of this section. If the secretary takes no action within fifteen days of receipt of the application for appeal and review, the decision will be promptly scheduled for review by the board of review as though it had been referred by the secretary. The secretary may request the board of review to review a decision of a hearing officer that the secretary believes to be inconsistent with the law or with applicable rules of interpretation or that is not supported by the evidence, and the board of review shall grant the request if it is filed within fifteen days of the issuance

of the decision of the hearing officer. The secretary may also direct that any pending determination or adjudicatory proceeding be removed to the board of review for a final decision. If the board of review holds a hearing on any matter, the hearing shall be conducted by a quorum of the board of review in accordance with regulations prescribed by the secretary for hearing appeals. The board of review shall promptly notify the interested parties of its findings and decision. A decision of the board of review on any disputed matter reviewed and decided by it shall be based upon the law and the lawful rules of interpretation issued by the secretary, and it shall be the final administrative decision of the department, except in cases of remand. If the board of review remands a matter to a hearing officer, claims examiner or tax representative, judicial review shall be permitted only after issuance of a final administrative decision.

I. Notwithstanding any other provision of this section granting any party the right to appeal, benefits shall be paid promptly in accordance with a determination or a decision of a claims examiner, hearing officer, secretary, board of review or a reviewing court, regardless of the pendency of the period to file an appeal or petition for judicial review that is provided with respect thereto in Subsection D or M of this section or the pendency of any such filing or petition until such determination or decision has been modified or reversed by a subsequent decision. The provisions of this subsection shall apply to all claims for benefits pending on the date of its enactment.

J. If a prior determination or decision allowing benefits is affirmed by a decision of the department, including the board of review or a reviewing court, such benefits shall be paid promptly regardless of any further appeal which may thereafter be available to the parties, and no injunction, supersedeas, stay or other writ or process suspending the payment of such benefits shall be issued by the secretary or board of review or any court, and no action to recover such benefits paid to a claimant shall be taken. If a determination or decision allowing benefits is finally modified or reversed, the appropriate contributing employer's account will be relieved of benefit charges in accordance with Subsection B of Section 51-1-11 NMSA 1978.

K. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers and the conduct of hearings and appeals shall be in accordance with rules prescribed by the secretary for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A hearing officer or the board of review may refer to the secretary for interpretation any question of controlling legal significance, and the secretary shall issue a declaratory interpretation which shall be binding upon the decision of the hearing officer and the board of review. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is appealed to the district court.

L. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the secretary. Such fees and all administrative expenses of proceedings

involving disputed claims shall be deemed a part of the expense of administering the Unemployment Compensation Law.

M. Any determination or decision of a claims examiner or hearing officer or by a representative of the tax section of the department in the absence of an appeal therefrom as provided by this section shall become final fifteen days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies as provided in Subsection H of this section. The division and any employer or claimant who is affected by the decision shall be joined as a party in any judicial action involving any such decision. All parties shall be served with an endorsed copy of the petition within thirty days from the date of filing and an endorsed copy of the order granting the petition within fifteen days from entry of the order. Service on the department shall be made on the secretary or his designated legal representative either by mail with accompanying certification of service or by personal service. The division may be represented in any such judicial action by an attorney employed by the department or, when requested by the secretary, by the attorney general or any district attorney.

N. The final decision of the secretary or board of review upon any disputed matter may be reviewed both upon the law, including the lawful rules of interpretation issued by the secretary, and the facts by the district court of the county wherein the person seeking the review resides upon certiorari, unless it is determined by the district court where the petition is filed that, as a matter of equity and due process, venue should be in a different county. For the purpose of such review, the division shall return on such certiorari the reports and all of the evidence heard by it on any such reports and all the papers and documents in its files affecting the matters and things involved in such certiorari. The district court shall render its judgment after hearing, and either the department or any other party thereto affected may appeal from such judgment to the supreme court of the state in accordance with the rules governing special statutory proceedings. Such certiorari shall not be granted unless the same is applied for within thirty days from the date of the final decision of the secretary or board of review. Such certiorari shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the Workers' Compensation Act of this state. It shall not be necessary in any proceedings before the division to enter exceptions to the rulings and no bond shall be required in obtaining certiorari from the district court as hereinabove provided, but such certiorari shall be granted as a matter of right to the party applying therefor."

Section 4

Section 4. Section 51-1-11 NMSA 1978 (being Laws 1961, Chapter 139, Section 3, as amended) is amended to read:

"51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE.--

A. The division shall maintain a separate account for each contributing employer and shall credit his account with all contributions paid by him under the Unemployment Compensation Law. Nothing in the Unemployment Compensation Law shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by the employer into the fund.

B. Benefits paid to an individual shall be charged against the accounts of his base-period employers on a pro rata basis according to the proportion of his total base-period wages received from each, except that no benefits paid to a claimant as extended benefits under the provisions of Section 51-1-48 NMSA 1978 shall be charged to the account of any base-period employer who is not on a reimbursable basis and who is not a governmental entity and, except as the secretary shall by regulation prescribe otherwise, in the case of benefits paid to an individual who:

(1) left the employ of a base-period employer who is not on a reimbursable basis voluntarily without good cause in connection with his employment;

(2) was discharged from the employment of a base-period employer who is not on a reimbursable basis for misconduct connected with his work;

(3) received benefits based upon wages earned from a base-period employer who is not on a reimbursable basis for work performed in a work-release program designed to give an inmate of a correctional institution an opportunity to work while serving a term of incarceration if the inmate's separation was caused by his release from prison;

(4) is employed part-time by a base-period employer who is not on a reimbursable basis and who continues to furnish the individual the same part-time work while the individual is separated from full-time work for a nondisqualifying reason; or

(5) received benefits based upon wages earned from a base-period employer who is not on a reimbursable basis while attending approved training under the provisions of Subsection E of Section 51-1-5 NMSA 1978.

C. The division shall not charge a contributing or reimbursing base-period employer's account with any portion of benefit amounts which the division can bill to or recover from the federal government as either regular or extended benefits.

D. All contributions to the fund shall be pooled and available to pay benefits to any individual entitled thereto, irrespective of the source of such contributions. The standard rate of contributions payable by each employer shall be five and four-tenths percent.

E. No employer's rate shall be varied from the standard rate for any calendar year unless, as of the computation date for that year, his account has been chargeable with benefits throughout the preceding thirty-six months, except that:

(1) the provisions of this subsection shall not apply to governmental entities;

(2) subsequent to December 31, 1984, any employing unit that becomes an employer subject to the payment of contributions under the Unemployment Compensation Law or has been an employer subject to the payment of contributions at a standard rate of two and seven-tenths percent through December 31, 1984 shall be subject to the payment of contributions at the reduced rate of two and seven-tenths percent until, as of the computation date of a particular year, the employer's account has been chargeable with benefits throughout the preceding thirty-six months; and

(3) any individual, type of organization or employing unit that acquires all or part of the trade or business of another employing unit, pursuant to Paragraphs (2) and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has a reduced rate of contribution shall be entitled to the transfer of the reduced rate to the extent permitted under Subsection G of this section.

F. The secretary shall, for the year 1942 and for each calendar year thereafter, classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with a view of fixing such contribution rates as will reflect such benefit experience. Each employer's rate for any calendar year shall be determined on the basis of his record and the condition of the fund as of the computation date for such calendar year.

An employer may make voluntary payments in addition to the contributions required under the Unemployment Compensation Law, which shall be credited to his account in accordance with department regulation. The voluntary payments shall be included in the employer's account as of the employer's most recent computation date if they are made on or before the following March 1. Voluntary payments when accepted from an employer will not be refunded in whole or in part.

G. In the case of a transfer of an employing enterprise, the experience history of the transferred enterprise as provided in Subsection F of this section will be transferred from the predecessor employer to the successor under the following conditions and in accordance with the applicable regulations of the secretary:

(1) Definitions:

(a) "employing enterprise" is a business activity engaged in by a contributing employing unit in which one or more persons have been employed within the current or the three preceding calendar quarters;

(b) "predecessor" means the owner and operator of an employing enterprise immediately prior to the transfer of such enterprise;

(c) "successor" means any individual or any type of organization that acquires an employing enterprise and continues to operate such business entity; and

(d) "experience history" means the experience rating record and reserve account, including the actual contributions, benefit charges and payroll experience of the employing enterprise.

(2) For the purpose of this section, two or more employers who are parties to or the subject of any transaction involving the transfer of an employing enterprise shall be deemed to be a single employer and the experience history of the employing enterprise shall be transferred to the successor employer if the successor employer has acquired by the transaction all of the business enterprises of the predecessor; provided that:

(a) all contributions, interest and penalties due from the predecessor employer have been paid;

(b) notice of the transfer has been given in accordance with the regulations of the secretary within four years of the transaction transferring the employing enterprise or the date of the actual transfer of control and operation of the employing enterprise;

(c) in the case of the transfer of an employing enterprise, the successor employer must notify the division of the acquisition on or before the due date of the successor employer's first wage and contribution report. If the successor employer fails to notify the division of the acquisition within this time limit, the division, when it receives actual notice, will effect the transfer of the experience history and applicable rate of contribution retroactively to the date of the acquisition and the successor shall pay a penalty of fifty dollars ($50.00); and

(d) where the transaction involves only a merger, consolidation or other form of reorganization without a substantial change in the ownership and controlling interest of the business entity, as determined by the secretary, the limitations on transfers stated in Subparagraphs (a), (b) and (c) of this paragraph shall not apply. No party to a merger, consolidation or other form of reorganization described in this paragraph shall be relieved of liability for any contributions, interest or penalties due and owing from the employing enterprise at the time of the merger, consolidation or other form of reorganization.

(3) The applicable experience history may be transferred to the successor in the case of a partial transfer of an employing enterprise if the successor has acquired one or more of the several employing enterprises of a predecessor but not

all of the employing enterprises of the predecessor and each employing enterprise so acquired was operated by the predecessor as a separate store, factory, shop or other separate employing enterprise and the predecessor, throughout the entire period of his contribution with liability applicable to each enterprise transferred, has maintained and preserved payroll records which, together with records of contribution liability and benefit chargeability, can be separated by the parties from the enterprises retained by the predecessor to the satisfaction of the secretary or his delegate. A partial experience history transfer will be made only if:

(a) the successor notifies the division of the acquisition, in writing, not later than the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition;

(b) the successor files an application provided by the division that contains the endorsement of the predecessor within thirty days from the delivery or mailing of such application by the division to the successor's last known address; and

(c) the successor files with the application a Form ES-903A or its equivalent with a schedule of the name and social security number of and the wages paid to and the contributions paid for each employee for the three and one-half year period preceding the date of computation as defined in Subparagraph (d) of Paragraph (3) of Subsection H of this section or such lesser period as the enterprises transferred may have been in operation. The application and Form ES-903A must be supported by the predecessor's permanent employment records, which must be available for audit by the division. The application and Form ES-903A shall be reviewed by the division and upon approval, the percentage of the predecessor's experience history attributable to the enterprises transferred shall be transferred to the successor. The percentage shall be obtained by dividing the taxable payrolls of the transferred enterprises for such three and one-half year period preceding the date of computation or such lesser period as the enterprises transferred may have been in operation by the predecessor's entire payroll.

H. For each calendar year, adjustments of contribution rates below the standard or reduced rate and measures designed to protect the fund are provided as follows:

(1) The total assets in the fund and the total of the last annual payrolls of all employers subject to contributions as of the computation date for each year shall be determined. These annual totals are here called "the fund" and "total payrolls". For each year, the "reserve" of each employer qualified under Subsection E of this section shall be fixed by the excess of his total contributions over total benefit charges computed as a percentage of his average payroll reported for contributions. The determination of each employer's annual rate, computed as of the computation date for each calendar year, shall be made by matching his reserve as shown in the reserve column with the corresponding rate shown in the applicable rate schedule of the table provided in Paragraph (4) of this subsection.

(2) Each employer's rate for each calendar year commencing January 1, 1979 or thereafter shall be:

(a) the rate in schedule 1 of the table provided in Paragraph (4) of this subsection on the corresponding line as his reserve if the fund equals at least four percent of the total payrolls;

(b) the rate in schedule 2 of the table provided in Paragraph (4) of this subsection on the corresponding line if the fund has dropped to between four percent and three percent;

(c) the rate in schedule 3 of the table provided in Paragraph (4) of this subsection on the corresponding line if the fund has dropped to between three percent and two percent;

(d) the rate in schedule 4 of the table provided in Paragraph (4) of this subsection on the corresponding line if the fund has dropped to between two percent and one and one-half percent;

(e) the rate in schedule 5 of the table provided in Paragraph (4) of this subsection on the corresponding line if the fund has dropped to between one and one-half percent and one percent; or

(f) the rate in schedule 6 of the table provided in Paragraph (4) of this subsection on the corresponding line if the fund has dropped below one percent.

(3) As used in this section:

(a) "annual payroll" means the total amount of remuneration from an employer for employment during a twelve-month period ending on a computation date, and "average payroll" means the average of the last three annual payrolls;

(b) "base-period wages" means the wages of an individual for insured work during his base period on the basis of which his benefit rights were determined;

(c) "base-period employers" means the employers of an individual during his base period; and

(d) "computation date" for each calendar year means the close of business on June 30 of the preceding calendar year.

(4) Table of employer reserves and contribution rate schedules:

Employer Contribution Reserve	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
10.0% and over	0.1%	0.3%	0.6%
9.0%-9.9%	0.3%	0.6%	0.9%
8.0%-8.9%	0.6%	0.9%	1.2%
7.0%-7.9%	0.9%	1.2%	1.5%
6.0%-6.9%	1.2%	1.5%	1.8%
5.0%-5.9%	1.5%	1.8%	2.1%
4.0%-4.9%	1.8%	2.1%	2.4%
3.0%-3.9%	2.1%	2.4%	2.7%
2.0%-2.9%	2.4%	2.7%	3.0%
1.0%-1.9%	2.7%	3.0%	3.3%
0.9%-0.0%	3.0%	3.3%	3.6%
(-0.1%)-(-0.5%)	3.3%	3.6%	3.9%
(-0.5%)-(-1.0%)	4.2%	4.2%	4.2%
(-1.0%)-(-2.0%)	5.0%	5.0%	5.0%
Under (-2.0%)	5.4%	5.4%	5.4%

Employer Contribution Reserve	Contribution Schedule 4	Contribution Schedule 5	Contribution Schedule 6
10.0% and over	0.9%	1.2%	2.7%
9.0%-9.9%	1.2%	1.5%	2.7%
8.0%-8.9%	1.5%	1.8%	2.7%
7.0%-7.9%	1.8%	2.1%	2.7%
6.0%-6.9%	2.1%	2.4%	2.7%

5.0%-5.9% 2.4% 2.7% 3.0%

4.0%-4.9% 2.7% 3.0% 3.3%

3.0%-3.9% 3.0% 3.3% 3.6%

2.0%-2.9% 3.3% 3.6% 3.9%

1.0%-1.9% 3.6% 3.9% 4.2%

0.9%-0.0% 3.9% 4.2% 4.5%

(-0.1%)-(-0.5%) 4.2% 4.5% 4.8%

(-0.5%)-(-1.0%) 4.5% 4.8% 5.1%

(-1.0%)-(-2.0%) 5.0% 5.1% 5.3%

Under (-2.0%) 5.4% 5.4% 5.4%.

I. The division shall promptly notify each employer of his rate of contributions as determined for any calendar year pursuant to this section. Such notification shall include the amount determined as the employer's average payroll, the total of all his contributions paid on his own behalf and credited to his account for all past years and total benefits charged to his account for all such years. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to his last known address or in the absence of mailing, within thirty days after the delivery of such notice, the employer files an application for review and redetermination, setting forth his reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with regulations prescribed by the secretary, but no employer shall have standing, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on his application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to his last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

J. The division will provide each contributing employer, within ninety days of the end of each calendar quarter, a written determination of benefits chargeable to

his account. Such determination shall become conclusive and binding upon the employer for all purposes unless, within thirty days after the mailing of the determination to his last known address or in the absence of mailing, within thirty days after the delivery of such determination, the employer files an application for review and redetermination, setting forth his reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with regulations prescribed by the secretary, but no employer shall have standing in any proceeding involving his contribution liability to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on his application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to his last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

K. The contributions, together with interest and penalties thereon imposed by the Unemployment Compensation Law, shall not be assessed nor shall action to collect the same be commenced more than four years after a report showing the amount of the contributions was due. In the case of a false or fraudulent contribution report with intent to evade contributions or a willful failure to file a report of all contributions due, the contributions, together with interest and penalties thereon, may be assessed or an action to collect such contributions may be begun at any time. Before the expiration of such period of limitation, the employer and the secretary may agree in writing to an extension thereof and the period so agreed on may be extended by subsequent agreements in writing. In any case where the assessment has been made and action to collect has been commenced within four years of the due date of any contribution, interest or penalty, including the filing of a warrant of lien by the secretary pursuant to Section 51-1-36 NMSA 1978, such action shall not be subject to any period of limitation.

L. The secretary shall correct any error in the determination of an employer's rate of contribution during the calendar year to which the erroneous rate applies, notwithstanding that notification of the employer's rate of contribution may have been issued and contributions paid pursuant to the notification. Upon issuance by the division of a corrected rate of contribution, the employer shall have the same rights to review and redetermination as provided in Subsection I of this section.

M. Any interest required to be paid on advances to this state's unemployment compensation fund under Title XII of the Social Security Act shall be paid in a timely manner as required under Section 1202 of Title XII of the Social Security Act and shall not be paid, directly or indirectly, by the state from amounts in the state's unemployment compensation fund."

Section 5

Section 5. Section 51-1-38 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 16, as amended) is amended to read:

"51-1-38. PENALTIES--LIABILITY FOR BENEFIT OVERPAYMENT.--

A. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under the Unemployment Compensation Law either for himself or for any other person, shall be punished by a fine of not more than one hundred dollars ($100) or by imprisonment for not longer than thirty days or by both such fine and imprisonment, and each such false statement or misrepresentation or failure to disclose a material fact shall constitute a separate offense. In any case where, after notice and an opportunity to be heard, any person is found by the secretary to have so obtained or increased the amount of any benefit for himself, he shall, in addition to other penalties provided herein, forfeit all benefit rights under the Unemployment Compensation Law for a period of not more than one year from and after such determination.

B. Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under the Unemployment Compensation Law or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not more than one hundred dollars ($100) or by imprisonment for not longer than thirty days or by both such fine and imprisonment, and each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense.

C. Any person who shall willfully violate any provision of the Unemployment Compensation Law or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of the Unemployment Compensation Law and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not more than one hundred dollars ($100) or by imprisonment for not longer than thirty days or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

D. Notwithstanding any other provision of the Unemployment Compensation Law, including the provisions of Subsection J of Section 51-1-8 NMSA 1978, if any individual claiming benefits or waiting period credits shall, in connection with such claim, make any false statement or representation, in writing or otherwise, knowing it to be false or shall knowingly fail to disclose any material fact in order to

obtain or increase the amount of a benefit payment, such claim shall not constitute a valid claim for benefits in any amount or for waiting period credits but shall be void and of no effect for all purposes. The entire amount of the benefits obtained by means of such claim shall be, in addition to any other penalties provided herein, subject to recoupment by deduction from the claimant's future benefits or they may be recovered as provided for the collection of past due contributions in Subsection B of Section 51-1-36 NMSA 1978.

E. Any person who, by reason of the nondisclosure or misrepresentation by him or by another of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent), has received any sum as benefits under the Unemployment Compensation Law, while any conditions for the receipt of benefits imposed by the Unemployment Compensation Law were not fulfilled in his case and any person who receives any sum as benefits while he knows or should know that he is not entitled to such benefits because he has received a notice of denial or disqualification or has received a monetary eligibility notice showing erroneous base period employers and wages, shall, in the discretion of the secretary and notwithstanding any action brought pursuant to Subsection A of this section, either be liable to have such sum deducted from any future benefits payable to him under the Unemployment Compensation Law or be liable to repay to the department for the unemployment compensation fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in Subsection B of Section 51-1-36 NMSA 1978 for the collection of past-due contributions.

F. Except as provided in Subsection J of Section 51-1-8 NMSA 1978, any person who has received benefits as a result of a determination or decision of the department or any court that he was eligible and not disqualified for such benefits and such determination or decision is subsequently modified or reversed by a final decision as provided in Section 51-1-8 NMSA 1978, or who has received benefits as a result of administrative error or for any other reason while conditions for the receipt of benefits imposed by the Unemployment Compensation Law were not fulfilled in his case or while he was disqualified from receiving benefits, irrespective of whether such overpayment of benefits was due to any fault of the person claiming benefits, shall, as determined by the secretary or his authorized delegate, either be liable to have such sum deducted from any future benefits payable to him under the Unemployment Compensation Law at a rate to be determined by the secretary but not less than fifty percent of the weekly benefit amount payable to him, or be liable to repay to the department, for the unemployment compensation fund or for credit to the appropriate reimbursable account, a sum equal to the amount of benefits received by him for which he was not eligible or for which he was disqualified or that was otherwise overpaid to him; provided, that for the purposes of this subsection, no determination or decision establishing an overpayment of benefits shall be issued by the department against any person for failure to meet the eligibility conditions of Paragraph (3) of Subsection A of Section 51-1-5 NMSA 1978 more than one year after payment of benefits has been made, unless such condition of eligibility has been appealed or otherwise contested within such year.

G. Any amount of benefits for which a person is determined to be overpaid pursuant to this section may be collected in the manner provided in Subsection B of Section 51-1-36 NMSA 1978 for the collection of past-due contributions, notwithstanding that the person from whom the overpayment is to be collected has been assessed a penalty pursuant to Subsections A, B and C of this section.

H. An individual shall be liable to repay the amount of benefits received for any period for which he also received an award or settlement of back pay resulting from an action or grievance concerning a discharge unless the amount of the back pay award or settlement was reduced by the amount of benefits received during the period. The individual shall furnish the division with a signed copy of the award or settlement agreement which sets forth his name, the name of the employer, the period of time covered by the award or settlement, and the amount by which the award or settlement was so reduced."

Section 6

Section 6. Section 51-1-42 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 19, as amended) is amended to read:

"51-1-42. DEFINITIONS.--As used in the Unemployment Compensation Law:

A. "base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

B. "benefits" means the cash unemployment compensation payments payable to an eligible individual pursuant to Section 51-1-4 NMSA 1978 with respect to his weeks of unemployment;

C. "contributions" means the money payments required by Section 51-1-9 NMSA 1978 to be made into the unemployment compensation fund by an employer on account of having individuals performing services for him;

D. "employing unit" means any individual or type of organization, including any partnership, association, cooperative, trust, estate, joint-stock company, agricultural enterprise, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, household, fraternity or club, the legal representative of a deceased person or any state or local government entity to the extent required by law to be covered as an employer, which has in its employ one or more individuals performing services for it within this state. All individuals performing services for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of the Unemployment Compensation Law. Individuals performing services for contractors, subcontractors or agents which are performing work or services for an employing unit, as described in this subsection, which is within the

scope of the employing unit's usual trade, occupation, profession or business shall be deemed to be in the employ of the employing unit for all purposes of the Unemployment Compensation Law unless such contractor, subcontractor or agent is itself an employer within the provision of Subsection E of this section;

E. "employer" includes:

(1) any employing unit which:

(a) unless otherwise provided in this section, paid for service in employment as defined in Subsection F of this section wages of four hundred fifty dollars ($450) or more in any calendar quarter in either the current or preceding calendar year or had in employment, as defined in Subsection F of this section, for some portion of a day in each of twenty different calendar weeks during either the current or the preceding calendar year, and irrespective of whether the same individual was in employment in each such day, at least one individual;

(b) for the purposes of Subparagraph (a) of this paragraph, if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1, another such week; and

(c) for purposes of defining an "employer" under Subparagraph (a) of this paragraph, the wages or remuneration paid to individuals performing services in employment in agricultural labor or domestic services as provided in Paragraphs (6) and (7) of Subsection F of this section shall not be taken into account; except that any employing unit determined to be an employer of agricultural labor under Paragraph (6) of Subsection F of this section shall be an employer under Subparagraph (a) of this paragraph so long as the employing unit is paying wages or remuneration for services other than agricultural services;

(2) any individual or type of organization that acquired the trade or business or substantially all of the assets thereof, of an employing unit which at the time of such acquisition was an employer subject to the Unemployment Compensation Law; provided that where such an acquisition takes place, the secretary may postpone activating the separate account pursuant to Subsection A of Section 51-1-11 NMSA 1978 until such time as the successor employer has employment as defined in Subsection F of this section;

(3) any employing unit which acquired all or part of the organization, trade, business or assets of another employing unit, and which, if treated as a single unit with such other employing unit or part thereof, would be an employer under Paragraph (1) of this subsection;

(4) any employing unit not an employer by reason of any other paragraph of this subsection,

(a) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund, or

(b) which, as a condition for approval of the Unemployment Compensation Law for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under the Unemployment Compensation Law;

(5) any employing unit, which, having become an employer under Paragraph (1), (2), (3) or (4) of this subsection, has not, under Section 51-1-18 NMSA 1978, ceased to be an employer subject to the Unemployment Compensation Law;

(6) for the effective period of its election pursuant to Section 51-1-18 NMSA 1978, any other employing unit which has elected to become fully subject to the Unemployment Compensation Law; and

(7) any employing unit for which any services performed in its employ are deemed to be performed in this state pursuant to an election under an arrangement entered into in accordance with Subsection A of Section 51-1-50 NMSA 1978;

F. "employment" means:

(1) any service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) and includes an individual's entire service, performed within or both within and without this state if:

(a) the service is primarily localized in this state with services performed outside the state being only incidental thereto; or

(b) the service is not localized in any state but some of the service is performed in this state and: 1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or 2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;

(3) services performed within this state but not covered under Paragraph (2) of this subsection if contributions or payments in lieu of contributions are not required and paid with respect to such services under an unemployment compensation law of any other state, the federal government or Canada;

(4) services covered by an election pursuant to Section 51-1-18 NMSA 1978 and services covered by an election duly approved by the secretary in accordance with an arrangement pursuant to Paragraph (1) of Subsection A of Section 51-1-50 NMSA 1978 shall be deemed to be employment during the effective period of such election;

(5) services performed by an individual for an employer for wages or other remuneration unless and until it is established by a preponderance of evidence that:

(a) such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact;

(b) such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the contract of service;

(6) service performed after December 31, 1977 by an individual in agricultural labor as defined in Subsection Q of this section if:

(a) such service is performed for an employing unit which: 1) paid remuneration in cash of twenty thousand dollars ($20,000) or more to individuals in such employment during any calendar quarter in either the current or the preceding calendar year; or 2) employed in agricultural labor ten or more individuals for some portion of a day in each of twenty different calendar weeks in either the current or preceding calendar year, whether or not such weeks were consecutive, and regardless of whether such individuals were employed at the same time;

(b) such service is not performed before January 1, 1980 by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 2l4(c) and 101(15)(H) of the Immigration and Nationality Act; and

(c) for purposes of this paragraph, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator or other person shall be treated as an employee of such crew leader: 1) if such crew leader meets the requirements of a crew leader as defined in Subsection L of this section; or 2) substantially all the members of such crew operate or maintain mechanized agricultural equipment which is provided by the crew leader; and 3) the individuals performing such services are not, by written agreement or in fact, within the

meaning of Paragraph (5) of this subsection, performing services in employment for the farm operator or other person;

(7) service performed after December 31, 1977 by an individual in domestic service in a private home, local college club or local chapter of a college fraternity or sorority for a person or organization that paid cash remuneration of one thousand dollars ($1,000) in any calendar quarter in the current or preceding calendar year to individuals performing such services;

(8) service performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) the service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and

(b) the organization meets the requirements of "employer" as provided in Subparagraph (a) of Paragraph (1) of Subsection E of this section;

(9) service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, after December 31, 197l in the employ of an American employer (other than service which is deemed "employment" under the provisions of Paragraph (2) of this subsection or the parallel provisions of another state's law), if:

(a) the employer's principal place of business in the United States is located in this state;

(b) the employer has no place of business in the United States, but: 1) the employer is an individual who is a resident of this state; 2) the employer is a corporation which is organized under the laws of this state; or 3) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) none of the criteria of Subparagraphs (a) and (b) of this paragraph are met, but the employer has elected overage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

"American employer" for purposes of Paragraph (9) of this subsection means a person who is: 1) an individual who is a resident of the United States; 2) a partnership if two-thirds or more of the partners are residents of the United States; 3) a trust if all of the trustees are residents of the United States; or 4) a corporation organized under the laws of the United States or of any state. For the purposes of Paragraph (9) of this

subsection "United States" includes the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

(10) notwithstanding any other provisions of this subsection, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under the Unemployment Compensation Law;

(11) "employment" shall not include:

(a) service performed in the employ of: 1) a church or convention or association of churches; or 2) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(b) service performed by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of majority in the employ of his father or mother;

(d) service performed in the employ of the United States government or an instrumentality of the United States immune under the constitution of the United States from the contributions imposed by the Unemployment Compensation Law except that to the extent that the congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the provisions of the Unemployment Compensation Law shall be applicable to such instrumentalities, and to service performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided, that if this state shall not be certified for any year by the secretary of labor of the United States under Section 3304 of the federal Internal Revenue Code (26 U.S.C. Section 3304), the payments required of such instrumentalities with respect to such year shall be refunded by the department from the fund in the same manner and within the same period as is provided in Subsection D of Section 51-1-36 NMSA 1978 with respect to contributions erroneously collected;

(e) service performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot

be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

(f) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(g) service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(h) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(i) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(j) service covered by an election duly approved by the agency charged with the administration of any other state or federal unemployment compensation law, in accordance with an arrangement pursuant to Paragraph (1) of Subsection A of Section 51-1-50 NMSA 1978 during the effective period of such election;

(k) service performed, as part of an unemployment work-relief or work-training program assisted or financed in whole or part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training;

(l) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if the service is an integral part of such program, and the institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(m) service performed in the employ of a hospital, if the service is performed by a patient of the hospital, or services performed by an inmate of a custodial or penal institution for a governmental entity or nonprofit organization;

(n) service performed by real estate salesmen for others when the services are performed for remuneration solely by way of commission;

(o) service performed in the employ of a school, college or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university; or

(p) service performed by an individual for a fixed or contract fee officiating at a sporting event which is conducted by or under the auspices of a nonprofit or governmental entity if that person is not otherwise an employee of the entity conducting the sporting event; and

(12) for the purposes of this subsection, if the services performed during one-half or more of any pay period by an individual for the person employing him constitute employment, all the services of such individual for such period shall be deemed to be employment but, if the services performed during more than one-half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to the individual by the person employing him. This paragraph shall not be applicable with respect to services performed in a pay period by an individual for the person employing him where any of such service is excepted by Subparagraph (f) of Paragraph (11) of this subsection;

G. "employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices;

H. "fund" means the unemployment compensation fund established by the Unemployment Compensation Law to which all contributions and payments in lieu of contributions required under the Unemployment Compensation Law and from which all benefits provided under the Unemployment Compensation Law shall be paid;

I. "unemployment" means, with respect to an individual, any week during which he performs no services and with respect to which no wages are payable to him and during which he is not engaged in self-employment or receives an award of back pay for loss of employment. The secretary shall prescribe by regulation what constitutes part-time and intermittent employment, partial employment and the conditions under which individuals engaged in such employment are eligible for partial unemployment benefits;

J. "state", when used in reference to any state other than New Mexico, includes, in addition to the states of the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

K. "unemployment compensation administration fund" means the fund established by Subsection A of Section 51-1-34 NMSA 1978 from which administrative expenses under the Unemployment Compensation Law shall be paid. "Employment

security department fund" means the fund established by Subsection B of Section 51-1-34 NMSA 1978 from which certain administrative expenses under the Unemployment Compensation Law shall be paid;

L. "crew leader" means:

(1) a person who holds a valid certificate of registration as a crew leader or farm labor contractor under the Migrant and Seasonal Agricultural Worker Protection Act;

(2) furnishes individuals to perform services in agricultural labor for any other person;

(3) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for service in agricultural labor; and

(4) has not entered into a written agreement with the other person for whom he furnishes individuals in agricultural labor, that such individuals will be the employees of the other person;

M. "week" means such period of seven consecutive days, as the secretary may by regulation prescribe. The secretary may by regulation prescribe that a week shall be deemed to be "in", "within" or "during" that benefit year which includes the greater part of such week;

N. "calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31;

O. "insured work" means services performed for employers who are covered under the Unemployment Compensation Law;

P. "benefit year" with respect to any individual means the one-year period beginning with the first day of the first week of unemployment with respect to which the individual first files a claim for benefits in accordance with Subsection A of Section 51-1-8 NMSA 1978, and thereafter the one-year period beginning with the first day of the first week of unemployment with respect to which the individual next files such a claim for benefits after the termination of his last preceding benefit year; provided, that at the time of filing such a claim the individual has been paid the wages for insured work required under Paragraph (5) of Subsection A of Section 51-1-5 NMSA 1978;

Q. "agricultural labor" includes all services performed:

(1) on a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation or maintenance of such farm and its tools and equipment, if the major part of such service is performed on a farm;

(3) in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes when such ditches, canals, reservoirs or waterways are owned and operated by the farmers using the water stored or carried therein; and

(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivery to storage or to market or to a carrier for transportation to market any agricultural or horticultural commodity but only if such service is performed as an incident to ordinary farming operations. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, greenhouses, ranges and orchards;

R. "payments in lieu of contributions" means the money payments made into the fund by an employer pursuant to the provisions of Subsection A of Section 51-1-13 NMSA 1978;

S. "department" means the labor department; and

T. "wages" means all remuneration for services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be established and determined in accordance with regulations prescribed by the secretary; provided, that the term "wages" shall not include:

(1) subsequent to December 31, 1977, that part of the remuneration in excess of the base wage as determined by the secretary for each calendar year. The base wage upon which contribution shall be paid during any calendar year shall be sixty-five percent of the state's average annual earnings computed by the department by dividing total wages reported to the department by contributing employers for the second preceding calendar year before the calendar year the computed base wage becomes effective by the average annual employment reported by contributing employers for the same period rounded to the next higher multiple of one hundred dollars ($100); provided, that the base wage so computed for any calendar year shall not be less than seven thousand dollars ($7,000). Wages paid by an employer to an individual in his employ during any calendar year in excess of the

base wage in effect for that calendar year shall be reported to the department but shall be exempt from the payment of contributions unless such wages paid in excess of the base wage become subject to tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund;

(2) the amount of any payment with respect to services performed after June 30, 1941 to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment), on account of:

(a) retirement if such payments are made by an employer to or on behalf of any employee under a simplified employee pension plan that provides for payments by an employer in addition to the salary or other remuneration normally payable to such employee or class of such employees and does not include any payments which represent deferred compensation or other reduction of an employee's normal taxable wages or remuneration or any payments made to a third party on behalf of an employee as part of an agreement of deferred remuneration;

(b) sickness or accident disability if such payments are received under a workers' compensation or occupational disease disablement law;

(c) medical and hospitalization expenses in connection with sickness or accident disability; or

(d) death;

provided the individual in its employ has not the option to receive, instead of provision for such death benefit, any part of such payment, or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employing unit and has not the right under the provisions of the plan or system or policy of insurance providing for such death benefit to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his service with such employing unit;

(3) remuneration for agricultural labor paid in any medium other than cash;

(4) any payment made to, or on behalf of, an employee or an employee's beneficiary under a cafeteria plan within the meaning of Section 125 of the federal Internal Revenue Code of 1986;

(5) any payment made, or benefit furnished to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe

that the employee will be able to exclude such payment or benefit from income under Section 129 of the federal Internal Revenue Code of 1986; or

(6) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died. The provisions of this section shall become effective July 1, 1993."

Section 7

Section 7. Section 51-1-48.1 NMSA 1978 (being Laws 1981, Chapter 354, Section 13, as amended) is amended to read:

"5l-l-48.l. EXTENDED BENEFITS--ELIGIBILITY.--

A. During an extended benefit period in this state, an individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the secretary finds that with respect to such week:

(1) he is an "exhaustee" as defined in Section 5l-l-48 NMSA l978;

(2) he has been paid wages for insured work during his base period equal to at least one and one-half times the wages paid in that quarter of his base period in which his wages were highest or as otherwise provided by the Federal-State Extended Unemployment Compensation Act of 1970, as amended; and

(3) he has satisfied those provisions of the Unemployment Compensation Law which apply to claims for, and the payment of, regular benefits and which are consistent with the provisions of this section and the Federal-State Extended Unemployment Compensation Act of 1970, as amended.

B. An individual shall be ineligible for payment of extended benefits for any week of unemployment in the individual's extended eligibility period if the secretary finds that during such period the individual failed to accept any offer of suitable work or failed to apply for any suitable work to which the individual was referred by the department or the individual failed to actively engage in seeking work.

(1) For purposes only of this subsection, "suitable work" means any work which is within an individual's capabilities, provided that the gross average weekly remuneration payable for the work must:

(a) exceed the individual's weekly extended benefit amount as determined in Subsection A of Section 5l-l-48.2 NMSA l978 plus the amount of any supplemental unemployment benefits (as defined in Section 50l (c)(l7)(D) of the Internal Revenue Code of l954) payable to the individual;

(b) equal or exceed the higher of: l) the minimum wage required by Section 6(a)(1) of the Fair Labor Standard Act of l938, as amended, without regard to any exemption; or 2) the minimum wage provisions of Section 50-4-22 NMSA l978, as amended; and

(c) the offer of work is a bona fide offer made to the individual in writing or is currently listed with the employment service of the division.

(2) For purposes of this subsection, an individual shall be treated as actively engaged in seeking work during a week of unemployment if the individual furnishes tangible evidence each week, as provided by regulation of the secretary, that he has made a systematic and sustained effort to obtain work which meets the criteria in Paragraph (1) of this subsection.

C. If any individual is ineligible for extended benefits for any week because of his failure to accept any offer of suitable work or to apply for any suitable work when referred by the department or to actively seek new work as provided in this section, the individual shall be ineligible to receive extended benefits for any week during the period beginning with the week following the week in which such failure occurs and until the individual has been employed during at least four weeks and has earned a total remuneration of at least four times his weekly extended benefit amount established during his benefit year.

D. If an individual furnishes evidence satisfactory to the division that such individual's prospects for obtaining work in his customary occupation or trade within a reasonably short period are good, the determination of suitable work with respect to such individual shall be made in accordance with the state law provisions applicable to claimants for regular benefits.

E. The employment service of the division shall refer applicants for extended benefits to suitable work meeting the criteria of Paragraph (1) of Subsection B of this section.

F. An individual shall not be eligible for extended benefits for any week for which such benefits would be payable pursuant to an interstate claim filed under the interstate benefit payment plan if no extended benefit period is in effect for the week in the state in which the interstate claim is filed. The provisions of this subsection shall not apply to the first two weeks for which extended benefits are payable to the individual on an interstate claim from the extended benefit account established for the individual with respect to the benefit year."

Section 8

Section 8. A new section of the Unemployment Compensation Law, Section 51-1-58 NMSA 1978, is enacted to read:

"51-1-58. CONFORMITY WITH FEDERAL LAWS.--If any provisions of this chapter are determined to be in nonconformity with federal statutes, as determined by the United States secretary of labor or his designee, the secretary, with the approval of the governor, is authorized to administer the state law to conform with any mandatory conformity provisions of the federal statutes until such time as the legislature meets in its next regular session and has an opportunity to amend the state law."

Section 9

Section 9. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. SB 453

CHAPTER 210

RELATING TO FINANCIAL INSTITUTIONS; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 58-1-65 NMSA 1978 (being Laws 1963, Chapter 305, Section 53, as amended) is amended to read:

"58-1-65. DIRECTORS AND OFFICERS.--

A. The affairs of a state bank shall be managed by a board of directors, which shall exercise its powers and be responsible for the discharge of its duties. The number of directors, not less than three and not more than twenty-five, shall be fixed by the bylaws and the number so fixed shall be the board, regardless of vacancies. At least three-fourths of the directors shall be citizens of the United States and two-thirds shall be residents of the state. Each director shall have full record and beneficial ownership free of lien or encumbrance on common stock of the bank, or, when a bank is controlled by a bank holding company, either ownership of the common stock of the bank or ownership in a similar manner of shares of common stock of the bank holding company, of the book value of at least one thousand dollars ($1,000). Any director who becomes disqualified shall forthwith resign his office, but, upon removal of the disqualification, he shall be eligible for election. A director who is disqualified may be removed by the board of directors or by the director of the division. No action taken by a director prior to the resignation or removal shall be subject to attack on the ground of his disqualification.

B. Directors shall receive such reasonable compensation as the bylaws may prescribe and shall serve until their successors are elected and qualify.

C. Directors shall be elected by the stockholders at the first meeting and thereafter at the annual meeting or at a special meeting called for that purpose. If the articles of incorporation provide for cumulative voting, the votes of each share may be cast for one person or divided among two or more as the stockholder may choose. The person or persons, according to the number of directors to be elected, having the largest number of votes shall be elected.

D. The term of office of directors shall be one year or, if the bylaws so provide, three years, in which case one-third of the directors, or as near to one-third as possible, shall be elected for each year following the first election of directors. Vacancies at any one time, to the number of one-third of the board, may be filled by vote of the board of directors until the next meeting of the stockholders. The director of the division may designate a director to fill a vacancy that has continued for longer than three months, and a director so designated shall serve until a successor is electe and has qualified.

E. A director may be removed by the stockholders at a meeting. Where cumulative voting for directors is provided in the articles of incorporation, no director shall be removed unless the votes cast against a motion for his removal are less than the total number of shares outstanding divided by the number of authorized directors, but all of the directors shall be removed if a majority of the outstanding shares approves a motion for the removal of all.

F. The officers designated by the bylaws shall be elected by the board of directors. A member of the board of directors shall be elected president. Officers shall be elected or a contract executed for their employment in accordance with the bylaws of the bank. An officer may be removed by the board of directors at any time, but removal shall not prejudice any rights that he may have to damages for breach of contract of employment.

G. A bank shall report promptly to the director of the division any changes among executive officers and directors, including in its report a statement of the business and professional affiliations of new executive officers and directors."

Section 2

Section 2. Section 58-4-1 NMSA 1978 (being Laws 1951, Chapter 37, Section 1) is amended to read:

"58-4-1. ADDITIONAL DEFINITIONS.--As used in this article, unless the context otherwise requires:

A. "association" includes a state or federal savings and loan association unless limited by use of the words "state" or "federal";

B. "converting bank" means a bank converting from a state bank to a national bank or the reverse;

C. "merger" includes consolidation;

D. "merging bank" means a party to a merger;

E. "resulting bank" means the bank resulting from a merger or conversion; and

F. "dissenting stockholder" means a stockholder dissenting and voting his dissent as provided in this article."

Section 3

Section 3. A new section of the Banking Act, Section 58-4-13 NMSA 1978, is enacted to read:

"58-4-13. CONVERSION OF SAVINGS ASSOCIATION TO A STATE BANK.--

A. Any association may convert to a state bank pursuant to this section. A mutual association shall first convert to a stock association before applying for conversion to a state bank. A transaction in which the resulting bank is a subsidiary or an affiliate of a bank holding company or bank that has been in existence for at least two years shall not be subject to the provisions of this section but shall be subject to the approval of the director of the division.

B. Any association, upon a majority vote of its board of directors, may apply to the director of the division for permission to convert to a bank and for certification of appropriate articles of incorporation and bylaws to effect the conversion.

C. The association shall submit a plan of conversion as a part of the application to the director of the division. The director may recommend approval of the plan of conversion with or without amendment. The director shall recommend approval of the plan of conversion if upon examination and investigation he finds that:

(1) the resulting bank will operate in a safe, sound and prudent manner with adequate capital, liquidity and earning prospects;

(2) the directors, officers and other managerial officials of the association are qualified by character and financial responsibility to control and operate in a legal and proper manner the bank proposed to be formed as a result of the conversion;

(3) the interest of the depositors, the creditors and the public generally will not be jeopardized by the proposed conversion; and

(4) the proposed name will not mislead the public as to the character or purpose of the resulting bank, and the proposed name is not the same as one already adopted or appropriated by an existing bank in this state or so similar as to be likely to mislead the public.

D. The director of the division may promulgate rules to govern conversion undertaken pursuant to this section. The requirements for a converting association shall be no more stringent than those provided by rule or regulation applicable to other federal-deposit-insurance-corporation insured commercial banks. The requirements for a converting association shall be no less stringent than those provided by rule or regulation applicable to other federal-deposit-insurance-corporation insured commercial banks, except as may be allowed during transition periods permitted by this section.

E. In the event the director of the division fails to promulgate rules, the conditions to be met for approval of the application for conversion shall include the following:

(1) the applicant's general condition shall reflect adequate capital, liquidity, reserves, earning and asset composition necessary for safe and sound operation of the resulting bank;

(2) the management and the board of directors shall be capable of supervising a sound banking operation and overseeing the changes that must be accomplished in the conversion from an association to a bank;

(3) the director of the division shall determine that the conversion will have a positive impact on the convenience of the public and will not substantially reduce the services available to the public in the market area; and

(4) within a reasonable time after the effective date of the conversion, the resulting bank shall divest itself of all assets and liabilities that do not conform to state banking law or rules. The length of this transition period shall be determined by the director of the division and shall be specified when the application for conversion is approved.

F. In evaluating each of the conditions described in Subsection E of this section, the director of the division shall consider a comparison of the relevant financial ratios of the applicant with the average ratios of New Mexico banks of similar asset size.

G. If the director of the division approves the plan of conversion, then the association shall submit the plan to the stockholders. After approval of the plan of conversion, the director shall supervise and monitor the conversion process and shall

ensure that the conversion is conducted pursuant to law and the association's approved plan of conversion.

H. After lawful notice to the stockholders of the association and full and fair disclosure of the plan of conversion, the plan shall be approved by a majority of the total votes that stockholders of the association are eligible and entitled to cast. Stockholders may vote in person or by proxy. Following the vote of the stockholders, the association shall file with the director of the division the results of the vote certified by an appropriate officer of the association. The director shall then approve the requested conversion, and the association shall file with the state corporation commission articles of incorporation with the certificate of the approval of the director attached. The conversion of the association to a bank shall be effective upon this filing.

I. The director of the division may authorize the resulting bank to:

(1) wind up any activities legally engaged in by the association at the time of conversion but not permitted to state banks; and

(2) retain for a transitional period any assets and deposit liabilities legally held by the association at the effective date of the conversion that may not be held by state banks.

J. Upon conversion of an association to a bank, the legal existence of the association does not terminate, and the resulting bank is a continuation of the association. The conversion shall be a mere change in identity, form or organization. All rights, liabilities, obligations, interest and relations of whatever kind of the association shall continue and remain in the resulting bank. Except as may be authorized during a transitional period by the director of the division, a bank resulting from the conversion of an association shall have only those rights, powers and duties that are authorized for banks by law. All actions and legal proceedings to which the association was a party prior to conversion shall be unaffected by the conversion and shall proceed as if the conversion had not taken place.

K. As used in this section, "conversion" includes:

(1) a transaction in which a state bank assumes all or substantially all of the liabilities and purchases all or substantially all of the assets of an association; and

(2) any other transaction that results in a change of identity of an association to a state bank."

Section 4

Section 4. Section 58-15-3 NMSA 1978 (being Laws 1955, Chapter 128, Section 3, as amended) is amended to read:

"58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--PENALTY.--

A. No person shall engage in the business of lending in amounts of two thousand five hundred dollars ($2,500) or less without first having obtained a license from the director. Nothing contained in this subsection shall restrict or prohibit a licensee under the New Mexico Small Loan Act of 1955 from making loans in any amount under the New Mexico Bank Installment Loan Act of 1959 in accordance with the provisions of Section 58-7-2 NMSA 1978.

B. Nothing in the New Mexico Small Loan Act of 1955 shall apply to a person making individual advances of two thousand five hundred dollars ($2,500) or less under a written agreement providing for a total loan or line of credit in excess of two thousand five hundred dollars ($2,500) for which real estate is pledged as collateral.

C. Any banking corporation, savings and loan association or credit union operating under the laws of the United States or of New Mexico shall be exempt from the licensing requirements of the New Mexico Small Loan Act of 1955, nor shall that act apply to any business transacted by any such person under the authority of and as permitted by any such law, nor to any bona fide pawnbroking business transacted under a pawnbroker's license, nor to bona fide commercial loans made to dealers upon personal property held for resale. Nothing contained in the New Mexico Small Loan Act of 1955 shall be construed as abridging the rights of any of those exempted from the operations of that act from contracting for or receiving interest or charges not in violation of any existing applicable statute of this state.

D. The provisions of Subsection A of this section apply to any person owning any interest, legal or equitable, in the business or profits of any licensee whose name does not specifically appear on the face of the license, except a stockholder in a corporate licensee, and to any person who seeks to evade its application by any device, subterfuge or pretense whatsoever, including but not thereby limiting the generality of the foregoing: the loan, forbearance, use or sale of credit (as guarantor, surety, endorser, comaker or otherwise), money, goods or things in action; the use of collateral or related sales or purchases of goods or services or agreements to sell or purchase, whether real or pretended; receiving or charging compensation for goods or services, whether or not sold, delivered or provided; and the real or pretended negotiation, arrangement or procurement of a loan through any use or activity of a third person, whether real or fictitious.

E. Any person, copartnership, trust and the trustees or beneficiaries thereof, association or corporation and the several members, officers, directors, agents and employees thereof who violate or participate in the violation of any provision of Subsection A of this section is guilty of a petty misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 (B) NMSA 1978. Any contract or loan in the making or collection of which any act is done that violates Subsection A or D of this section is void and the lender has no right to collect, receive or retain any principal, interest or charges whatsoever."

Section 5

Section 5. Section 58-15-5 NMSA 1978 (being Laws 1978, Chapter 6, Section 1, as amended) is amended to read:

"58-15-5. LICENSES--INVESTIGATION OF APPLICATON--ISSUANCE--DENIAL--ISSUANCE OF RENEWAL LICENSE--DENIAL OF RENEWAL LICENSE--FITNESS AND CHARACTER OF APPLICANT--LICENSE FEES--LICENSEE BOUND BY ACT.--

A. Upon the filing of an application, whether it is an original or a renewal, the director shall investigate the facts concerning the application and the requirements provided in this section.

Any applicant for license, upon written notice to do so by the director, shall within twenty days after service of
the notice furnish in writing, under oath, to the director any and all additional information required by the director that may be relevant or, in the opinion of the director, helpful to him in conducting his investigation.

Failure to comply with the director's requirement for supplemental information or the willful furnishing of false information is sufficient ground for denial of license.

False or misleading information willfully and intentionally furnished to the director prior to the issuance of any license is ground for suspension or revocation of any license in accordance with the procedures for suspension or revocation of license in the New Mexico Small Loan Act of 1955.

The director shall grant or deny each application for an original license within sixty days from the filing of the application with the required information and fees, unless the period is extended by written agreement between the applicant and the director.

B. In the event the director finds:

(1) that the financial responsibility, character and general fitness of the applicant for an original license and of the individual members and beneficiaries thereof, if the applicant is a copartnership, association or trust, and of the officers and directors thereof, if the applicant is a corporation, are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly and efficiently within the declared purposes and spirit of the New Mexico Small Loan Act of 1955;

(2) that allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted; and

(3) that the applicant has available for operation of the business at the specified location cash or its equivalent, convertible securities or receivables of thirty thousand dollars ($30,000) or any combination thereof;
he shall enter an order granting the application, file his findings and, upon payment of the license fee of five hundred dollars ($500), issue and deliver a license to the applicant.

C. If the director does not make the findings enumerated in Subsection B of this section, he shall enter an order denying the application, notify the applicant of the denial and retain the application fee. Within thirty days after the entry of such an order, he shall prepare written findings and shall deliver a copy to the applicant.

D. Written application for renewal licenses shall be filed on or before March 31 of each year, and thereupon the director shall investigate the facts and review his files of examinations of the applicant made by his office and of complaints filed by borrowers, if any. If he finds:

(1) that no valid complaints of violations or abuses of the New Mexico Small Loan Act of 1955 or of the regulations of the director promulgated under that act have been filed by borrowers;

(2) that his examinations of the affairs of the applicant indicate that the business has been conducted and operated lawfully and efficiently within the declared purposes and spirit of the New Mexico Small Loan Act of 1955; and

(3) that the financial responsibility, experience and general fitness and character of the applicant remain such as to command the confidence of the public and to warrant the belief that the business will continue to be operated lawfully and efficiently within the purposes and spirit of the New Mexico Small Loan Act of 1955;
he shall deliver a renewal license to the applicant.

E. If the director does not make the findings enumerated in Subsection D of this section, he may grant a temporary extension of the license not exceeding sixty days pending a hearing; shall enter an order fixing a date for hearing upon the application; shall notify the licensee thereof, specifying the particular complaints, violations or abuses or other reasons for his contemplated refusal to renew the license; and shall afford to the applicant an opportunity to be heard. At the hearing, the director shall produce his evidence to establish the truth of the charges of violation or other grounds specified in the notice, and the applicant shall be accorded the right to produce evidence or other matters of defense. If after the hearing the director finds that the complaints of violations or other grounds specified in the notice are not well founded, he shall issue the renewal license. If he finds that the complaints of violations or other grounds are well founded, he shall enter an order denying the renewal application and notify the applicant of the denial, returning the renewal license fee tendered with the application. Within thirty days after the entry of such an order, he shall prepare written findings and shall deliver a copy of the findings to the applicant. The order shall be

subject to review as provided in Section 58-15-25 NMSA 1978. The court in its discretion and upon proper showing may order a temporary extension of the license pending disposition of the review proceedings.

F. In connection with the determination of fitness and character of an applicant under this section, the fact that the applicant or licensee is a member of or interested financially in, connected or affiliated with, controls or is controlled by or owns or is owned by other corporations, partnerships, trusts, associations or other legal entities engaged in the lending of money whose policies and practices as to rates of interest, charges and fees and general dealing with borrowers are questionable or would constitute violation of the general usury statutes of this state or of the declared purposes and spirit of the New Mexico Small Loan Act of 1955 shall be given such consideration and weight as the director determines.

G. At the time of issuance of original license and each annual renewal thereof, the licensee for each licensed office shall pay to the director as a license fee for the period covered by the license the sum of five hundred dollars ($500) as a minimum, plus an additional seventy-five cents ($.75) for each one thousand dollars ($1,000) or fraction thereof of loans outstanding as of December 31 next preceding, as shown on the applicant's annual report. In the event that the application for annual renewal of the license is delinquent, the licensee shall also pay a delinquency fee of ten dollars ($10.00) per day for each day the licensee is delinquent in filing the application for renewal.

H. Each licensee by accepting any license that is issued or renewed or by continuing to operate any licensed office under the New Mexico Small Loan Act of 1955 shall by such action be deemed to have consented to be bound by the lawful provisions of that act and all lawful requirements, regulations and orders of the director promulgated or issued pursuant to any authorization granted in that act."

Section 6

Section 6. Section 58-15-10 NMSA 1978 (being Laws 1955, Chapter 128, Section 10, as amended) is amended to read:

"58-15-10. BOOKS AND RECORDS--ANNUAL REPORTS--ADDITIONAL INFORMATION.--

A. Each licensee shall keep and use in his business such books, accounts and records in accordance with sound accounting practices as in the director's opinion will enable him to determine whether the licensee is complying with the provisions of the New Mexico Small Loan Act of 1955 and with the orders and regulations lawfully made by the director under that act. Each licensee shall preserve the books, accounts and records for at least two years after making the final entry on any loan recorded therein.

B. Each licensee shall annually on or before March 31 file a report with the director giving such relevant information as he may reasonably require concerning the business and operations during the preceding calendar year for each licensed place of business conducted by the licensee within the state pursuant to the provisions of the New Mexico Small Loan Act of 1955. The report shall be made under oath and shall be in the form prescribed by the director. A summary of the reports shall be included in the published annual report of the director.

C. At the time of filing each annual report, at the time of the annual examination or at any other time when any license is in effect, the director may, upon written notice, require any licensee to furnish within twenty days in writing, and under oath if so specified by any written notice issued and served by the director upon the licensee, any and all additional information as to ownership of any office; operation of any office; books, records, files and papers; and affiliation or relationship with any other person, firm, trust, association or corporation as, in the opinion of the director, may be helpful to him in the discharge of his official duties.

False or misleading information willfully furnished to the director by any licensee in any annual report or pursuant to any notice or requirement of the director is sufficient ground for suspension and revocation of license in accordance with the procedures for suspension or revocation of license set forth in the New Mexico Small Loan Act of 1955."

Section 7

Section 7. Section 58-16-9 NMSA 1978 (being Laws 1990, Chapter 123, Section 9) is amended to read:

"58-16-9. OFF-PREMISES ATM CONSIDERED A FINANCIAL INSTITUTION BRANCH OFFICE.--

A. An off-premises ATM is a branch office of a financial institution. Subject to the limitations contained
in the Remote Financial Service Unit Act, in-state financial institutions are authorized to install one or more off-premises ATMs. Before installing or operating an off-premises ATM, the in-state financial institution shall first obtain the approval of the director to install and operate the off-premises ATM, which written approval shall not be withheld by the director unless good cause is shown. The director, in making this determination, shall take into account, but not by way of limitation, factors such as the financial history and condition of the applicant, the adequacy of its capital structure, its future earnings prospects and the general character of its management, the future earnings prospects of the off-premises ATM and the adequacy of any network, intercept processor or processing computer, if any. The director's approval shall not be given until the director has ascertained to his satisfaction that:

(1) the establishment of the off-premises ATM complies in all respects with all applicable requirements for a branch office of the particular financial institution making application, including but not limited to geographic restrictions, if any;

(2) the proposed location is in the public interest; and

(3) the establishment of the off-premises ATM will meet the needs and promote the convenience of the area to be served by the ATM.

B. An investigation fee of four hundred dollars ($400) shall accompany each application for an off-premises ATM."

Section 8

Section 8. Section 58-17-16 NMSA 1978 (being Laws 1961, Chapter 156, Section 16, as amended) is amended to read:

"58-17-16. VIOLATIONS--PUNISHMENT.--

A. Whoever violates any provision of the Endowed Care Cemetery Act of 1961, except as provided in Subsection B of this section, is guilty of a petty misdemeanor.

B. Whoever fails to establish an irrevocable trust fund, encroaches upon the principal of an irrevocable trust, refuses to cooperate in an examination or investigation or violates the provisions of a trust instrument by willfully failing to deposit to a cemetery's trust fund the amounts provided within the time provided by Section 58-17-6 NMSA
1978, or any greater amounts if the trust instrument provides for greater amounts to be deposited, is guilty of a fourth degree felony and shall be sentenced in accordance with the Criminal Sentencing Act."

Section 9

Section 9. Section 58-21-5 NMSA 1978 (being Laws 1983, Chapter 86, Section 5, as amended) is amended to read:

"58-21-5. REGISTRATION FEES--DURATION OF REGISTRATION.--

A. Applicants shall, at the time of application, pay to the division four hundred dollars ($400) for initial registration and three hundred dollars ($300) for each renewal registration. Additionally, th director shall charge and collect from an applicant a fee of ten dollars ($10.00) per day for late filings of a renewal registration or three hundred dollars ($300), whichever is less.

B. A registration shall continue for a period of twelve months from the date of registration. Each registrant shall submit a renewal application at least thirty days before the expiration of his existing registration.

C. Persons claiming exemption pursuant to Subsection H of Section 58-21-6 NMSA 1978 shall, at the time of such claim, pay to the division three hundred dollars ($300). Additionally, the director shall charge and collect from a claimant a fee of ten dollars ($10.00) per day for late filings of an exemption certification form or three hundred dollars ($300), whichever is less."

Section 10

Section 10. Section 58-21-9 NMSA 1978 (being Laws 1983, Chapter 86, Section 9) is amended to read:

"58-21-9. POWERS AND DUTIES OF DIRECTOR.--

A. The director shall exercise general supervision and control over mortgage loan companies and loan brokers doing business in New Mexico. In addition to the other duties imposed on him by law, the director shall:

(1) make reasonable rules and regulations as may be necessary for the implementation of the Mortgage Loan Company and Loan Broker Act; provided that such rules and regulations shall be subject to the judicial review in the manner set forth in Section 12-8-8 NMSA 1978;

(2) conduct such investigations as may be necessary to determine whether any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Mortgage Loan Company and Loan Broker Act; and

(3) conduct examinations, investigations and hearings in addition to those specifically provided for by law as may be necessary and proper to the efficient administration of the Mortgage Loan Company and Loan Broker Act.

B. The director may conduct an investigation upon complaint, when it appears that a mortgage loan company or loan broker is conducting business in a manner injurious to consumers or brokers, or when it appears that any person has improperly claimed an exemption pursuant to Subsection E or H of Section 58-21-6 NMSA 1978." SB 462

CHAPTER 211

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE DEFENSE CONVERSION AND TECHNOLOGY ACT; ENACTING CERTAIN SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Defense Conversion and Technology Act".

Section 2

Section 2. PURPOSE.--The purpose of the Defense Conversion and Technology Act is to designate the economic development department as the lead agency to promote defense conversion technology, coordinate the transfer of defense technology and other technology from federal, state and local government facilities to private sector industries and promote private-public partnership and business development programs.

Section 3

Section 3. DEFINITIONS.--As used in the Defense Conversion and Technology Act:

A. "commission" means the economic development and tourism commission or any successor commission created in Chapter 9, Article 15 NMSA 1978 to provide program and policy guidance to the department; and

B. "department" means the economic development department.

Section 4

Section 4. DESIGNATION AS THE LEAD STATE AGENCY.--The department is designated as the lead state agency to coordinate or accept federal and state funds appropriated for conversion of defense technologies and to coordinate technology transfer in accordance with the state's technology development plan.

Section 5

Section 5. DEFENSE CONVERSION--DEPARTMENT DUTIES.--

A. The department shall coordinate all defense conversion and technology transfer activities of the state. The department is authorized to contract with the appropriate partnership intermediaries to assist in the coordination of defense conversion duties.

B. The department shall:

(1) oversee the activities of the manufacturing productivity center and manufacturing extension programs;

(2) coordinate the activities of small business incubators to encourage the development and viability of technology spin-off companies in the private sector;

(3) coordinate appropriate divisions in the department to provide technology export assistance;

(4) coordinate small business development and assistance programs for new and existing businesses;

(5) work with appropriate entities to identify sources of funding for capital expenditure programs and initial venture programs;

(6) coordinate the development of regional technology clusters; and

(7) provide support and coordination assistance as deemed necessary by the commission and the secretary of the department to assist the state in developing defense conversion industries.

Section 6

Section 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.SB 513

CHAPTER 212

RELATING TO LICENSES; PROVIDING FOR THE LICENSURE AND REGULATION OF PRIVATE INVESTIGATORS AND POLYGRAPHERS; CREATING THE PRIVATE INVESTIGATOR AND POLYGRAPHER FUND; PROVIDING FOR CRIMINAL PENALTIES; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Private Investigators and Polygraphers Act".

Section 2

Section 2. DEFINITIONS.--As used in the Private Investigators and Polygraphers Act:

A. "alarm company" means a company that installs burglar or security alarms in a facility and responds with guards when the alarm is sounded;

B. "armored car company" means a company that knowingly and willingly transports money and other negotiables for a fee or other remuneration;

C. "bodyguard" means a person who physically performs the mission of personal security of another individual;

D. "branch office" means an office physically located in New Mexico and managed, controlled or directed by a manager;

E. "client" means an individual or legal entity having a contract that authorizes services to be provided in return for financial or other consideration;

F. "conviction" means any final adjudication of guilty, whether pursuant to a plea of guilty or nolo contendere or otherwise and whether or not the sentence is deferred or suspended;

G. "department" means the regulation and licensing department;

H. "licensee" means a person licensed as a:

(1) private investigator;

(2) private patrol operator; or

(3) polygraph examiner;

I. "manager" means an individual who:

(1) is a resident of New Mexico;

(2) has the qualifications required of a licensee; and

(3) directs, controls or manages a private investigator or private patrol operator business for the owner of the business when the owner:

(a) is a nonresident licensee; or

(b) does not qualify for a license under the Private Investigators and Polygraphers Act;

J. "person" means any individual, firm, company, association, organization, partnership or corporation;

K. "polygraphy" means the employment of an instrument designed to graphically record simultaneously the physiological changes in human respiration, cardiovascular activity, galvanic skin resistance or reflex for the purpose of lie detection and includes the reading and interpretation of polygraphic records and results;

L. "private investigator" means a person who for any consideration whatsoever engages in business or accepts employment to conduct an investigation for the purpose of obtaining information with reference to:

(1) crime or wrongs done or threatened against the United States or any state or territory of the United States;

(2) the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliation, association, transactions, acts, reputation or character of any person;

(3) the location, disposition or recovery of lost or stolen property;

(4) the cause or responsibility for fires, losses, accidents or damage or injury to persons or properties; or

(5) the securing of evidence to be used before any court, board, officer or investigating committee;

M. "private investigator employee" means an individual who is working under the license and bond of a private investigator;

N. "private patrol operator" or "operator of a private patrol service" means a person who for any consideration whatsoever agrees to:

(1) furnish or furnishes a uniformed or nonuniformed watchman, guard, patrolman or other person to protect property and any persons on or in the property;

(2) prevent the theft, unlawful taking, loss, embezzlement, misappropriation or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers or property of any kind; or

(3) perform the service of a security guard, armored car company or security dog company. A private patrol operator may not make any investigation except those that are incidental to the theft, loss, embezzlement, misappropriation or

concealment of any property or any other item enumerated in the Private Investigators and Polygraphers Act that he has been hired or engaged to protect, guard or watch;

O. "security dog company" means a company that uses trained dogs with handlers to perform a security mission at a location; and

P. "security guard" means any individual who is an employee of a private patrol operator and employed to perform such security missions as watchman, fixed post guard, dog handler, patrolman or other person to protect property or prevent thefts.

Section 3

Section 3. LICENSE REQUIRED.--It is unlawful for any person to:

A. act as a private investigator, a private patrol operator or a manager or to represent himself to be a licensee or a manager unless he is licensed under the Private Ivestigators and Polygraphers Act;

B. render physical protection for remuneration as a bodyguard unless he is licensed as a private investigator;

C. continue to act as a private investigator, private patrol operator or manager if his license issued pursuant to that act has expired;

D. falsely represent that he is employed by a licensee; or

E. practice polygraphy for any remuneration without a license issued by the department in accordance with the Private Investigators and Polygraphers Act.

Section 4

Section 4. PERSONS EXEMPTED.--The Private Investigators and Polygraphers Act does not apply to:

A. attorneys;

B. a person employed exclusively and regularly by one employer in connection with the affairs of such employer only where there exists an employer-employee relationship;

C. an officer or employee of the United States or this state or a political subdivision of the United States or this state while that officer or employee is engaged in the performance of his official duties;

D. a person engaged exclusively in the business of obtaining and furnishing information concerning the financial rating of persons;

E. a charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit;

F. a licensed collection agency or an employee thereof while acting within the scope of his employment while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his property;

G. admitted insurers, adjusters, agents and insurance brokers licensed by the state performing duties in connection with insurance transactions by them; or

H. any institution subject to the jurisdiction of the director of the financial institutions division of the
department or the comptroller of currency of the United States.

Section 5

Section 5. ADMINISTRATION OF ACT--RULES AND REGULATIONS.--

A. The department shall enforce and administer the provisions of the Private Investigators and Polygraphers Act.

B. The department shall appoint an advisory board to assist in the conduct of the examination process for licensure and in any other manner to aid in the administration of that act. The advisory board shall consist of two licensed private investigators, one licensed private patrol operator, one licensed polygraph examiner and one member of the public. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act.

C. The department shall keep a record of each licensee and each employee of a private investigator or private patrol operator.

D. The department shall adopt and enforce rules and regulations necessary to carry out the provisions of the Private Investigators and Polygraphers Act, including requirements for continuing education.

Section 6

Section 6. REQUIREMENTS FOR LICENSURE.--

A. The department shall issue a license for a private investigator to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) is of good moral character;

(3) has passed a written examination as prescribed by the department;

(4) has at least three years' experience within the last five years in investigative work or a level of experience determined to be sufficient by the department; and

(5) has not been convicted of a felony offense or any other criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

B. The department shall issue a license for a private investigator manager to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is a resident of New Mexico;

(2) is at least eighteen years of age;

(3) has passed a written examination as prescribed by the department;

(4) has at least three years' experience within the last five years in investigative work or a level of experience determined to be sufficient by the department;

(5) is of good moral character; and

(6) has not been convicted of a felony offense or any other criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

C. The department shall issue a license for a private patrol operator to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) is of good moral character;

(3) has passed a written examination as prescribed by the department;

(4) has at least three years' experience within the last five years in security work or a level of experience determined to be sufficient by the department; and

(5) has not been convicted of a felony offense or any other criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

D. The department shall issue a license for a private patrol operator manager to any person who files a completed application accompanied by the required fees and
who submits satisfactory evidence that the applicant:

(1) is a resident of New Mexico;

(2) is at least eighteen years of age;

(3) has passed a written examination as prescribed by the department;

(4) has at least three years' experience within the last five years in security work or a level of experience determined to be sufficient by the department;

(5) is of good moral character; and

(6) has not been convicted of a felony offense or any other criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

E. A manager's license is required when the owner of a private investigator or private patrol operator business:

(1) is a nonresident licensee; or

(2) does not qualify for a license under the Private Investigators and Polygraphers Act.

F. The department shall issue a security guard pocket card to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age; and

(2) is of good moral character.

G. The department shall issue a license for polygrapher to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) possesses a high school diploma or its equivalent;

(3) has not been convicted of a felony or misdemeanor involving moral turpitude; and

(4) has graduated from a polygraph examiners course approved by the department; and

(a) has completed a probationary operational competency period and passed an examination of ability to practice polygraphy; or

(b) has submitted proof of holding, for a minimum of two years immediately prior to the date of application, a current license to practice polygraphy in another jurisdiction whose standards equal or surpass those of New Mexico.

Section 7

Section 7. LICENSE FEES.--Each applicant for licensure shall pay a fee set by the department not to exceed the following:

A. private investigator, initial license or renewal, two hundred dollars ($200);

B. private investigator manager, initial license or renewal, one hundred dollars ($100);

C. private investigator employee, initial registration or renewal, fifty dollars ($50.00);

D. private patrol operator, initial license or renewal, two hundred dollars ($200);

E. private patrol operator manager, initial license or renewal, one hundred dollars ($100);

F. private patrol operator employee, initial registration or renewal, twenty-five dollars ($25.00);

G. branch office, initial license or renewal fee, seventy-five dollars ($75.00);

H. change in license status, one hundred dollars ($100);

I. polygraph examiner, initial license or renewal, three hundred dollars ($300);

J. polygraph applicant examination, fifty dollars ($50.00); and

K. late fee for failure to renew a license within the allotted time period, fifty dollars ($50.00).

Section 8

Section 8. LICENSE RENEWAL.--On or before June 30 of each odd-numbered year, every person licensed or registered under the Private Investigators and Polygraphers Act shall remit to the department together with the prescribed fee for the class of license desired an application for license or registration renewal on a form that is prescribed and furnished by the department. Information required on the renewal form shall include the licensee's current address, state tax identification number and proof of compliance with continuing education requirements promulgated by the department. Failure to renew a license by June 30 of each renewal year shall cause the license to be suspended until a late fee together with the unpaid renewal fee is received by the department. Any license that is not renewed within one year from the date the license expired shall be automatically revoked.

Section 9

Section 9. DISPLAY OF LICENSE--NOTIFICATION OF CHANGES.--

A. A license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

B. A licensee shall notify the department within thirty days after any change in his address, in the name under which he does business or in the officers or partners of the business.

Section 10

Section 10. OPERATION OF BUSINESS--MANAGER REQUIRED.--

A. Each business providing private investigator or private patrol operator services in New Mexico shall be operated under the direction, control, charge or management of a licensee; provided that the business shall be under the direction, control, charge or management of a manager if the owner of the business:

(1) is a nonresident licensee; or

(2) does not qualify for a license under the Private Investigators and Polygraphers Act.

B. Any nonresident licensee who wishes to engage in a private investigator or private patrol operator business in New Mexico shall have a branch office located in New

Mexico operated under the direction, control, charge or management of a manager licensed under the Private Investigators and Polygraphers Act.

C. A licensee shall not conduct a business under a fictitious name until he has obtained the written authorization of the department. The department shall not authorize the use of a fictitious name that is so similar to the name of a public officer or agency or to the name used by another licensee that the public may be confused or misled by it.

D. A licensee shall at all times be legally responsible for the good business conduct of each of his employees, including his manager.

E. Each licensee shall maintain a record containing information relative to his employees as may be prescribed by the department and the records may be subject to inspection.

F. Except as otherwise provided by the Private Investigators and Polygraphers Act, every employee of a licensee shall be registered by the licensee with the department within seven days of employment; provided, however, that a licensee may hire temporary employees for periods of time not to exceed five days for special celebrations, parades or similar events without those employees being registered. The provisions of this subsection shall not be used to circumvent the registration of long-term employees.

G. A person registered under the Private Investigators and Polygraphers Act shall notify the department in writing within thirty days of each change in his employment. If a person ceases to be employed by a licensee, the person shall notify the department in writing within thirty days and shall surrender his registration card to the department.

H. A manager duly licensed under the Private Investigators and Polygraphers Act need not register as an employee.

I. Employees of a licensee who are engaged exclusively in stenographic, typing, filing, clerical or other activities that do not constitute the work of a private investigator or private patrol officer are not required to register.

J. Each nonresident licensee shall file in writing with the department the address of each branch office and within ten days after the establishment, closing or changing of location of a branch office shall notify the department in writing.

K. A person shall not act as a manager until he is licensed under the Private Investigators and Polygraphers Act. If a manager ceases to be connected with a licensee, the licensee shall notify the department in writing within thirty days from such cessation. If the licensee fails to notify the department within the thirty-day period, his

license shall be subject to suspension or revocation and may be reinstated only upon the filing of an application for reinstatement and payment of the reinstatement fee.

Section 11

Section 11. BOND REQUIRED.--

A. A license, except a manager's license and polygraph examiner's license, shall not be issued under the Private Investigators and Polygraphers Act unless the applicant files with the department:

(1) a surety bond executed by a surety company authorized to do business in this state; or

(2) a certificate of deposit in the sum of two thousand dollars ($2,000), conditioned for the faithful and lawful conduct of business by the applicant.

The form of bond, its execution and the sufficiency of the surety shall be verified by the department.

B. A licensee shall maintain the surety bond, and, upon failure to do so, the license of the licensee shall be suspended and shall not be reinstated until an application in the form prescribed by the department is filed together with a proper surety bond. The department may deny the application notwithstanding the applicant's compliance with this section:

(1) for any reason that would justify a refusal to issue or a suspension or a revocation of a license; or

(2) for the performance by the applicant of any practice while under suspension for failure to keep his bond in force for which a license under the Private Investigators and Polygraphers Act is required.

C. Bonds executed and filed with the department pursuant to the Private Investigators and Polygraphers Act shall remain in force until the surety company has terminated future liability by thirty-day notice to the department.

Section 12

Section 12. PROHIBITED ACTS.--

A. Any licensee or manager for the licensee may divulge to any law enforcement officer or district attorney, the attorney general or his representatives any information he acquires concerning any criminal offense, but he shall not divulge to any other person, except as he is required by law, any information acquired by him except at the direction of his employer or the client for whom the information was obtained.

B. No licensee, manager or employee of a licensee shall knowingly make any false report to his employer or the client for whom the information was being obtained.

C. No written report shall be submitted to a client except by the licensee, the manager or a person authorized by either of them, and the person submitting the report shall exercise diligence in ascertaining whether the facts and information of the report are true and correct.

D. No licensee, manager or employee of a private investigator shall use a badge in connection with the official activities of the licensee's business.

E. No licensee, manager or employee of a licensee shall use a title or wear a uniform, use an insignia, use an identification card or make any statement with the intent to give an impression that he is connected in any way with the federal or state government or any political subdivision of either.

F. No private patrol operator licensee, manager or employee of a private patrol operator licensee shall use a badge except when engaged in guard or patrol work and while wearing a uniform.

G. No licensee shall appear as an assignee party in any proceeding involving claim and delivery, replevin or other possessory action or action for foreclosing a chattel mortgage, mechanic's lien, materialman's lien or any other lien.

H. A polygraph examiner shall not ask questions during the course of a polygraph examination relative to sexual affairs of an examinee, the examinee's race, creed, religion or union affiliation or any activity not previously and specifically agreed to by written consent.

Section 13

Section 13. DENIAL, SUSPENSION OR REVOCATION OF LICENSE OR REGISTRATION.--In accordance with procedures contained in the Uniform Licensing Act, the department may deny, suspend or revoke any license or registration held or applied for under the Private Investigators and Polygraphers Act upon grounds that the licensee, registrant or applicant:

A. made a false statement or gave false information in connection with an application for a license or renewal or reinstatement of a license;

B. violated any provision of the Private Investigators and Polygraphers Act;

C. violated any rule of the department adopted pursuant to that act;

D. has been convicted of a felony or any crime involving moral turpitude or illegally using, carrying or possessing a deadly weapon;

E. impersonated, or permitted or aided and abetted an employee to impersonate, a law enforcement officer or employee of the United States or of any state or political subdivision of either;

F. committed or permitted any employee to commit any act while the license was expired that would be cause for the suspension or revocation of a license or grounds for the denial of an application for a license;

G. willfully failed or refused to render to a client services or a report as agreed between the parties for which compensation has been paid or tendered in accordance with the agreement of the parties;

H. committed assault, battery or kidnapping or used force or violence on any person without proper justification;

I. knowingly violated, or advised, encouraged or assisted the violation of, any court order or injunction in the course of business of the licensee;

J. knowingly issued a worthless or otherwise fraudulent payroll check that is not redeemed within two days of denial of payment of any bank;

K. has been chronically or persistently inebriated or addicted to the illegal use of dangerous or narcotic drugs;

L. has been adjudged mentally incompetent or insane by regularly constituted authorities; or

M. while unlicensed, committed or aided and abetted the commission of any act for which a license is required under the Private Investigators and Polygraphers Act.

Section 14

Section 14. HEARING.--Every person who is denied a license or employee registration or who has his license or employee registration suspended or revoked shall be entitled to a hearing before the department if within twenty days after the denial, suspension or revocation a request for a hearing is served on the department. The procedures outlined in the Uniform Licensing Act shall be followed pertaining to the hearing insofar as they do not conflict with the provisions of the Private Investigators and Polygraphers Act.

Section 15

Section 15. APPEAL--REVIEW OF RECORD.--Any person aggrieved by the decision of the department as a consequence of the hearing may appeal the decision to the district court of the first judicial district. Upon appeal, the review by the court shall be limited to the record taken at the hearing and no new evidence may be considered by the court.

Section 16

Section 16. LICENSE NOT TRANSFERABLE.--A license issued under the Private Investigators and Polygraphers Act is not transferable or reassignable.

Section 17

Section 17. LOCAL REGULATIONS.--The provisions of the Private Investigators and Polygraphers Act shall not prevent the local authorities of any city, county or city and county by ordinance and within the exercise of the police power of such city, county or city and county from imposing local ordinances upon any street patrol special officer or upon any person licensed within the scope of the Private Investigators and Polygraphers Act if the ordinances are consistent with that act.

Section 18

Section 18. FUND ESTABLISHED.--There is created in the state treasury the "private investigator and polygrapher fund". All license fees received by the department pursuant to the Private Investigators and Polygraphers Act shall be deposited in the fund and shall be used for the administration of that act. The state treasurer shall invest the fund as other state funds are invested, and all income derived from the fund shall be credited to the fund. All balances in the fund shall remain in the fund and shall ot revert to the general fund.

Section 19

Section 19. DEADLY WEAPONS.--Licensed private patrol operators and their registered employees, when in uniform and in the performance of their duties, may carry firearms and other deadly weapons; provided, however, nothing in the Private Investigators and Polygraphers Act shall be construed as granting to polygraph examiners, private investigators, private patrol operators or their employees the right to carry concealed weapons.

Section 20

Section 20. PENALTIES.--

A. A person who engages in a business regulated under the Private Investigators and Polygraphers Act who fraudulently represents himself to be a licensee

or registered employee is guilty of a misdemeanor and shall be punished by a term of imprisonment less than one year or a fine of not more than one thousand dollars ($1,000) or both. A person who fraudulently represents that he is employed by a licensee is guilty of a misdemeanor and shall be punished by a term of imprisonment less than six months or a fine of not more than five hundred dollars ($500) or both.

B. A person who violates a provision of the Private Investigators and Polygraphers Act, except as provided for in Subsection A of this section, is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment for not more than six months or both.

Section 21

Section 21. TEMPORARY PROVISION--TRANSFER OF APPROPRIATIONS AND PROPERTY OF AND CONSTRUCTION OF REFERENCE TO THE OFFICE OF THE ATTORNEY GENERAL.--

A. Subject to other provisions of law or transfers approved by the secretary of finance and administration providing for a contrary disposition, all appropriations, records, equipment, supplies and all other property of any kind that, prior to the effective date of this act, are related to licensing of private investigators and belonged to or were in the possession of the office of the attorney general are transferred to the department. All existing rules, regulations, contracts and agreements relating to licensing of private investigators and in effect regarding the office of the attorney general shall be binding and effective on the department.

B. All fees received by the regulation and licensing department under the Private Investigators and Polygraphers Act shall be used only for the administration of that act.

C. All references to the office of the attorney general or the department of justice relating to licensing of private investigators and private patrol operators in the law on the effective date of the Private Investigators and Polygraphers Act shall be construed to be references to the department.

Section 22

Section 22. DELAYED REPEAL.--The Private Investigators and Polygraphers Act is repealed on July 1, 2000 pursuant to the Sunset Act.

Section 23

Section 23. REPEAL.--

A. Sections 61-26-1 through 61-26-15 NMSA 1978 (being Laws 1973, Chapter 28, Sections 1 and 2, Laws 1974, Chapter 78, Section 32, Laws 1973, Chapter

28, Section 3, Laws 1979, Chapter 75, Section 3, Laws 1973, Chapter 28, Sections 5 through 7, Laws 1989, Chapter 152, Section 11, Laws 1973, Chapter 28, Sections 8 through 11, and Laws 1989, Chapter 152, Sections 10 and 12, as amended) are repealed.

B. Sections 61-27-1 through 61-27-49 NMSA 1978 (being Laws 1965, Chapter 247, Sections 1 through 49, as amended) are repealed.

Section 24

Section 24. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 581

CHAPTER 213

RELATING TO COLLECTION AGENCIES; AMENDING AND REPEALING CERTAIN SECTIONS OF THE COLLECTION AGENCY REGULATORY ACT PERTAINING TO SOLICITORS.

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

Section 1

Section 1. Section 61-18A-5 NMSA 1978 (being Laws 1987, Chapter 252, Section 5) is amended to read:

"61-18A-5. UNLAWFUL TO CONDUCT COLLECTION AGENCY OR ENGAGE IN THE BUSINESS OF A REPOSSESSOR WITHOUT LICENSE.--

A. No person shall conduct within this state a collection agency, act as a collection agency manager or engage within the state in the business of collecting claims for others or of soliciting the right to collect or receive payment from another of any claim or advertise or solicit either in print, by letter, in person or otherwise, the right to collect or receive payment for another of any claim or seek to make collection or obtain payment of any claim on behalf of another without having first applied for and obtained the licenses required by the Collection Agency Regulatory Act.

B. No person shall conduct within this state the business of a repossessor without having first applied for and obtained a repossessor's license.

C. No person shall be considered to be engaged in collection activity within this state if that person's activities regarding this state are limited to collecting debts not incurred in New Mexico from debtors located in this state by means of interstate communications, including telephone, mail or facsimile transmission, from the person's location in another state."

Section 2

Section 2. Section 61-18A-7 NMSA 1978 (being Laws 1987, Chapter 252, Section 7) is amended to read:

"61-18A-7. APPLICATION FOR LICENSE.--Application for a collection agency license, repossessor's license or manager's license shall be made to the director in such form as may be required by the director."

Section 3

Section 3. Section 61-18A-30 NMSA 1978 (being Laws 1987, Chapter 252, Section 30) is amended to read:
"61-18A-30. FEES.--The director shall charge and collect the following fees:

A. an original license fee for a collection agency or branch thereof, of five hundred dollars ($500);

B. a renewal fee for a collection agency or branch thereof, of three hundred dollars ($300);

C. a duplicate license fee of fifteen dollars ($15.00);

D. a temporary license fee of thirty-five dollars ($35.00);

E. a delinquency fee of ten dollars ($10.00) per day for each day of delinquency in filing applications for renewals;

F. a manager's license examination fee of one hundred dollars ($100);

G. a manager's license renewal fee of fifty dollars ($50.00);

H. a fee of five dollars ($5.00) for each copy of any issue or edition of the Collection Agency Regulatory Act and rules and regulations;

I. a fee of five dollars ($5.00) for each list of licensees in good standing;

J. a fee of two hundred dollars ($200) per day or fraction thereof for each examiner of the financial institutions division of the regulation and licensing department engaged in an examination or investigation of a licensee, not to exceed five examiner-days per calendar year. If the examination or investigation is an out-of-state examination or investigation, the licensee shall reimburse the financial institutions division the actual travel costs incurred to perform the examination or investigation; and

K. an original license fee or renewal license fee for a repossessor of two hundred fifty dollars ($250)."

Section 4

Section 4. REPEAL.--Section 61-18A-29 NMSA 1978 (being Laws 1987, Chapter 252, Section 29) is repealed.SB 587

CHAPTER 214

RELATING TO COMMERCIAL TRANSACTIONS; AMENDING SECTIONS OF THE UNIFORM COMMERCIAL CODE TO CLARIFY AND CORRECT PROVISIONS WITHIN THOSE SECTIONS.

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

Section 1

Section 1. Section 55-1-201 NMSA 1978 (being Laws 1961, Chapter 96, Section 1-201, as amended) is amended to read:

"55-1-201. GENERAL DEFINITIONS.--Subject to additional definitions contained in the subsequent articles of the Uniform Commercial Code which are applicable to specific articles or parts thereof and unless the context otherwise requires, in that act:

(1) "action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined;

(2) "aggrieved party" means a party entitled to resort to a remedy;

(3) "agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in Sections 55-1-205, 55-2-208 and 55-2A-207 NMSA 1978. Whether an agreement has legal consequences is determined by the provisions of the Uniform Commercial Code, if applicable; otherwise by the law of contracts (Section 55-1-103 NMSA 1978). (Compare "contract".);

(4) "bank" means any person engaged in the business of banking;

(5) "bearer" means the person in possession of an instrument, document of title or certificated security payable to bearer or indorsed in blank;

(6) "bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation and includes an air consignment note or air waybill;

(7) "branch" includes a separately incorporated foreign branch of a bank;

(8) "burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence;

(9) "buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

(10) "conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court;

(11) "contract" means the total legal obligation which results from the parties' agreement as affected by this act and any other applicable rules of law. (Compare "agreement".);

(12) "creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate;

(13) "defendant" includes a person in the position of defendant in a cross-action or counterclaim;

(14) "delivery" with respect to instruments, documents of title, chattel paper or certificated securities means voluntary transfer of possession;

(15) "document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass;

(16) "fault" means wrongful act, omission or breach;

(17) "fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units are treated as equivalents;

(18) "genuine" means free of forgery or counterfeiting;

(19) "good faith" means honesty in fact in the conduct or transaction concerned;

(20) "holder", with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder", with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession;

(21) to "honor" is to pay or to accept and pay, or where a credit so engages, to purchase or discount a draft complying with the terms of the credit;

(22) "insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved;

(23) a person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law;

(24) "money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations;

(25) a person has "notice" of a fact when:

(a) he has actual knowledge of it;

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather

than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by the Uniform Commercial Code;

(26) a person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications;

(27) notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information;

(28) "organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity;

(29) "party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within the Uniform Commercial Code;

(30) "person" includes an individual or an organization (see Section 55-1-102 NMSA 1978);

(31) "presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence;

(32) "purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property;

(33) "purchaser" means a person who takes by purchase;

(34) "remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal;

(35) "representative" includes an agent, an officer of a corporation or association and a trustee, executor or administrator of an estate or any other person empowered to act for another;

(36) "rights" includes remedies;

(37) "security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 55-2-401 NMSA 1978) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Chapter 55, Article 9 NMSA 1978. The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 55-2-401 NMSA 1978 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Chapter 55, Article 9 NMSA 1978. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (Section 55-2-326 NMSA 1978).

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that:

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording or registration fees or service or maintenance costs with respect to the goods;

(c) the lessee has an option to renew the lease or to become the owner of the goods;

(d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this Subsection (37):

(x) additional consideration is not nominal if: (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(y) "reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(z) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into;

(38) "send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none, to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending;

(39) "signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing;

(40) "surety" includes guarantor;

(41) "telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission or the like;

(42) "term" means that portion of an agreement which relates to a particular matter;

(43) "unauthorized" signature means one made without actual, implied or apparent authority and includes a forgery;

(44) "value". Except as otherwise provided with respect to negotiable instruments and bank cllections (Sections 55-3-303, 55-4-210 and 55-4-211 NMSA 1978) a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(b) as security for or in total or partial satisfaction of a pre-existing claim;

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract;

(45) "warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire; and

(46) "written" or "writing" includes printing, typewriting or any other intentional reduction to tangible
form."

Section 2

Section 2. Section 55-2-103 NMSA 1978 (being Laws 1961, Chapter 96, Section 2-103) is amended to read:

"55-2-103. DEFINITIONS AND INDEX OF DEFINITIONS.--

(1) In this article, unless the context otherwise requires:

(a) "buyer" means a person who buys or contracts to buy goods;

(b) "good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade;

(c) "receipt" of goods means taking physical possession of them; and

(d) "seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Acceptance"..... Section 55-2-606 NMSA 1978;

"Banker's credit"..... Section 55-2-325 NMSA 1978;

"Between merchants"..... Section 55-2-104 NMSA 1978;

"Cancellation" ..... Section 55-2-106(4) NMSA 1978;

"Commercial unit"..... Section 55-2-105 NMSA 1978;

"Confirmed credit"..... Section 55-2-325 NMSA 1978;

"Conforming to contract" Section 55-2-106 NMSA 1978;

"Contract for sale".....Section 55-2-106 NMSA 1978;

"Cover".....Section 55-2-712 NMSA 1978;

"Entrusting".....Section 55-2-403 NMSA 1978;

"Financing agency".....Section 55-2-104 NMSA 1978;

"Future goods".....Section 55-2-105 NMSA 1978;

"Goods".....Section 55-2-105 NMSA 1978;

"Identification".....Section 55-2-501 NMSA 1978;

"Installment contract"...Section 55-2-612 NMSA 1978;

"Letter of Credit".....Section 55-2-325 NMSA 1978;

"Lot".....Section 55-2-105 NMSA 1978;

"Merchant".....Section 55-2-104 NMSA 1978;

"Overseas".....Section 55-2-323 NMSA 1978;

"Person in position of seller".....Section 55-2-707 NMSA 1978;

"Present sale".....Section 55-2-106 NMSA 1978;

"Sale".....Section 55-2-106 NMSA 1978;

"Sale on approval".....Section 55-2-326 NMSA 1978;

"Sale or return".....Section 55-2-326 NMSA 1978;

"Termination".....Section 55-2-106 NMSA 1978;

(3) The following definitions in other articles apply to this article:

"Check".....Section 55-3-104 NMSA 1978;

"Consignee".....Section 55-7-102 NMSA 1978;

"Consignor".....Section 55-7-102 NMSA 1978;

"Consumer goods"...Section 55-9-109 NMSA 1978;

"Dishonor".....Section 55-3-502 NMSA 1978;

"Draft".....Section 55-3-104 NMSA 1978.

(4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article."

Section 3

Section 3. Section 55-2A-103 NMSA 1978 (being Laws 1992, Chapter 114, Section 10) is amended to read:

"55-2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.--

(1) In this article unless the context otherwise requires:

(a) "buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not

include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

(b) "cancellation" occurs when either party puts an end to the lease contract for default by the other party;

(c) "commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole;

(d) "conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract;

(e) "consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family or household purpose;

(f) "fault" means wrongful act, omission, breach or default;

(g) "finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated

damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies;

(h) "goods" means all things that are movable at the time of identification to the lease contract or are fixtures (Section 55-2A-309 NMSA 1978), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals;

(i) "installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent;

(j) "lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease; unless the context clearly indicates otherwise, the term includes a sublease;

(k) "lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances, including course of dealing or usage or trade or course of performance as provided in this article; unless the context clearly indicates otherwise, the term includes a sublease agreement;

(l) "lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law; unless the context clearly indicates otherwise, the term includes a sublease contract;

(m) "leasehold interest" means the interest of the lessor or the lessee under a lease contract;

(n) "lessee" means a person who acquires the right to possession and use of goods under a lease; unless the context clearly indicates otherwise, the term includes a sublessee;

(o) "lessee in ordinary course of business" means a person ho in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker; "leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt;

(p) "lessor" means a person who transfers the right to possession and use of goods under a lease; unless the context clearly indicates otherwise, the term includes a sublessor;

(q) "lessor's residual interest" means the lessor's interest in the goods after expiration, termination or cancellation of the lease contract;

(r) "lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest;

(s) "lot" means a parcel or a single article that is the subject matter of a separate lease or delivery whether or not it is sufficient to perform the lease contract;

(t) "merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease;

(u) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain; the discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into;

(v) "purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift or any other voluntary transaction creating an interest in goods;

(w) "sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease;

(x) "supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease;

(y) "supply contract" means a contract under which a lessor buys or leases goods to be leased; and

(z) "termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this article and the sections in which they appear are:

"Accessions". Section 55-2A-310(1) NMSA 1978.

"Construction mortgage". Section 55-2A-309(1)(d) NMSA 1978.

"Encumbrance". Section 55-2A-309(1)(e) NMSA 1978.

"Fixtures". Section 55-2A-309(1)(a) NMSA 1978.

"Fixture filing". Section 55-2A-309(1)(b) NMSA 1978.

"Purchase money lease". Section 55-2A-309(1)(c) NMSA 1978.

(3) The following definitions in other articles apply to this article:

"Account". Section 55-9-106 NMSA 1978.

"Between merchants". Section 55-2-104(3) NMSA 1978.

"Buyer". Section 55-2-103(1)(a) NMSA 1978.

"Chattel paper". Section 55-9-105(1)(b) NMSA 1978.

"Consumer goods". Section 55-9-109(1) NMSA 1978.

"Document". Section 55-9-105(1)(f) NMSA 1978.

"Entrusting". Section 55-2-403(3) NMSA 1978.

"General intangibles". Section 55-9-106 NMSA 1978.

"Good faith". Section 55-2-103(1)(b) NMSA 1978.

"Instrument". Section 55-9-105(1)(i) NMSA 1978.

"Merchant". Section 55-2-104(1) NMSA 1978.

"Mortgage". Section 55-9-105(1)(j) NMSA 1978.

"Pursuant to commitment". Section 55-9-105(1)(k) NMSA 1978.

"Receipt". Section 55-2-103(1)(c) NMSA 1978.

"Sale". Section 55-2-106(1) NMSA 1978.

"Sale on approval". Section 55-2-326 NMSA 1978.

"Sale or return". Section 55-2-326 NMSA 1978.

"Seller". Section 55-2-103(1)(d) NMSA 1978.

(4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article."

Section 4

Section 4. Section 55-5-103 NMSA 1978 (being Laws 1961, Chapter 96, Section 5-103, as amended) is amended to read:

"55-5-103. DEFINITIONS.--

(1) In this article, unless the context otherwise requires:

(a) "credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this article (Section 55-5-102 NMSA 1978) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor;

(b) a "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper, including document of title, security, invoice, certificate, notice of default and the like;

(c) an "issuer" is a bank or other person issuing a credit;

(d) a "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment;

(e) an "advising bank" is a bank which gives notification of the issuance of a credit by another bank;

(f) a "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank;

(g) a "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer; and

(h) "day" as shown on the face of a documentary draft means banking day unless otherwise specified.

(2) Other definitions applying to this article and the sections in which they appear are:

"Notation of credit".....Section 55-5-108 NMSA 1978; and

"Presenter".....Section 55-5-112(3) NMSA 1978.

(3) Definitions in other articles applying to this article and the sections in which they appear are:

"Accept" or "Acceptance".Section 55-3-409 NMSA 1978;

"Banking day".....Section 55-4-104 NMSA 1978;

"Contract for sale".....Section 55-2-106 NMSA 1978;

"Draft".....Section 55-3-104 NMSA 1978;

"Holder in due course"...Section 55-3-302 NMSA 1978;

"Midnight deadline".....Section 55-4-104 NMSA 1978; and

"Security".....Section 55-8-102 NMSA 1978.

(4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article."

Section 5

Section 5. Section 55-9-203 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-203, as amended) is amended to read:

"55-9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST--PROCEEDS--FORMAL REQUISITES.--

(1) Subject to the provisions of Section 55-4-210 NMSA 1978 on the security interest of a collecting bank, Section 55-8-321 NMSA 1978 on security interests in securities and Section 55-9-113 NMSA 1978 on a security interest arising under the article on sales (Article 2) or the article on leases (Article 2A), a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement that contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in Subsection (1) of this section have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed, a security agreement gives the secured party the rights to proceeds provided by Section 55-9-306 NMSA 1978.

(4) A transaction, although subject to Chapter 55, Article 9 NMSA 1978, is also subject to the Oil and Gas Products Lien Act; Sections 56-1-1 through 56-1-15 NMSA 1978 (pertaining to retail installment sales); Sections 56-8-15 through 56-8-20 NMSA 1978 (pertaining to credit extended by pawnbrokers, traders and others); the New Mexico Bank Installment Loan Act of 1959; the New Mexico Small Loan Act of 1955; and the Motor Vehicle Sales Finance Act. In the case of conflict between the provisions of Chapter 55, Article 9 NMSA 1978 and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

Section 6

Section 6. Section 55-9-206 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-206, as amended) is amended to read:

"55-9-206. AGREEMENT NOT TO ASSERT DEFENSES AGAINST ASSIGNEE--MODIFICATION OF SALES WARRANTIES WHERE SECURITY AGREEMENT EXISTS.--

(1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the

seller or lessor isenforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the article on negotiable instruments (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the article on sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties."

Section 7

Section 7. Section 55-9-302 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-302, as amended by Laws 1987, Chapter 247, Section 3 and also by Laws 1987, Chapter 248, Section 50) is amended to read:

"55-9-302. WHEN FILING IS REQUIRED TO PERFECT SECURITY INTEREST--SECURITY INTERESTS TO WHICH FILING PROVISIONS OF THIS ARTICLE DO NOT APPLY.--

(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under Section 55-9-305 NMSA 1978;

(b) a security interest temporarily perfected in instruments or documents without delivery under Section 55-9-304 NMSA 1978 or in proceeds for a ten-day period under Section 55-9-306 NMSA 1978;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 55-9-313 NMSA 1978;

(e) an assignment of accounts that does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (Section 55-4-210 NMSA 1978) or in securities (Section55-8-321 NMSA 1978) or arising under the article on

sales (Article 2) or the article on leases (Article 2A) (see Section 55-9-113 NMSA 1978) or covered in Subsection (3) of this section; or

(g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by Chapter 55, Article 9 NMSA 1978 is not necessary or effective to perfect a security interest in property subject to:

(a) a statute or treaty of the United States that provides for a national or international registration or a national or international certificate of title or that specifies a place of filing different from that specified in this article for filing of the security interest; or

(b) the following statutes of this state: Sections 66-3-201 through 66-3-204 of the Motor Vehicle Code and any other certificate of title statute covering automobiles, trailers, mobile homes, boats, farm tractors or the like; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of Chapter 55, Article 9 NMSA 1978 apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (Subsection (2) of Section 55-9-103 NMSA 1978).

(4) Compliance with a statute or treaty described in Subsection (3) of this section is equivalent to the filing of a financing statement under Chapter 55, Article 9 NMSA 1978, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in Section 55-9-103 NMSA 1978 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to Chapter 55, Article 9 NMSA 1978."

Section 8

Section 8. Section 55-9-312 NMSA 1978 (being Laws 1961, Chapter 96, Section 9-312, as amended) is amended to read:

"55-9-312. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN THE SAME COLLATERAL.--

(1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: Section 55-4-210 NMSA 1978 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; Section 55-9-103 NMSA 1978 on security interests related to other jurisdictions; and Section 55-9-114 NMSA 1978 on consignments.

(2) A perfected security interest in crops, for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise, takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory;

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one-day period where the purchase money security interest is temporarily perfected without filing or possession (Subsection (5) of Section 55-9-304 NMSA 1978);

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests that do not qualify for the special priorities set forth in Subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection; and

(b) so long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of Subsection (5) of this section, a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, by the taking of possession or under Section 55-8-321 on securities, the security interest has the same priority for the purposes of Subsection (5) of this section with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

Section 9

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 43

CHAPTER 215

RELATING TO HEALTH; CHANGING THE MEMBERSHIP OF THE HEAD INJURY TASK FORCE; PROVIDING FOR THE CONTINUATION OF THE HEAD INJURY TASK FORCE.

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

Section 1

Section 1. Section 24-20-2 NMSA 1978 (being Laws 1990, Chapter 103, Section 1) is amended to read:

"24-20-2. HEAD INJURY TASK FORCE--MEMBERSHIP--DUTIES.--

A. There is created the "head injury task force", which shall consist of:

(1) representatives from the department of health, including the developmental disabilities division, the mental health division, the behavioral health services division, the public health division and the long-term care and restorative services division;

(2) a representative from the medical assistance division of the human services department;

(3) a representative from the developmental disabilities planning council;

(4) two representatives from the state department of public education, including the vocational rehabilitation division;

(5) a representative from the university of New Mexico hospital;

(6) a representative from the university of New Mexico school of medicine;

(7) a representative from a public post-secondary educational institution's college of education;

(8) a representative from the corrections department;

(9) representatives from the children, youth and families department, including the juvenile justice services division and the training bureau of the social services division;

(10) persons with traumatic head injury, their family members and professionals working with and involved in the issue of traumatic head injury; and

(11) a representative from the Indian health services of the federal health and human services department.

B. The representatives of the state entities serving on the head injury task force shall be designated by their respective entity heads. Members of the public shall be appointed by the secretary of health. Other members may be appointed as necessary by the secretary of health.

C. The head injury task force shall:

(1) conduct a comprehensive survey of available services to those with traumatic head injury, identify gaps in services and determine service needs and costs;

(2) develop a state plan for implementing comprehensive case management for persons with traumatic head injury;

(3) advise and assist the primary care and emergency medical services bureau of the department of health in expanding the data collected by the

trauma regisry at the university of New Mexico hospital burn and trauma center to include all prehospital and hospital admissions and discharge information;

(4) develop a consistent definition of traumatic head injury for use as a standard category in all applicable incidence- and service-reporting systems; and

(5) report annually in July to the legislative interim health and human services committee its findings and recommendations for changes in policies and the law related to traumatic head injury.

D. The head injury task force shall coordinate its work with and report to the governor's health policy advisory committee or any similar entity established to address health policy and planning.

E. Appointed members of the head injury task force shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

F. The department of health shall:

(1) provide staff assistance and administrative support to the head injury task force to carry out its duties; and

(2) serve as the lead agency in organizing the task force, conducting the comprehensive study and developing a state plan.

G. The head injury task force shall elect annually a chairman and such other officers as are deemed necessary. Meetings shall be held at least quarterly but no more than six times per year."

Section 2

Section 2. Laws 1990, Chapter 103, Section 2 is amended to read:

"Section 2. DELAYED REPEAL.--Section 24-20-2 NMSA 1978 is repealed June 30, 1995."

Section 3

Section 3. TEMPORARY PROVISION--TRANSFERS.--

A. On the effective date of this act, all appropriations, including appropriations in the General Appropriations Act of 1993, funds and records of the head injury task force of the department of health shall be transferred to the developmental disabilities planning council.

B. On the effective date of this act, all furniture, equipment and supplies being used solely for the purpose of the head injury task force shall be transferred to the developmental disabilities planning council.

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 168

CHAPTER 216

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE DEFENSE CONVERSION AND TECHNOLOGY ACT; ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Defense Conversion and Technology Act".

Section 2

Section 2. PURPOSE.--The purpose of the Defense Conversion and Technology Act is to designate the economic development department as the lead agency to promote defense conversion technology, coordinate the transfer of defense technology and other technology from federal, state and local government facilities to private sector industries and promote private-public partnership and business development programs.

Section 3

Section 3. DEFINITIONS.--As used in the Defense Conversion and Technology Act:

A. "commission" means the economic development and tourism commission or any successor commission created in Chapter 9, Article 15 NMSA 1978 to provide program and policy guidance to the department; and

B. "department" means the economic development department.

Section 4

Section 4. DESIGNATION AS THE LEAD STATE AGENCY.--The department is designated as the lead state agency to coordinate or accept federal and state funds

appropriated for conversion of defense technologies and to coordinate technology transfer in accordance with the state's technology development plan.

Section 5

Section 5. DEFENSE CONVERSION--DEPARTMENT DUTIES.--

A. The department shall coordinate all defense conversion and technology transfer activities of the state. The department is authorized to contract with the appropriate partnership intermediaries to assist in the coordination of defense conversion duties.

B. The department shall:

(1) oversee the activities of the manufacturing productivity center and manufacturing extension programs;

(2) coordinate the activities of small business incubators to encourage the development and viability of technology spin-off companies in the private sector;

(3) coordinate appropriate divisions in the department to provide technology export assistance;

(4) coordinate small business development and assistance programs for new and existing businesses;

(5) work with appropriate entities to identify sources of funding for capital expenditure programs and initial venture programs;

(6) coordinate the development of regional technology clusters; and

(7) provide support and coordination assistance as deemed necessary by the commission and the secretary of the department to assist the state in developing defense conversion industries.

Section 6

Section 6. APPROPRIATION.--One million dollars ($1,000,000) is appropriated from the operating reserve to the economic development department for expenditure in the eighty-first and eighty-second fiscal years for the purpose of carrying out the provisions of the Defense Conversion and Technology Act.

Section 7

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.HB 592

CHAPTER 217

RELATING TO MINIMUM WAGES; INCREASING THE MINIMUM WAGE RATE; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 50-4-22 NMSA 1978 (being Laws 1955, Chapter 200, Section 3, as amended) is amended to read:

"50-4-22. MINIMUM WAGES.--

A. Every employer, except as provided in Section 50-4-21 NMSA 1978, shall pay the minimum wage rate of $4.25 an hour excepting that an employer furnishing food, utilities, supplies or housing to an employee who is engaged in agriculture may deduct the reasonable value of such furnished items from any wages due to the employee.

B. All employees covered by Subsection A of this section who customarily and regularly receive more than thirty dollars ($30.00) a month in tips shall be paid a minimum hourly wage of two dollars twelve and one-half cents ($2.125). The employer may consider tips as part of wages, but such a wage credit shall not exceed fifty percent of the minimum wage. All tips received by such employees shall be retained by the employee, except that nothing herein shall prohibit the pooling of tips among employees.

C. No employee covered by the provisions of Subsection A of this section shall be required to work more than forty hours in any week of seven days, unless he is paid one and one-half times his regular hourly rate of pay for all hours worked in excess of forty hours."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. _____HB 627

CHAPTER 218

RELATING TO LICENSURE; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE ENGINEERING AND SURVEYING PRACTICE ACT.

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

Section 1

Section 1. Section 61-23-1 NMSA 1978 (being Laws 1987, Chapter 336, Section 1) is amended to read:

"61-23-1. SHORT TITLE.--Chapter 61, Article 23 NMSA 1978 may be cited as the "Engineering and Surveying Practice Act"."

Section 2

Section 2. Section 61-23-2 NMSA 1978 (being Laws 1987, Chapter 336, Section 2) is amended to read:

"61-23-2. DECLARATION OF POLICY.--The legislature declares that it is a matter of public safety, interest and concern that the practices of engineering and surveying merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practices of engineering and surveying. In order to safeguard life, health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or surveying shall be required to submit evidence that he is qualified to so practice and shall be registered as provided in the Engineering and Surveying Practice Act. It shall be unlawful for any person to practice or offer to practice in New Mexico or to use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a professional, licensed or registered engineer or surveyor unless that person is registered or exempt under the provisions of the Engineering and Surveying Practice Act. The practice of engineering or surveying shall be deemed a privilege granted by the state board of registration for professional engineers and surveyors based on the qualifications of the individual as evidenced by the registrant's certificate that shall not be transferable."

Section 3

Section 3. Section 61-23-3 NMSA 1978 (being Laws 1987, Chapter 336, Section 3) is amended to read:

"61-23-3. DEFINITIONS.--As used in the Engineering and Surveying Practice Act:

A. "approved" or "approval" means acceptable to the board;

B. "board" means the state board of registration for professional engineers and surveyors;

C. "conviction" or "convicted" means any final adjudication of guilt, whether pursuant to a plea or nolo contendere or otherwise and whether or not the sentence is deferred or suspended;

D. "engineer" means a person who is qualified to practice engineering by reason of his intensive preparation and knowledge in the use of mathematics, chemistry, physics and engineering sciences, including the principles and methods of engineering analysis and design acquired by professional education and engineering experience;

E. "engineering" or "practice of engineering" means any creative or engineering work, that requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such creative work as consultation, investigation, forensic investigation, evaluation, planning and design of engineering works and systems, expert technical testimony, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic, environmental or thermal nature, insofar as they involve safeguarding life, health or property, and including such other profssional services as may be necessary to the planning, progress and completion of any engineering work. The practice of engineering does not include responsibility for the supervision of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place;

F. "engineering committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of engineering;

G. "engineer intern" means a person who has qualified for, taken and passed an examination in the
fundamental engineering subjects as provided in the Engineering and Surveying Practice Act;

H. "incidental practice" means the performance of other professional services that are related to a registrant's work as an engineer;

I. "professional development" means education by a registrant in order to maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge;

J. "professional engineer", "consulting engineer", "licensed engineer" or "registered engineer" means a person who is registered by the board to practice the profession of engineering;

K. "responsible charge" means responsibility for the direction, control and supervision of engineering or surveying work, as the case may be, to assure that the work product has been critically examined and evaluated for compliance with appropriate professional standards by a registrant in that profession and by sealing or signing the documents, the professional engineer or surveyor accepts responsibility for the engineering or surveying work respectively, represented by the documents and that applicable engineering or surveying standards have been met;

L. "surveying" or "practice of surveying" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:

(1) the measuring and locating of lines, angles, elevations and natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volumes;

(2) the monumenting of property boundaries and for the platting and layout of lands and subdivisions thereof;

(3) the application of photogrammetric methods used to derive topographic and other data;

(4) the establishment of horizontal and vertical controls for surveys for design, topographic surveys including photogrammetric methods, construction surveys of
engineering and architectural public works projects; and

(5) the preparation and perpetuation of maps, records, plats, field notes and property descriptions;

M. "surveying committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of surveying;

N. "surveyor" or "professional surveyor" means a person who is qualified to practice surveying by reason of his intensive preparation and knowledge in the use of mathematics, physical and applied sciences and surveying including the principles and methods of surveying acquired by education and experience and who is registered by the board to practice surveying;

O. "surveyor intern" means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in the Engineering and Surveying Practice Act; and

P. "surveying work" means the work performed in the practice of surveying. The board recognizes that there may be an overlap between the work of engineers and surveyors in obtaining survey information for the planning and design of an engineering project. A registered professional engineer who has primary engineering responsibility and control of an engineering project may perform an engineering survey. A registered professional engineer may apply photogrammetric methods to derive topographic and other data."

Section 4

Section 4. Section 61-23-5 NMSA 1978 (being Laws 1987, Chapter 336, Section 5) is amended to read:

"61-23-5. STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND SURVEYORS--MEMBERS--TERMS.--

A. There is created the "state board of registration for professional engineers and surveyors" that shall consist of five registered professional engineers, at least one of whom shall be in engineering education, three registered professional surveyors and two public members.

B. The members of the board shall be appointed by the governor for staggered terms of five years. The appointees shall have the qualifications required by Section 61-23-6 NMSA 1978. The appointments shall be made in such a manner that the terms of not more than two members expire in each year. Each member of the board shall receive a certificate of appointment from the governor. Before the beginning of the term of office, the appointee shall file with the secretary of state a written oath or affirmation for the faithful discharge of official duty. A member of the board may be reappointed but may not serve more than two consecutive full terms. A member shall not be reappointed to the board for at least two years after serving two consecutive full terms. The board may designate any former board member to assist it in an advisory capacity.

C. Each member may hold office until the expiration of the term for which appointed or until a successor has been duly qualified and appointed. In the event of a vacancy for any cause that results in an unexpired term, if not filled within three months by official action, the board may appoint a provisional member to serve until the governor acts. Vacancies on the board shall be filled by appointment by the governor for the balance of the unexpired term."

Section 5

Section 5. Section 61-23-6 NMSA 1978 (being Laws 1987, Chapter 336, Section 6) is amended to read:

"61-23-6. BOARD MEMBERS--QUALIFICATIONS.--

A. Each engineer member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of engineering as a professional engineer for at least ten years, including responsible charge of engineering projects for at least five years or engaged in engineering education for at least ten years, including responsible charge of engineering education for at least five years and shall be a professional engineer registered in New Mexico.

B. Each surveyor member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of surveying as a professional surveyor for at least ten years, including responsible charge of surveying projects for at least five years and shall be a professional surveyor registered in New Mexico.

C. Each public member shall be a citizen of the United States, a resident of New Mexico and at least thirty-five years of age, shall not have been registered nor be
qualified for registration as an engineer, surveyor, architect or landscape architect and shall not have any significant financial interest, direct or indirect, in the professions regulated."

Section 6

Section 6. Section 61-23-9 NMSA 1978 (being Laws 1987, Chapter 336, Section 9) is amended to read:

"61-23-9. BOARD--ORGANIZATION--MEETINGS.--

A. There shall be an engineering committee composed of the five members of the board who serve as registered professional engineers and one of the public members who shall be appointed to the committee by the board. The engineering committee shall meet in conjunction with all board meetings. The bylaws or regulations of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. The committee shall elect a chairman and vice chairman from the committee members at the last committee meeting prior to July 1 of each year.

B. There shall be a surveying committee composed of the three members of the board who serve as registered professional surveyors and one of the public members who shall be appointed to the committee by the board. The surveying committee shall meet in conjunction with all board meetings. The bylaws or regulations of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. In the event of a lack of a quorum and at the request of the committee, other qualified board members may serve on this committee. The committee shall elect a

chairman and vice chairman from the committee members at the last committee meeting prior to July 1 of each year.

C. All matters that come before the board that pertain exclusively to engineering or exclusively to surveying shall be referred to the respective committee for disposition. The committee action on such matters shall be the action of the board.

D. The board shall hold at least four regular meetings each year. At least one meeting shall be held at the state capitol. The bylaws or regulations of the board shall provide procedures for giving notice of all meetings and for holding special meetings. The board shall elect annually a chairman, a vice chairman and a secretary who shall be members of the board. No member of the board shall be elected to the same office for two consecutive full terms. A quorum of the board shall be a majority of the board. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. The board shall have an official seal."

Section 7

Section 7. Section 61-23-10 NMSA 1978 (being Laws 1987, Chapter 336, Section 10) is amended to read:

"61-23-10. DUTIES AND POWERS OF THE BOARD.--

A. It shall be the duty of the board to administer the provisions of the Engineering and Surveying Practice Act and to exercise the authority granted the board in that act. The board is authorized to engage such personnel, including an executive director, as it may deem necessary.

B. The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board also shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors. All such bylaws and rules shall be binding upon all persons registered under the Engineering and Surveying Practice Act.

C. To effect the provisions of the Engineering and Surveying Practice Act, the board may, under the chairperson's hand and the board's seal, subpoena witnesses and compel the production of books, papers and documents in any disciplinary action against a registrant or a person practicing or offering to practice without registration. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person refuses to obey any subpoena so issued or refuses to testify or produce any books, papers or documents, the board may apply to a court of competent jurisdiction for an order to compel the requisite action. If any person willfully fails to comply with such an order, that person may be held in contempt of court.

D. The board may apply for injunctive relief to enforce the provisions of the Engineering and Surveying Practice Act or to restrain any violation of that act. The members of the board shall not be personally liable under this proceeding.

E. The board may subject an applicant for registration to such examinations as it deems necessary to determine his qualifications.

F. No action or other legal proceedings for damages shall be instituted against the board, any board member or employee of the board for any act done in good faith and in the intended performance of any power or duty granted under the Engineering and Surveying Practice Act or for any neglect or default in the good faith performance or exercise of any such power or duty.

G. The board, in cooperation with the board of examiners for achitects and the board of landscape architects, shall create a joint standing committee to be known as the "joint practice committee". In order to safeguard life, health and property and to promote the public welfare, the committee shall have as its purpose the promotion and development of the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the professions. The composition of the committee and its powers and duties shall be in accordance with identical resolutions adopted by each board.

H. As used in the Engineering and Surveying Practice Act, "incidental practice" shall be defined by identical regulations of the board of registration for professional engineers and surveyors and the board of examiners for architects."

Section 8

Section 8. Section 61-23-11 NMSA 1978 (being Laws 1987, Chapter 336, Section 11) is amended to read:

"61-23-11. RECEIPTS AND DISBURSEMENTS.--

A. The executive director of the board shall receive and account for all money received under the provisions of the Engineering and Surveying Practice Act and shall pay that money to the state treasurer for deposit in a separate fund to be known as the "professional engineers' and surveyors' fund". Money in this fund shall be paid out only by warrant of the secretary of finance and administration upon the state treasurer, upon itemized vouchers approved by the chairman and attested by the executive director of the board. All money in the professional engineers' and surveyors' fund is appropriated for the use of the board.

B. The executive director of the board shall give a surety bond to the state in such sum as the board may determine. The premium on the bond shall be regarded

as a proper and necessary expense of the board and shall be paid out of the professional engineers' and surveyors' fund.

C. The board may make expenditures of the professional engineers' and surveyors' fund for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under the Engineering and Surveying Practice Act, including the expenses of the board's delegates to the conventions of, and for membership dues to, the national council of examiners for engineering and surveying and any of its subdivisions or any other body of similar purpose."

Section 9

Section 9. Section 61-23-12 NMSA 1978 (being Laws 1987, Chapter 336, Section 12) is amended to read:

"61-23-12. RECORDS AND REPORTS.--

A. The board shall keep a record of its proceedings and a register of all applications for registration, indicating the name, age and residence of each applicant, the applicant's educational and other qualifications, whether an examination was required, whether the applicant was rejected, whether a certificate of registration was granted, the date of the action of the board and such other information as may be deemed necessary by the board. This record and register shall be open to public inspection.

B. The following board records and papers are of a confidential nature and are not public records:

(1) examination material for examinations not yet given;

(2) file records of examination problem solutions;

(3) letters of inquiry and reference concerning applicants;

(4) board inquiry forms concerning applicants;

(5) investigation files where any investigation is ongoing or is still pending; and

(6) all other materials of like confidential nature.

C. The records of the board shall be prima facie evidence of the proceedings of the board set forth in those records, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

D. Annually, on or before August 30, the board shall submit to the governor a report of its transactions of the preceding year, accompanied by a complete statement of the receipts and expenditures of the board attested by affidavits of the board's chairman, secretary and executive director."

Section 10

Section 10. Section 61-23-13 NMSA 1978 (being Laws 1987, Chapter 336, Section 13) is amended to read:

"61-23-13. ROSTER OF REGISTERED PROFESSIONAL ENGINEERS AND SURVEYORS.--A roster showing the names and addresses of all registered professional engineers and professional surveyors shall be prepared by the executive director of the board prior to September 1 of each even-numbered year. A supplement to the roster shall be prepared by the executive director of the board prior to September 1 of each odd-numbered year. Copies of the roster and supplement shall be mailed to each registrant no later than November 30 of each year, placed on file with the secretary of state and the state commission of public records and may be distributed or sold to the public."

Section 11

Section 11. Section 61-23-14 NMSA 1978 (being Laws 1987, Chapter 336, Section 14) is repealed and a new Section 1-23-14 NMSA 1978 is enacted to read:

"61-23-14. CERTIFICATION AS AN ENGINEER INTERN--REQUIREMENTS.--

A. An applicant for certification as an engineer intern shall file the appropriate application that demonstrates that he:

(1) is of good moral character and reputation;

(2) has obtained at least a senior status in a board-approved, four-year curriculum in engineering,
related science curriculum or in a board-approved, four-year curriculum in engineering technology that is accredited by the technical accreditation commission of the accreditation board for engineering and technology; and

(3) has three references, one of whom shall be a registered professional engineer.

B. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as an engineer intern. An applicant who has made three unsuccessful attempts at achieving a passing score on the examination, shall only be eligible to take the examination after waiting a calendar

year. Thereafter, the applicant may take the examination no more than once each calendar year.

C. An applicant may be certified as an engineer intern upon successfully completing the examination, provided that he has:

(1) graduated from a board-approved, four-year engineering curriculum; or

(2) graduated from a board-approved, four-year related science curriculum or engineering technology program accredited by the technical accreditation commission of the accreditation board for engineering and technology, augmented by at least two years of board-approved, post-graduate engineering experience.

D. The certification of engineer intern does not permit the intern to practice as a professional engineer. Certification as an engineer intern is intended to demonstrate that the intern has obtained certain skills in engineering fundamentals and is pursuing a career in engineering."

Section 12

Section 12. A new section of the Engineering and Surveying Practice Act, Section 61-23-14.1 is enacted to read:

"61-23-14.1. REGISTRATION AS A PROFESSIONAL ENGINEER--REQUIREMENTS.--

A. Registration as a professional engineer may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and reputation;

(2) is certified as an engineer intern;

(3) has five references, three of whom shall be registrants practicing in the branch of engineering for which the applicant is applying and who have personal knowledge of the applicant's engineering experience and reputation. The use of nonregistered engineer references having personal knowledge of the applicant's engineering experience and reputation other than professional engineers may be accepted by the board provided a satisfactory written explanation is given; and either

(4) has at least four years of approved engineering experience after graduation from a board-approved engineering curriculum; or

(5) has a minimum of six years of approved engineering experience after graduation from a board-approved four-year related science or engineering technology curriculum.

B. After the applicant's application is approved by the board, the applicant shall be allowed to take the appropriate examination for registration as a professional engineer.

C. Upon successfully completing the examination, the applicant shall be eligible to register as a professional engineer upon action of the board.

D. An applicant may be registered by endorsement or comity if:

(1) he is currently registered as an engineer in the District of Columbia, another state, territory or possession of the United States, provided the registration does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the registration or the applicant's qualifications equaled or exceeded the registration standards in New Mexico at the time the applicant was initially registered; or

(2) he is currently registered as an engineer in a foreign country and can demonstrate, to the board's satisfaction, evidence that the registration was based on standards that equal or exceed those presently required for registration by the Engineering and Surveying Practice Act and can satisfactorily demonstrate to the board his competence in current engineering standards and procedures."

Section 13

Section 13. Section 61-23-18 NMSA 1978 (being Laws 1987, Chapter 336, Section 18) is amended to read:

"61-23-18. ENGINEERING--EXAMINATIONS.--The examinations for engineering certification and registration shall be held at least once a year at a time and place the board directs. The engineering committee shall determine the passing grade on examinations."

Section 14

Section 14. Section 61-23-19 NMSA 1978 (being Laws 1987, Chapter 336, Section 19) is amended to read:

"61-23-19. ENGINEERING--CERTIFICATE--SEALS.--

A. The board shall issue certificates of registration under the provisions of the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals.

C. An engineer shall have the right to engage in activities properly classified as architecture insofar as it is incidental to his work as an engineer, provided the engineer shall not hold himself out to be an architect or as performing architectural services unless duly registered as such."

Section 15

Section 15. Section 61-23-20 NMSA 1978 (being Laws 1987, Chapter 336, Section 20) is amended to read:

"61-23-20. ENGINEERING--REGISTRATION AND RENEWAL FEES--EXPIRATIONS.--

A. Registrations shall be for a period of two years as prescribed in the regulations and rules of procedure. Initial certificates of registration shall be issued to coincide with the biennial period. The initial registration fee shall be computed proportionately to the amount of time remaining in the biennial registration period.

B. The board shall establish by rule a biennial fee for professional engineers. Registration renewal is accomplished upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director shall send a renewal notice to each registrant's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the registration.

D. Each registrant shall have the responsibility to notify the board of any change of address.

E. Upon receipt of a renewal fee, and fulfillment of other requirements, the board shall issue a registration renewal card that shall show the name and registration number of the registrant and shall state that the person named therein has been granted registration to practice as a professional engineer for the biennial period.

F. Every registration shall automatically expire if not renewed on or before the last day of the biennial period. A registrant, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a delinquent registrant may renew a certificate by the payment of twice the biennial renewal fee at any time up to twelve months after the renewal fee became due. Should the registrant wish to renew an expired certificate after the twelve-month period has elapsed, he shall submit a formal application and fee as provided in Section 61-23-17 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications

for registration, unless the qualifications have changed since the registration has expired."

Section 16

Section 16. Section 61-23-21 NMSA 1978 (being Laws 1987, Chapter 336, Section 21) is amended to read:

"61-23-21. PRACTICE OF ENGINEERING.--

A. No firm, partnership, corporation or joint stock association shall be registered under the Engineering and Surveying Practice Act. No firm, partnership, corporation or joint stock association shall practice or offer to practice engineering in the state except as provided in the Engineering and Surveying Practice Act.

B. Professional engineers may engage in the practice of engineering and perform engineering work under the Engineering and Surveying Practice Act as individuals, partners or through joint stock associations or corporations. In the case of an individual, the individual shall be a professional engineer under the Engineering and Surveying Practice Act. All plans, designs, drawings, specifications or reports that are involved in such practice, issued by or for the practice, shall bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work issued. In the case of practice through partnership, at least one of the partners shall be a professional engineer under the Engineering and Surveying Practice Act, and all plans, designs, drawings, specifications or reports that are involved in such practice, issued by or for the partnership shall bear the seal and signature of the professional engineer in responsible charge of and directly responsible for such work when issued. In the case of practice through joint stock association or corporation, services or work involving the practice of engineering may be offered through that joint stock association or corporation; provided the person in responsible charge of the activities of the joint stock association or corporation which constitute such practice is a professional engineer who has authority to bind such joint stock association or corporation by contract; and further provided that all plans, designs, drawings, specifications or reports that are involved in such practice, issued by or for such joint stock association or corporation, bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work when issued.

C. An individual, firm, partnership, corporation or joint stock association may not use or assume a name involving the terms "engineer", "professional engineer", "engineering", "registered" or "licensed" engineer or any modification or derivative of such terms unless that individual, firm, partnership, corporation or joint stock association is qualified to practice engineering in accordance with the requirements in this section."

Section 17

Section 17. Section 61-23-22 NMSA 1978 (being Laws 1987, Chapter 336, Section 22) is repealed and a new Section 61-23-22 NMSA 1978 is enacted to read:

"61-23-22. ENGINEERING--EXEMPTIONS.--

A. A New Mexico licensed architect who has complied with all of the laws of New Mexico relating to the practice of architecture has the right to engage in the incidental practice, as defined by regulation, of activities properly classified as engineering provided that the architect shall not hold himself out to be an engineer or as performing engineering services, and further provided that the architect shall perform only that part of the work for which he is professionally qualified and shall utilize qualified professional engineers or others for those portions of the work in which the contracting architect is not qualified. Furthermore, the architect shall assume all responsibility for compliance with all laws, codes, regulations and ordinances of the state or its political subdivisions pertaining to all documents bearing his professional seal.

B. Officers and employees of the government of the United States engaged in the practice of engineering insofar that the work involved in said practice is limited and restricted to within federal government property shall be exempt from the provisions of the Engineering and Surveying Practice Act. Any connection or joining of work to other work outside of the federal property shall require that the connection or joining be specified by engineers registered under the provisions of that act.

C. An engineer employed by a firm, association or corporation who performs only the engineering services involved in the operation of the employer's business shall be exempt from the provisions of the Engineering and Surveying Practice Act, provided that neither the employee nor the employer offers engineering services to the public."

Section 18

Section 18. Section 61-23-24 NMSA 1978 (being Laws 1987, Chapter 336, Section 24) is repealed and a new Section 61-23-24 NMSA 1978 is enacted to read:

"61-23-24. ENGINEERING--VIOLATIONS--DISCIPLINARY ACTION--PENALTIES--REISSUANCE OF CERTIFICATES.--

A. The board may suspend, refuse to renew or revoke the certificate of registration, impose a fine not to exceed five thousand dollars ($5,000), place on probation for a specific period of time with specific conditions or reprimand any professional engineer who is found by the board to have:

(1) practiced or offered to practice engineering in New Mexico in violation of the Engineering and Surveying Practice Act;

(2) attempted to use as his own the certificate of another;
(3) given false or forged evidence to the board or to any board member for obtaining a certificate of registration;

(4) falsely impersonated any other registrant of like or different name;

(5) attempted to use an expired, suspended or revoked certificate of registration;

(6) falsely presented himself to be a professional engineer by claim, sign, advertisement or letterhead;

(7) violated the rules of professional responsibility for professional engineers adopted and promulgated by the board;

(8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules and regulations adopted by the board;

(9) been convicted of a felony; or

(10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules and regulations of the board.

B. Nothing in the Engineering and Surveying Practice Act shall prohibit the general use of the word "engineer", "engineered", or "engineering" so long as such words are not used in an offer to the public to perform engineering work as defined in Subsections E and J of Section 61-23-3 NMSA 1978.

C. The board may by rule establish the guidelines for the disposition of disciplinary cases involving specific types of violations. The guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

D. Failure to pay any fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act shall be a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

E. Any person may prefer charges of fraud, deceit, gross negligence, incompetence or misconduct against any registrant. The charges shall be in writing and shall be sworn to by the person making the charges and filed with the executive director of the board. All charges shall be referred to the engineering committee, acting for the board. No action that would have any of the effects specified in the Uniform Licensing Act, Subsections D, E, or F of Section 61-1-3, NMSA 1978 may be initiated later than

two years after the discovery by the board but in no case shall an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges, unless dismissed as unfounded or trivial or resolved by reprimand, shall be heard in accordance with the provision of the Uniform Licensing Act by the engineering committee acting for the board or by the board.

F. Persons making charges shall not be subject to civil or criminal suits, provided that the charges are made in good faith and are not frivolous or malicious.

G. The board or any board member may initiate proceedings under the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

H. The board, for reasons it deems sufficient, may reissue a certificate of registration to any person whose certificate has been revoked or suspended, providing a majority of the members of the engineering committee, acting for the board, or of the board vote in favor of such reissuance. A new certificate of registration bearing the original registration number to replace any certificate revoked, lost, destroyed or mutilated may be issued subject to the rules of the board with payment of a fee determined by the board.

I. The board shall prepare and adopt rules of professional responsibility for professional engineers as provided in the Engineering and Surveying Practice Act that shall be made known in writing to every registrant and applicant for registration under that act, and shall be published in the roster. Publication and public notice shall be in accordance with the Uniform Licensing Act. The board may revise and amend these rules of professional responsibility for professional engineers from time to time and shall notify each registrant in writing of such revisions
or amendments.

J. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than five thousand dollars ($5,000) or by imprisonment of no more than one year, or both.

K. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonregistrant.

L. The practice of engineering in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance, and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county that the violation occurs."

Section 19

Section 19. A new section of the Engineering and Surveying Practice Act, Section 61-23-24.1 NMSA 1978, is enacted to read:

"61-23-24.1. ENGINEERIN--PROFESSIONAL DEVELOPMENT.--The board shall implement and conduct a professional development program. Compliance and exceptions shall be established by the regulations and rules of procedure of the board."

Section 20

Section 20. Section 61-23-26 NMSA 1978 (being Laws 1987, Chapter 336, Section 26) is amended to read:

"61-23-26. ENGINEERING--PUBLIC WORK.--

A. It is unlawful for the state or any of its political subdivisions to engage in the construction of any public work involving engineering unless the plans and specifications involving engineering have been prepared by and are under the responsible charge of a registered professional engineer and the public work involving professional surveying has been executed under the responsible charge of a registered professional surveyor. Nothing in this section shall be held to apply to any public work wherein the contemplated expenditure for the complete project does not exceed one hundred thousand dollars ($100,000), except for public work involving structural design, structural modifications or surveying.

B. The Engineering and Surveying Practice Act shall not apply to construction surveys of engineering and architectural public works projects, the anticipated construction cost of which is less than one hundred thousand dollars ($100,000)."

Section 21

Section 21. Section 61-23-27 NMSA 1978 (being Laws 1987, Chapter 336, Section 27) is amended to read:

"61-23-27. ENGINEERING--PUBLIC OFFICER--REGISTRATION REQUIRED.--No person except a registered professional engineer shall be eligible to hold any responsible office or position for the state or any political subdivision of the state that includes the performance or responsible charge of engineering work."

Section 22

Section 22. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.1 NMSA 1978, is enacted to read:

"61-23-27.1. CERTIFICATION AS A SURVEYOR INTERN.--

A. An applicant for certification as a surveyor intern shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and reputation;

(2) has successfully completed forty-five semester hours of a board-approved surveying curriculum;

(3) has four years of combined board approved education, office and field experience in surveying. The forty-five semester hours of surveying curriculum will count as one year of experience; and

(4) have three references, two of whom shall be registered professional surveyors having personal knowledge of the applicant's surveying knowledge and experience.

B. The forty-five semester hours of academic training may be acquired by attendance at a college, university, a technical institute or by completion of a course of home study equivalent to forty-five semester hours from an institute having a curriculum approved by the board. The educational requirements shall be in surveying and associated scientific curriculum.

C. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as a surveyor intern.

D. Upon successfully completing the examination, the applicant may be certified as a surveyor intern by action of the board.

E. The certification of surveyor intern does not permit the registrant to practice surveying. Certification as a surveyor intern is intended to demonstrate that the intern has obtained certain skills in surveying fundamentals and is pursuing a career in surveying."

Section 23

Section 23. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.2 NMSA 1978, is enacted to read:

"61-23-27.2. REGISTRATION OF PROFESSIONAL SURVEYOR--REQUIREMENTS.--

A. Registration as a professional surveyor may be through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and reputation;

(2) is certified as a surveyor intern;

(3) has eight years of a combination of education and experience approved by the board; and

(4) has five references, three of whom shall be registered professional surveyors having personal knowledge of the applicant's surveying experience.

B. The applicant's experience shall, as a minimum, include three years of increasingly responsible experience in boundary surveying and four years of increasingly responsible experience under the direct supervision of a registered professional surveyor.

C. After acceptance of the application by the board, the applicant will be allowed to take the appropriate
examination for registration as a professional surveyor.

D. Upon successfully completing the examination, the applicant may be registered as a professional surveyor by action of the board.

E. If otherwise qualified, an applicant may be registered if he is currently registered as a professional surveyor in:

(1) the District of Columbia, another state, territory or possession of the United States, provided that:

(a) registration does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the registration or the applicant's qualifications equaled or exceeded the registration standards in New Mexico at the time the applicant was initially registered; and

(b) the applicant has passed examinations the board deems necessary to determine his qualifications, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in this state; or

(2) a foreign country and can demonstrate to the board's satisfaction:

(a) evidence that the registration was based on standards that equal or exceed those presently required for registration by the Engineering and Surveying Practice Act; and

(b) his competence in current surveying standards and procedures by passing examinations the board deems necessary to determine the

applicant's qualification including a written examination that includes questions on laws, procedures and practices pertaining to surveying in New Mexico."

Section 24

Section 24. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.3 NMSA 1978, is enacted to read:

"61-23-27.3. CERTIFICATION OF SURVEYOR INTERN--REQUIREMENTS--EFFECTIVE JULY 1, 1995.--

A. Effective July 1, 1995, an applicant for certification as a surveyor intern shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and reputation;

(2) has obtained at least a senior status in a board-approved four-year curriculum in surveying; and

(3) has three references, two of whom shall be registered professional surveyors having personal knowledge of the applicant's knowledge and experience.

B. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as a surveyor intern.

C. Upon successfully completing the examination and an approved four-year surveying curriculum, then by action of the board, the applicant may be certified as a surveyor intern.

D. The certification of surveyor intern does not permit the registrant to practice surveying. Certification as a surveyor intern is intended to demonstrate that the intern has obtained certain skills in surveying fundamentals and is pursuing a career in surveying.

E. If otherwise qualified, a graduate of an unapproved but related curriculum of at least four years, to be considered for certification as a surveyor intern, shall have a specific record of four years of combined office and field board-approved surveying experience obtained under the direction of a registered professional surveyor. Time spent in obtaining the unapproved or related curriculum will not be counted in the four years of required experience."

Section 25

Section 25. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.4 NMSA 1978, is enacted to read:

"61-23-27.4. REGISTRATION AS A PROFESSIONAL SURVEYOR--GENERAL REQUIREMENTS--EFFECTIVE JULY 1, 1995.--

A. Effective July 1, 1995, registration as a professional surveyor may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and reputation;

(2) is certified as a surveyor intern;

(3) has at least four years of approved surveying experience after graduation; and

(4) has five references, three of which shall be from registered professional surveyors having personal knowledge of the applicant's surveying experience.

B. The applicant's experience shall, as a minimum, include three years of increasingly responsible experience in boundary surveying and four years of increasingly responsible experience under the direct supervision of a registered professional surveyor.

C. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for registration as a professional surveyor.

D. Upon successfully completing the examination, the applicant shall be eligible to register as a professional surveyor upon action of the board.

E. If otherwise qualified, an applicant may be registered if he is currently registered as a professional surveyor in:

(1) the District of Columbia, another state, territory or possession of the United States, provided that:

(a) registration does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the registration or the applicant's qualifications equaled or exceeded the registration standards in New Mexico at the time the applicant was initially registered; and

(b) the applicant has passed examinations the board deems necessary to determine his qualifications, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in this state; or

(2) a foreign country and can demonstrate to the board's satisfaction:

(a) evidence that the registration was based on standards that equal or exceed those presently required for registration by the Engineering and Surveying Practice Act; and

(b) his competence in current surveying standards and procedures by passing examinations the board deems necessary to determine the applicant's qualification including a written examination that includes quetions on laws, procedures and practices pertaining to surveying in New Mexico."

Section 26

Section 26. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.5 NMSA 1978, is enacted to read:

"61-23-27.5. SURVEYING--APPLICATION AND EXAMINATION FEES.--

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act shall apply for examination, registration or certification on forms prescribed and furnished by the board. Applications shall be accompanied by the appropriate fee, any sworn statements the board may require to show the applicant's citizenship and education, a detailed summary of his technical work and appropriate references.

B. All application, reapplication, examination and reexamination fees shall be set by the board and shall not exceed the actual cost of carrying out the provisions of the Engineering and Surveying Practice Act. Fees shall not be refundable.

C. Any application may be denied for fraud, deceit, conviction of a felony or for any crime involving moral turpitude."

Section 27

Section 27. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.6 NMSA 1978, is enacted to read:

"61-23-27.6. SURVEYING--EXAMINATIONS.--The examinations for surveying certification and registration shall be held at least once a year at a time and place the board directs. The surveying committee shall determine the passing grade on examinations."

Section 28

Section 28. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.7 NMSA 1978, is enacted to read:

"61-23-27.7. SURVEYING--REGISTRATION AND RENEWAL FEES--EXPIRATIONS.--

A. Registrations shall be for a period of two years as prescribed in the regulations and rules of procedure. Initial certificates of registration shall be issued to coincide with the biennial period. The initial registration fee shall be computed proportionately to the amount of time remaining in the biennial registration period.

B. The board shall establish by regulation a biennial fee for professional surveyors. Renewal shall be granted upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director shall send a renewal notice to each registrant's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the registration.

D. It shall be the responsibility of the registrant to notify the board of any change of address and to maintain the certificate of registration current.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a registration renewal card that shall show the name and registration number of the registrant and shall state that the person named therein has been granted registration to practice as a professional surveyor for the biennial period.

F. Every certificate of registration shall automatically expire if not renewed on or before the last day of the biennial period. A registrant, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a delinquent registrant may renew a certificate by the payment of twice the biennial renewal fee at any time up to twelve months after the renewal fee became due. Should the registrant wish to renew an expired certificate after the twelve month period has elapsed, he shall submit a formal application and fee as provided in Section 61-23-27.2 NMSA 1978, or if after July 1, 1995 as provided in Section 61-23-27.4 NMSA 1978 of the Engineering and Surveying Practice Act. The board, in considering the reapplication, need not question the applicant's qualifications for registration unless the qualifications have changed since the registration has expired."

Section 29

Section 29. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.8 NMSA 1978, is enacted to read:

"61-23-27.8. SURVEYING CERTIFICATES AND SEALS.--

A. The board shall issue certificates of registration under the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals."

Section 30

Section 30. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.9 NMSA 1978, is enacted to read:

"61-23-27.9. SURVEYING--PRACTICE OF SURVEYING.--

A. No firm, partnership, corporation or joint stock association shall be registered under the Engineering and Surveying Practice Act. No firm, partnership, corporation or joint stock association shall practice or offer to practice surveying in the state except as provided in that act.

B. Professional surveyors may engage in the practice of surveying and perform surveying work under the Engineering and Surveying Practice Act as individuals, partners or through joint stock associations or corporations.

In the case of an individual, the individual shall be a professional surveyor under the Engineering and Surveying Practice Act. All plats, drawings and reports that are involved in the practice, issued by or for the practice, shall bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work issued. In the case of practice through a partnership, at least one of the partners shall be a professional surveyor under that act, and in the case of a single professional surveyor partner, all drawings or reports issued by or for the partnership shall bear the seal of the professional surveyor partner who shall be responsible for the work. In the case of practice through a joint stock association or corporation, services or work involving the practice of surveying may be offered through such joint stock association or corporation provided the person in responsible charge of the activities of the joint stock association or corporation which constitute the practice is a professional surveyor who has authority to bind such joint stock association or corporation by contract; and further provided that all drawings or reports which are involved in such practice, issued by or for the joint stock association or corporation, bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work when issued.

C. An individual, firm, partnership, corporation or joint stock association may not use or assume a name involving the terms "surveyor", "professional surveyor" or "surveying" or any modification or derivative of those terms unless that individual, firm, partnership, corporation or joint stock association is qualified to practice surveying in accordance with the requirements in this section."

Section 31

Section 31. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.10 NMSA 1978, is enacted to read:

"61-23-27.10. SURVEYING EXEMPTIONS.--

A. Officers and employees of the government of the United States engaged within New Mexico in the practice of surveying for the government, provided that they offer no surveying services to the public, and further provided that services do not affect the public, shall be exempt from the Engineering and Surveying Practice Act.

B. A surveyor employed by a firm, association or corporation who performs only the surveying services involved in the operation of the employer's business shall be exempt from the provisions of the Engineering and Surveying Practice Act, provided that neither the employee nor the employer offers surveying services to the public."

Section 32

Section 32. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.11 NMSA 1978, is enacted to read:

"61-23-27.11. SURVEYING--VIOLATIONS--DISCIPLINARY ACTIONS--PENALTIES-- REISSUANCE OF CERTIFICATES.--

A. The board may suspend, refuse to renew or revoke the certificate of registration, impose a fine not to
exceed five thousand dollars ($5,000), place on probation for a specific period of time with specific conditions or reprimand any professional surveyor who is found by the board to have:

(1) practiced or offered to practice surveying in New Mexico in violation of the Engineering and Surveying Practice Act;

(2) attempted to use as his own the certificate of another;

(3) given false or forged evidence to the board or to any board member for obtaining a certificate of registration;

(4) falsely impersonated any other registrant of like or different name;

(5) attempted to use an expired, suspended or revoked certificate of registration;

(6) falsely presented himself to be a professional surveyor by claim, sign, advertisement or letterhead;

(7) violated the rules of professional responsibility for professional surveyors adopted and promulgated by the board;

(8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules and regulations adopted by the board pursuant to the Engineering and Surveying Practice Act;

(9) been convicted of a felony; or

(10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules and regulations adopted by the board.

B. The board may by rule establish the guidelines for the disposition of disciplinary cases involving specific types of violations. Guidelines may include minimum and maximum fines, periods of probation, or conditions of probation or reissuance of a license.

C. Failure to pay any fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act shall be a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

D. Any person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against any registrant. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the executive director of the board. No action that would have any of the effects specified in the Uniform Licensing Act, Subsection D, E, or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board but in no case shall such an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges shall be referred to the surveying committee, acting for the board, or to the board. All charges, unless dismissed as unfounded or trivial or resolved by reprimand, shall be heard in accordance with the provisions of the Uniform Licensing Act by the surveying committee, acting for the board or by the board.

E. Persons making charges shall not be subject to civil or criminal suits, provided the charges are made in good faith and are not frivolous or malicious.

F. The board or any board member may initiate proceedings under the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

G. The board, for reasons it deems sufficient, may reissue a certificate of registration to any person whose certificae has been revoked or suspended, providing a majority of the members of the surveying committee, acting for the board, or of the

board vote in favor of such reissuance. A new certificate of registration bearing the original registration number to replace any certificate revoked, lost, destroyed or mutilated may be issued subject to the rules of the board with payment of a fee determined by the board.

H. The board shall prepare and adopt rules of professional responsibility for professional surveyors as provided in the Engineering and Surveying Practice Act that shall be made known in writing to every registrant and applicant for registration under that act and shall be published in the roster. Such publication and public notice shall be in accordance with the Uniform Licensing Act. The board may revise and amend these rules of professional responsibility for professional surveyors from time to time and shall notify each registrant in writing of the revisions or amendments.

I. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than five thousand dollars ($5,000) or by imprisonment of no more than one year, or both.

J. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonregistrant.

K. The practice of surveying in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance, and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county in which the violation occurs."

Section 33

Section 33. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.12 NMSA 1978, is enacted to read:

"61-23-27.12. SURVEYING--PROFESSIONAL DEVELOPMENT.--The board shall implement and conduct a professional development program. Compliance and exceptions shall be established by the regulations and rules of procedure of the board."

Section 34

Section 34. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.13 NMSA 1978, is enacted to read:

"61-23-27.13. SURVEYING--PUBLIC WORK.--It is unlawful for the state or any of its political subdivisions to engage in the construction of any public work involving surveying unless the surveying is under the responsible charge of a registered professional surveyor."

Section 35

Section 35. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.14 NMSA 1978, is enacted to read:

"61-23-27.14. SURVEYING--PUBLIC OFFICER--REGISTRATION REQUIRED.--No person except a registered professional surveyor shall be eligible to hold any responsible office or position for the state or any political subdivision of the state which requires the performance or responsible charge of surveying work."

Section 36

Section 36. A new section of the Engineering and Surveying Practice Act, 61-23-28.1 NMSA 1978, is enacted to read:

"61-23-28.1. SURVEYING--RECORD OF SURVEY.--

A. After the completion of a boundary survey in conformity with the practice of surveying as defined in the Engineering and Surveying Practice Act and in compliance with the minimum standards for surveying as published by the board, a professional surveyor shall file with the county clerk in the county or counties in which the survey was made a record of survey relating to land boundaries and property lines. Filing procedures shall be prescribed in the board's minimum standards. The record of survey required to be filed pursuant to this section shall be filed within thirty calendar days after the completion of the survey or approval by the governing authority.

B. Fees for recording a record of survey will be in conformance with Sections 14-8-12 through 14-8-16 NMSA 1978. The county clerk shall keep a proper index of the record of survey by the name of the owner and by section, township and range or projected section, township and range if the subject tract is in a land grant and with references with other legal subdivisions. These records shall be kept in conformance with Sections 14-8-12 through 14-8-16 NMSA 1978."

Section 37

Section 37. Section 61-23-31 NMSA 1978 (being Laws 1987, Chapter 336, Section 31) is amended to read:

"61-23-31. LICENSURE UNDER PRIOR LAWS.--Any person holding a valid registration as a professional engineer, professional surveyor, professional engineer and surveyor or certification as an engineer intern, or surveyor intern granted by the board under any prior law of New Mexico shall not be required to make a new application or to submit to an examination, but shall be entitled to the renewal of such registration upon the terms and conditions of the Engineering and Surveying Practice Act."

Section 38

Section 38. A new section of the Engineering and Surveying Practice Act, 61-23-31.1 NMSA 1978, is enacted to read:

"61-23-31.1. GOOD SAMARITAN.--

A. A professional engineer or professional surveyor who voluntarily, without compensation, at the request of a state or local public official acting in an official capacity, provides structural, electrical, mechanical, other engineering services, or surveying at the scene of a declared national, state, or local emergency caused by a major earthquake, hurricane, tornado, fire, explosion, flood, collapse or other similar disaster or catastrophic event, shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by the engineer's or surveyor's acts, errors, or omissions in the performance of any surveying or engineering services for any structure, building, piping or other engineered system, publicly owned.

B. The immunity provided shall apply only to a voluntary engineering or surveying service that occurs within thirty days of the emergency, disaster, or catastrophic event, unless extended by an executive order issued by the governor under the governor's emergency executive powers. Nothing in this section shall provide immunity for wanton, willful or intentional misconduct."

Section 39

Section 39. Section 61-23-32 NMSA 1978 (being Laws 1987, Chapter 336, Section 32) is amended to read:

"61-23-32. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The state board of registration for professional engineers and surveyors is terminated on July 1, 1999 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Engineering and Surveying Practice Act until July 1, 2000. Effective July 1, 2000, the Engineering and Surveying Practice Act is repealed."

Section 40

Section 40. Section 61-1-3.1 NMSA 1978 (being Laws 1981, Chapter 349, Section 3, as amended) is amended to read:

"61-1-3.1. LIMITATIONS.--

A. No action that would have any of the effects specified in Subsection D, E or F of Section 61-1-3 NMSA 1978 shall be initiated by a board later than two years after the conduct that would be the basis for the action, except as provided in Subsections C and D of this section.

B. The time limitation contained in Subsection A of this section shall be tolled by any civil or criminal litigation in which the licensee or applicant is a party arising from substantially the same facts, conduct or transactions that would be the basis for the board's action.

C. The New Mexico state board of psychologist examiners shall not initiate an action that would have any of the effects specified in Subsection D, E or F of Section 61-1-3 NMSA 1978 later than five years after the conduct of the psychologist or psychologist associate that is the basis for the action. However, if the conduct that is the basis for the action involves a minor or a person adjudicated incompetent, the action shall be initiated, in the case of a minor, no later than one year after the minor's eighteenth birthday or five years after the conduct, whichever is last and, in the case of a person adjudicated incompetent, one year after the adjudication of incompetence is terminated or five years after the conduct, whichever is last.

D. The New Mexico state board of public accountancy shall initiate an action under the Public Accountancy Act no later than two years following the discovery of a violation of that act if the violation would have any of the effects specified in Subsections E and F of Section 61-1-3 NMSA 1978.

E. The New Mexico state board of registration for professional engineers and surveyors shall not initiate an action that would have any of the effects specified in Subsection D, E or F of Section 61-1-3 NMSA 1978 later than two years after the discovery by that board but in no case shall an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges, unless dismissed as unfounded or trivial or resolved by reprimand, shall be heard by that board in accordance with the provisions of the Uniform Licensing Act."

Section 41

Section 41. REPEAL.--Sections 61-23-15 and 61-23-16, 61-23-23, 61-23-25 and 61-23-29 NMSA 1978 (being Laws 1987, Chapter 336, Section 15, 16, 23, 25 and 29) are repealed.

Section 42

Section 42. SEVERABILITY.--If any part or application of the Engineering and Surveying Practice Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 43

Section 43. EFFECTIVE DATE.--The effective date of the provisions of Sections 1 through 23 and 26 through 42 of this act is July 1, 1993. The effective date of the provisions of Sections 24 and 25 of this act is July 1, 1995.HB 666

CHAPTER 219

RELATING TO DRUGS; CHANGING THE REGULATORY PROVISIONS RELATING TO THE ISSUANCE OF PHARMACY LICENSES AND PERMITS TO PROVIDE FOR A NEW PERMIT CATEGORY FOR HOME CARE SERVICES; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 61-11-14 NMSA 1978 (being Laws 1969, Chapter 29, Section 13, as amended) is amended to read:

"61-11-14. PHARMACY LICENSURE--WHOLESALE DRUG DISTRIBUTION BUSINESS LICENSURE--REQUIREMENTS--FEES--REVOCATION.--

A. Any person who desires to operate or maintain the operation of a pharmacy or who engages in a wholesale drug distribution business in this state shall apply to the board for the proper permit or license and shall meet the requirements of the board and pay the annual fee for the permit or license and its renewal.

B. The board shall issue the following classes of permits or licenses that shall be defined and limited by regulation of the board:

(1) retail pharmacy license;

(2) nonresident pharmacy license;

(3) wholesale drug distributor's license;

(4) drug manufacturer's license;

(5) hospital pharmacy license for both inpatient and outpatient dispensing;

(6) drug room license;

(7) drug custodial license for licensed nursing homes;

(8) state license for the department of health;

(9) drug permit for pharmaceutical sales representatives who possess dangerous drugs;

(10) limited drug permit for industrial and public health clinics not under the department of health and businesses of a similar nature where dangerous drugs are dispensed, the permit being limited to specific dangerous drugs or other limitations as set forth in the application and shown on the permit;

(11) limited drug permit for home care services not under the department of health in which dangerous drugs are stored and administered, the permit being limited to specific dangerous drugs or other limitations as set forth in the board's regulations and shown on the permit; and

(12) limited license for wholesalers, retailers or distributors of veterinary drugs bearing the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian". Such drugs may be sold or dispensed by any person possessing a retail pharmacy license, wholesale drug distributor's license or drug manufacturer's license issued by the board, without the necessity of acquiring a limited license for veterinary drugs as provided in this paragraph.

C. Every application for the issuance or annual renewal of:

(1) a license for a retail pharmacy, wholesale drug distributor, nonresident pharmacy, pharmaceutical sales representative, drug manufacturer or hospital pharmacy shall be accompanied by a fee set by the board in an amount not to exceed three hundred dollars ($300);

(2) a license or permit for a drug room or a nursing home shall be accompanied by a fee set by the board in an amount not to exceed one hundred dollars ($100);

(3) a license or a permit for an industrial or public health clinic or a business of a similar nature, a limited drug permit issued pursuant to the provisions of Paragraph (11) of Subsection B of this section or a limited license issued pursuant to Paragraph (12) of Subsection B of this section shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars ($200); and

(4) the department of health license shall be accompanied by a fee set by the board in an aggregate amount based on a charge not to exceed two hundred dollars ($200) for each facility where dangerous drugs are stored and dispensed or distributed; provided that the charge for each facility shall in no instance be more than the fee set for industrial or public health clinics.

D. If it is desired to operate or maintain a pharmaceutical business at more than one location, a separate license or permit shall be obtained for each location.

E. Each application for a permit or license shall be made on forms prescribed and furnished by the board.

F. Any person making application to the board for a license to operate a new retail pharmacy, hospital pharmacy, wholesale drug business or drug manufacturing business in this state shall submit to the board an application for licensure indicating:

(1) the name under which the business is to be operated;

(2) the address of each location to be licensed and the address of the principal office of the business;

(3) in the case of a retail pharmacy, the name and address of the owner, partner or officer or director of a corporate owner;

(4) the type of business to be conducted at each location;

(5) a rough drawing of the floor plan of each location to be licensed;

(6) the proposed days and hours of operation of the business; and

(7) other information the board may require.

After preliminary approval of the application for a license for a retail pharmacy, a hospital pharmacy, a drug manufacturing business or a drug distribution business, a request for an inspection, together with an inspection fee not to exceed two hundred dollars ($200), shall be submitted to the board for each business location, and an inspection shall be made of each location by the board or its agent.

G. Licenses and permits issued by the board under this section are not transferable and shall expire on December 31 of each year unless renewed. Any person failing to renew his license or permit on or before December 31 of each year shall not have his license or permit reinstated except upon payment of a reinstatement fee set by the board in an amount not to exceed one hundred dollars ($100) and all delinquent renewal fees.

H. The board, after notice and a refusal or failure to comply, is authorized to suspend or revoke any license or permit issued under the provisions of the Pharmacy Act at any time examination or inspection of the operation for which the license or permit was granted discloses that such place is not being conducted according to law or regulations of the board."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 681

CHAPTER 220

RELATING TO UTILITIES; INCREASING THE PENALTY FOR VIOLATING THE PUBLIC UTILITY ACT; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 62-13-1 NMSA 1978 (being Laws 1941, Chapter 84, Section 80) is amended to read:

"62-13-1. SHORT TITLE.-- Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978 may be cited as the "Public Utility Act"."

Section 2

Section 2. Section 62-12-4 NMSA 1978 (being Laws 1941, Chapter 84, Section 76, as amended) is amended to read:

"62-12-4. VIOLATION OF ORDERS.--Any person or corporation which violates any provision of the Public Utility Act or which fails, omits or neglects to obey, observe or comply with any lawful order, or any part or provision thereof, of the commission is subject to a penalty of not less than one hundred dollars ($100) nor more than one hundred thousand dollars ($100,000) for each offense."HB 710

CHAPTER 221

RELATING TO CRIMINAL PROCEDURE; AMENDING A CERTAIN SECTION OF THE NMSA 1978 PERTAINING TO VICTIM RESTITUTION.

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

Section 1

Section 1. Section 31-17-1 NMSA 1978 (being Laws 1977, Chapter 217, Section 2, as amended) is amended to read:

"31-17-1. VICTIM RESTITUTION.--

A. It is the policy of this state that restitution be made by each violator of the Criminal Code to the victims of his criminal activities to the extent that the defendant is reasonably able to do so. This section shall be interpreted and administered to effectuate this policy. As used in this section, unless the context otherwise requires:

(1) "victim" means any person who has suffered actual damages as a result of the defendant's criminal activities;

(2) "actual damages" means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish and loss of consortium. Without limitation, "actual damages" includes damages for wrongful death;

(3) "criminal activities" includes any crime for which there is a plea of guilty or verdict of guilty, upon which a judgment may be rendered and any other crime committed after July 1, 1977 which is admitted or not contested by the defendant; and

(4) "restitution" means full or partial payment of actual damages to a victim.

B. If the trial court exercises either of the sentencing options under Section 31-20-6 NMSA 1978, the court shall require as a condition of probation or parole that the defendant, in cooperation with the probation or parole officer assigned to the defendant, promptly prepare a plan of restitution, including a specific amount of restitution to each victim and a schedule of restitution payments. If the defendant is presently unable to make any restitution but there is a reasonable possibility that the defendant may be able to do so at some time during his probation or parole period, the plan of restitution shall also state the conditions under which or the event after which the defendant will make restitution. If the defendant believes that he will not be able to make any restitution, he shall so state and shall specify the reasons. If the defendant believes that no person suffered actual damages as a result of the defendant's criminal activities, he shall so state.

C. The defendant's plan of restitution and the recommendations of his probation or parole officer shall be submitted promptly to the court. The court shall promptly enter an order approving, disapproving or modifying the plan, taking into account the factors enumerated in Subsection D of this section. Compliance with the plan of restitution as approved or modified by the court shall be a condition of the defendant's probation or parole. Restitution payments shall be made to the clerk of the court unless otherwise directed by the court. The court thereafter may modify the plan at any time upon the defendant's request or upon the court's own motion. If the plan as approved or modified does not require full payment of actual damages to all victims or if the court determines that the defendant is not able and will not be able to make any restitution at any time during his probation or parole period or that no person suffered actual damages as a result of the defendant's criminal activities, the court shall file a specific written statement of its reasons for and the facts supporting its action or determination.

D. The probation or parole officer, when assisting the defendant in preparing the plan of restitution, and the court, before approving, disapproving or modifying the plan of restitution, shall consider the physical and mental health and condition of the defendant, his age, his education, his employment circumstances, his potential for employment and vocational training, his family circumstances, his financial

condition, the number of victims, the actual damages of each victim, what plan of restitution will most effectively aid the rehabilitation of the defendant and such other factors as shall be appropriate. The probation or parole officer shall attempt to determine the name and address of each victim and the amount of his pecuniary damages.

E. The clerk of the court shall mail to each known victim a copy of the court's order approving or modifying the plan of restitution, including the court's statement, if any, under Subsection C of this section.

F. At any time during the probation or parole period, the defendant or the victim may request and the court shall grant a hearing on any matter related to the plan of restitution.

G. Failure of the defendant to comply with Subsection B of this section or to comply with the plan of restitution as approved or modified by the court may constitute a violation of the conditions of probation or parole. Without limitation, the court may modify the plan of restitution or extend the period of time for restitution, but not beyond the maximum probation or parole period specified in Section 31-21-10 NMSA 1978.

H. This section and proceedings under this section shall not limit or impair the rights of victims to recover damages from the defendant in a civil action.

I. The rightful owner of any stolen property is the individual from whom the property was stolen. When recovering his property, the rightful owner of the stolen property shall not be civilly liable to any subsequent holder, possessor or retainer of the property for the purchase or sale price of the property or for any other costs or expenses associated with the property. Any subsequent holder, possessor or retainer of returned stolen property shall return the property to the rightful owner. The subsequent holder, possessor or retainer shall have a cause of action against the person from whom he obtained the property for actual damages."

CHAPTER 222

RELATING TO MUNICIPAL JUDGES; AMENDING SECTION 35-14-4 NMSA 1978 (BEING LAWS 1961, CHAPTER 208, SECTION 4, AS AMENDED) TO PROVIDE FOR THE ELECTION OF ADDITIONAL MUNICIPAL JUDGES.

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

Section 1

Section 1. Section 35-14-4 NMSA 1978 (being Laws 1961, Chapter 208, Section 4, as amended) is amended to read:

"35-14-4. ELECTION--TERM--VACANCY.--

A. Municipal judges shall be elected, for terms of four years, at a regular municipal election.

B. In municipalities with a population of thirty thousand persons or more, additional judges may be elected if the municipal governing body determines the workload of the court requires more than one judge. Municipalities with a population of less than thirty thousand persons shall have only one municipal judge.

C. The governing body of any municipality may fill vacancies by appointment of a municipal judge to serve until the next regular municipal election."

_____HB 784

CHAPTER 223

RELATING TO EDUCATION; PROVIDING FOR SCHOOL NURSES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 22-8-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 63, as amended) is amended to read:

"22-8-9. BUDGETS--MINIMUM REQUIREMENTS.--

A. No budget for a school district shall be approved by the department which does not provide for:

(l) a school year consisting of at least one hundred eighty full instructional days or the equivalent thereof, exclusive of any release time for in-service training or a variable school year consisting of a minimum number of instructional hours established by the state board;

(2) a pupil-teacher ratio or class or teaching load as provided in Section 22-2-8.2 NMSA 1978; and

(3) a full-time, department-certified nurse for each fifty-five teachers employed by a school district or the equivalent part-time department-certified nurse for less than fifty-five teachers.

B. The state board shall, by regulation, establish the requirements for a teaching day, the standards for an instructional hour and the standards for a full-time certified classroom instructor and for the equivalent thereof.

C. The local school board shall submit a plan for the implementation of an alternate school year to the state superintendent for his approval.

D. The provisions of Subsection C and Paragraph (1) of Subsection A of this section shall be construed to apply only to school districts with a MEM of 1,000 or fewer."

Section 2

Section 2. Section 22-10-3 NMSA 1978 (being Laws 1975, Chapter 306, Section 3, as amended) is amended to read:

"22-10-3. CERTIFICATE REQUIREMENT--TYPES OF CERTIFICATES--FORFEITURE OF CLAIM--EXCEPTION--ADMINISTRATOR APPRENTICESHIP.--

A. Any person teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency, any person administering in a public school and any person providing health care and administering medication or performing medical procedures shall hold a valid certificate authorizing the person to perform that function.

B. All certificates issued by the state board shall be standard certificates except that the state board may issue substandard and substitute certificates under certain circumstances. If a local school board or the governing authority of a state agency certifies to the state board that an emergency exists in the hiring of a qualified person, the state board may issue a substandard certificate to a person not meeting the requirements for a standard certificate. The state board may also issue a substitute certificate to a person not meeting the requirements for a standard certificate to enable the person to perform the functions of a substitute teacher pursuant to the regulations of the state board. All substandard and substitute certificates issued shall be effective for only one school year. No person under the age of eighteen years shall hold a valid certificate, whether a standard, substandard or substitute.

C. Any person teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency and any person administering in a public school without a valid certificate after the first three months of the school year shall thereafter forfeit all claim to compensation for services rendered.

D. This section shall not apply to a person performing the functions of a practice teacher as defined in the regulations of the state board.

E. Any school nurse certified by the department of education shall also be licensed by the state board of nursing.

F. Notwithstanding any existing requirements, any person seeking certification as an administrator shall be required to serve a one-year apprenticeship. The state board shall develop criteria and regulations to implement the provisions of this subsection."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1995. HB 17

CHAPTER 224

RELATING TO EDUCATION; REQUIRING SCHOOL-BASED BUDGETING IN CERTAIN SCHOOL DISTRICTS; AMENDING AND ENACTING CERTAIN SECTIONS OF THE PUBLIC SCHOOL CODE.

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

Section 1

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

"CERTAIN SCHOOL DISTRICT BUDGETS.--

A. The local school board of a school district with a total MEM of greater than thirty thousand shall develop a school-based budgeting plan for all schools in the district for presentation to the legislative education study committee by October 15, 1993. The plan shall describe the means by which teachers, parents and administrators will participate in the development of school-based budgets.

B. In those school districts with a total MEM of greater than thirty thousand each individual school may voluntarily submit to the local school board a school-based budget based upon the projected total MEM at that school and the projected number of program units generated by students at that school. If an individual school submits such a budget, the local school board may include it in the budget submission to the department required pursuant to the Public School Finance Act."

Section 2

Section 2. Section 22-8-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 60, as amended) is amended to read:

"22-8-6. BUDGETS--SUBMISSION--FAILURE TO SUBMIT.--

A. Prior to April 15 of each year, each local school board shall submit to the department an estimated budget for the school district for the ensuing fiscal year. Upon written approval of the state superintendent, the date for the submission of the estimated budget as required by this section may be extended to a later date fixed by the state superintendent.

B. The estimated budget required by this section may include:

(1) estimates of the cost of insurance policies for periods up to five years if a lower rate may be
obtained by purchasing insurance for the longer term; or

(2) estimates of the cost of contracts for the transportation of students for terms extending up to four years.

C. In each local school district with a total membership of greater than thirty thousand, the estimated budget required by this section may include a school-district-wide breakdown, by individual school, of the membership projected for each individual school, the total program units generated at an individual school and anticipated disbursements and expenditures at each school.

D. If a local school board fails to submit a budget pursuant to this section, the department shall prepare the estimated budget for the school district for the ensuing fiscal year. A local school board shall be considered as failing to submit a budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or if the budget submitted does not comply with the law or the manual of accounting and budgeting of the department."

Section 3

Section 3. Section 22-8-15 NMSA 1978 (being Laws 1967, Chapter 16, Section 70, as amended) is amended to read:

"22-8-15. ALLOCATION LIMITATION.--

A. The department shall determine the allocations to each school district from each of the distributions of the public school fund, subject to the limits established by law.

B. The local school board, in each local school district with a total MEM of greater than thirty-five thousand, shall allocate distributions of the public school fund to individual schools pursuant to school-based budgets approved by the department. The local school board may retain an amount to not exceed two percent of the total district distribution to meet administrative expenses of the district."

CHAPTER 225

RELATING TO PROCUREMENT; EXEMPTING CERTAIN PROFESSIONAL SERVICE CONTRACTS FROM THE TERM ALLOWED FOR MULTI-TERM CONTRACTS; AMENDING A SECTION OF THE PROCUREMENT CODE.

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

Section 1

Section 1. Section 13-1-150 NMSA 1978 (being Laws 1984, Chapter 65, Section 123, as amended) is amended to read:

"13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars ($25,000), may be entered into for any period of time deemed to be in the best interests of the state agency or a local public body not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is twenty-five thousand dollars ($25,000) or more, the term shall not exceed eight years, including all extensions and renewals, except that for any such contract entered into pursuant to the Public Building Energy Efficiency Act, if that act becomes law, the term shall not exceed ten years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. A contract for professional services, except for services required to support or operate federally certified medicaid, financial assistance and child support enforcement management information or payment systems, may not exceed a term of four years, including all extensions and renewals, except that a multi-term contract for the services of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding."

_____HB 873

CHAPTER 226

RELATING TO EDUCATION; AMENDING, REPEALING, ENACTING AND RECOMPILING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1. Section 22-1-2.1 NMSA 1978 (being Laws 1985, Chapter 21, Section 2) is amended to read:

"22-1-2.1. HOME SCHOOL--REQUIREMENTS.--Any person operating or intending to operate a home school shall:

A. notify the superintendent of schools of the school district in which the person is a resident of the establishment of a home school within thirty days of its establishment and notify the superintendent of schools of the school district on or before April 1 of each subsequent year of operation;

B. maintain records of student attendance and disease immunization and furnish such records to the superintendent of schools of the school district;

C. provide instruction by a person possessing at least a high school diploma or its equivalent; and

D. test students annually to assess student achievement according to the statewide and local school district testing programs as determined by the state superintendent. The home school child shall take such achievement tests at a time and place and in a manner consistent with the procedures established by the state superintendent."

Section 2

Section 2. Section 22-2-1 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 9, Section 10, as amended) is amended to read:

"22-2-1. STATE BOARD--POWERS.--

A. The state board is the governing authority and shall have control, management and direction of all public schools, except as otherwise provided by law.

B. The state board may promulgate, publish and enforce regulations to exercise its authority granted pursuant to the Public School Code.

C. The state board may apply to the district court for an injunction, writ of mandamus or other appropriate relief to enforce the provisions of the Public School Code or any of its regulations promulgated pursuant to the Public School Code.

D. The state board may waive provisions of the Public School Code as authorized by law."

Section 3

Section 3. Section 22-2-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 5, as amended) is amended to read:

"22-2-2. STATE BOARD--DUTIES.--Without limiting those powers granted to the state board pursuant to Section 22-2- 1 NMSA 1978, the state board shall perform the following duties:

A. properly and uniformly enforce the provisions of the Public School Code;

B. determine policy for the operation of all public schools and vocational education programs in the state;

C. appoint a state superintendent;

D. purchase and loan instructional material to students pursuant to the Instructional Material Law and adopt regulations relating to the use and operation of instructional material depositories in the instructional material distribution process;

E. designate courses of instruction to be taught in all public schools in the state;

F. assess and evaluate all state institutions and those private schools that desire state accreditation;

G. determine the qualifications for and issue a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools, according to law and according to a system of classification adopted and published by the state board;

H. suspend or revoke a certificate held by a certified school instructor or certified school administrator, according to law, for incompetency, immorality or for any other good and just cause;

I. make full and complete reports on consolidation of school districts to the legislature;

J. prescribe courses of instruction, requirements for graduation and standards for all public schools, for private schools seeking state accreditation and for the educational programs conducted in state institutions;

K. adopt regulations for the administration of all public schools and bylaws for its own administration;

L. require periodic reports on forms prescribed by it from all public schools and attendance reports from private schools;

M. authorize adult educational programs to be conducted in schools under its jurisdiction and promulgate and publish regulations governing all such adult educational programs;

N. require any school under its jurisdiction that sponsors athletic programs involving sports to mandate that the participating student obtain catastrophic health and accident insurance coverage, such coverage to be offered through the school and issued by an insurance company duly licensed pursuant to the laws of New Mexico;

O. require all accrediting agencies for public schools in the state to act with its approval;

P. accept and receive all grants of money from the federal government or any other agency for public school purposes and disburse the money in the manner and for the purpose specified in the grant;

Q. require prior approval for any educational program in a public school that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency;

R. approve or disapprove all rules or regulations promulgated by any association or organization attempting to regulate any public school activity and invalidate any rule or regulation in conflict with any regulation promulgated by the state board. The state board may require performance and financial audits of any association or organization attempting to regulate any public school activity. The state board shall have no power or control over the rules or regulations or the bylaws governing the administration of the internal organization of the association or organization;

S. review decisions made by the governing board or officials of any organization or association regulating any public school activity, and any decision of the state board shall be final in respect thereto;

T. accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the state;

U. establish and maintain regional centers, at its discretion, for conducting cooperative services between public schools and school districts within and among those regions and to facilitate regulation and evaluation of school programs;

V. assess and evaluate for accreditation purposes at least one-third of all public schools each year through visits by department of education personnel to investigate the adequacy of pupil gain in standard required subject matter, adequacy of pupil activities, functional feasibility of public school and school district organization, adequacy of staff preparation and other matters bearing upon the education of the students;

W. provide for management and other necessary personnel to operate any public school or school district that has failed to meet requirements of law, state board standards or state board regulations; provided that the operation of the public school or school district shall not include any consolidation or reorganization without the approval of the local board of that school district. Until such time as requirements of law, standards or regulations have been met and compliance is assured, the powers and duties of the local school board shall be suspended;

X. establish and implement a plan that provides for technical assistance to local school boards through workshops and other in-service training methods; provided, however, that no plan shall require mandatory attendance by any member of a local school board;

Y. submit a plan applying for funds available under Public Law 94-142 and disburse these funds in the manner and for the purposes specified in the plan; and

Z. enforce requirements for home schools. Upon finding that a home school is not in compliance with law, the state board shall have authority to order that a student attend a public school or a private school."

Section 4

Section 4. Section 22-2-8.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 2) is amended to read:

"22-2-8.1. LENGTH OF SCHOOL DAY--MINIMUM.--

A. Regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(1) kindergarten, two and one-half hours per day or four hundred fifty hours per year;

(2) grades one through six, five and one-half hours per day or nine hundred ninety hours per year; and

(3) grades seven through twelve, six hours per day or one thousand eighty hours per year.

B. Nothing in this section precludes a local school board from setting length of school days in excess of the minimum requirements established by Subsection A of this section.

C. The state superintendent may waive the minimum length of school days in those districts where such minimums would create undue hardships as defined by the state board."

Section 5

Section 5. Section 22-2-8.2 NMSA 1978 (being Laws 1986, Chapter 33, Section 3, as amended) is amended to read:

"22-2-8.2. STAFFING PATTERNS--CLASS LOAD--TEACHING LOAD.--

A. The individual class load for elementary school teachers shall not exceed twenty students for kindergarten; provided that any teacher in kindergarten with a class load of fifteen to twenty students shall be entitled to the assistance of an instructional assistant.

B. The average class load for elementary school teachers at an individual school shall not exceed twenty- two students when averaged among grades one, two and three; provided that any teacher in grade one with a class load of twenty-one or more shall be entitled to the full-time assistance of an instructional assistant. Effective with the 1994-95 school year, the average class load for an elementary school teacher at an individual school shall not exceed twenty-four students when averaged among grades four, five and six.

C. The daily teaching load per teacher for grades seven through twelve shall not exceed one hundred sixty students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed one hundred thirty-five with a maximum of twenty-seven students per class, and the daily teaching load for teachers of required English courses in grades nine through twelve shall not exceed one hundred fifty students with a maximum of thirty students per class.

D. Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class size averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class size averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the district.

E. The state superintendent may waive the individual school class load requirements established in this section. Waivers shall be applied for annually and a waiver shall not be granted for more than two consecutive years. Waivers may only be granted if a school district demonstrates:

(1) no portable classrooms are available;

(2) no other available sources of funding exist to meet its need for additional classrooms;

(3) the district is planning alternatives to increase building capacity, for implementation within one year; and

(4) the parents of all children affected by the waiver have been notified in writing of the statutory class load requirements, that the district has made a decision to deviate from these class load requirements and parents have been informed of the district plan to achieve compliance with the class load requirements.

F. If a waiver is granted pursuant to Subsection E of this section to an individual school, the average class load for elementary school teachers at that school shall not exceed twenty students in grade one and shall not exceed twenty-five students when averaged among grades two, three, four, five and six.

G. Each local school district shall report to the department of education the size and composition of classes subsequent to the fortieth day and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the local school district's budget by the state superintendent.

H. The department of education shall report to the legislative education study committee and the legislative finance committee regarding each local school district's ability to meet class load requirements imposed by law.

I. Notwithstandig the provisions of Subsection E of this Section, the state board may waive the individual class load and teaching load requirements established in this section upon a demonstration of a viable alternative curricular plan and a finding by the state board that the plan is in the best interest of the district and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department of education shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee.

J. Effective with the 1987-88 school year, certified school instructors shall not be required to perform noninstructional duties except in emergency situations as defined by the state board. For purposes of this subsection, "noninstructional duties" means noon hall duty, cafeteria duty, ground duty and bus duty. It is the intent of the legislature to maintain the provision of this subsection; provided, however, that for the 1993-94 school year, "noninstructional duties" shall mean only noon hall duty, noon ground duty and noon cafeteria duty."

Section 6

Section 6. Section 22-2-8.3 NMSA 1978 (being Laws 1986, Chapter 33, Section 4, as amended) is amended to read:

"22-2-8.3. SUBJECT AREAS--MINIMUM INSTRUCTIONAL AREAS REQUIRED--ACCREDITATION.--

A. The state board shall require instruction in specific subject areas as provided in Subsections B through F of this section. Any public school or school district failing to meet these minimum requirements shall not be accredited by the state board.

B. All first and second grade classes shall provide daily instruction in language arts skills, including phonics, and mathematics.

C. All third grade classes shall provide daily instruction in language arts skills and mathematics.

D. All fourth, fifth and sixth grade classes shall provide instruction in language arts skills, with an emphasis on writing and editing; mathematics; science; and social studies, including geography. The following subject areas shall be offered in the remaining instructional time: art; music; physical education; health; and computer literacy, including a general familiarization with computers and support in the areas of mathematics and writing through word processing.

E. All seventh grade classes shall provide instruction in English, with an emphasis on grammar and writing; communication skills or science; New Mexico history and geography; mathematics; and physical fitness. Remaining instructional time may be used for electives listed in Subsection G of this section.

F. All eighth grade classes shall provide instruction in English, mathematics, United States history and science. Remaining instructional time may be used for electives listed in Subsection G of this section.

G. The electives authorized in Subsections E and F of this section are art, industrial arts, chorus, band, home economics, typing, creative writing, speech, drama, Spanish, computer literacy and other electives approved by the state board."

Section 7

Section 7. Section 22-2-8.4 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended) is amended to read:

"22-2-8.4. GRADUATION REQUIREMENTS.--

A. At the end of the eighth grade or during the ninth grade, each student shall prepare an individual program of study for grades nine through twelve. The program of study shall be signed by a student's parent or guardian.

B. Successful completion of a minimum of twenty-three units shall be required for graduation. These units shall be as follows:

(1) four units in English, with major emphasis on grammar and literature;

(2) three units in mathematics;

(3) two units in science, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography, and government and economics;

(5) one unit in physical fitness;

(6) one unit in communication skills, with major emphasis on writing and speaking, which may include a language other than English; and

(7) nine elective units. Only the following elective units shall be counted toward meeting the requirements for graduation: fine arts, i.e., music, band, chorus and art; practical arts; physical education; languages other than English; speech; drama; vocational education; mathematics; science; English; R.O.T.C.; social science; computer science; health education; and other electives approved by the state board.

C. Final examinations shall be administered to all students in all classes offered for credit.

D. No student shall receive a high school diploma who has not passed a state competency examination in the subject areas of reading, English, math, science and social science. If a student exits from the school system at the end of grade twelve without having passed a state competency examination, he shall receive an appropriate state certificate indicating the number of credits earned and the grade completed.

E. The state board may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code."

Section 8

Section 8. Section 22-2-8.5 NMSA 1978 (being Laws 1986, Chapter 33, Section 6, as amended) is amended to read:

"22-2-8.5. ADDITIONAL STATEWIDE TESTING.--

A. The state board shall expand the program of educational accountability established through its educational standards by adding reading assessments and writing production tests to its existing uniform statewide system of assessment to determine pupil status, progress and degree of achievement of basic skills and of essential educational competencies.

B. The department of education shall involve local school district personnel, especially certified elementary reading specialists, in the development of

methods on a statewide basis to measure student reading performance in order to assist school districts in the assessment of student problem areas in the first and second grades.

C. The department of education shall involve local school district personnel, especially certified school instructors in the fourth and sixth grades, in the development or selection of a uniform statewide writing production test for school districts, which shall be administered in grades four and six to measure student writing performance in order to assist school districts in the assessment of student problem areas."

Section 9

Section 9. Section 22-2-8.6 NMSA 1978 (being Laws 1986, Chapter 33, Section 7, as amended) is amended to read:

"22-2-8.6. ESSENTIAL COMPETENCIES--REMEDIATION PROGRAMS--PROMOTION POLICIES--EXCEPTION.--

A. The state board shall identify measurable essential competencies and determine the criteria for mastery of the essential competencies as established in the state educational standards.

B. Local school boards shall develop remediation programs to provide special instructional assistance to students in grades one through eight who fail to master the essential competencies as established by the state board. Remediation programs may include but not be limited to tutoring or summer programs. The cost of school district- approved remediation programs shall be borne by the school district. Remediation plans shall be filed with the state board.

C. The cost of summer and after-school remediation programs offered in grades nine through twelve shall be borne by the parent or guardian; however, where parents are determined to be indigent according to guidelines established by the state board, the local school board shall bear those costs.

D. Diagnosis of weaknesses identified by the reading assessment instrument administered pursuant to Section 22- 2-8.5 NMSA 1978 shall serve as a criterion in assessing the need for remedial programs or retention.

E. At the end of grades one through eight, there are three options available, dependent on a student's mastery of essential competencies:

(1) the student has mastered the essential competencies and shall enter the next higher grade;

(2) the student has not mastered the essential competencies and may participate in remediation. Upon certification by the school district that the student has successfully mastered his areas of deficiency, he shall enter the next higher grade; or

(3) the student has not mastered the essential competencies and upon the recommendation of the certified school instructor and school principal shall be retained in the same grade for no more than one school year in order to have an additional opportunity to master the essential competencies, at which time the student shall enter the next higher grade.

F. Any student who has participated in remediation programs pursuant to Paragraph (2) of Subsection E of this section and for whom retention is recommended shall be afforded an opportunity for a parent-teacher conference for the purpose of outlining the options available for the student and explaining the grounds for the recommendation of retention. A parent or guardian who refuses to allow his child to be retained pursuant to Paragraph (3) of Subsection E of this section shall sign a waiver indicating that the child's promotion is against the specific advice and recommendation of the certified school instructor and the school principal.

G. Any student who fails to master the essential competencies for two successive school years shall be referred to an alternative program designed by the school district. Alternative program plans shall be filed with the state board."

Section 10

Section 10. Section 22-5-1.1 NMSA 1978 (being Laws 1985, Chapter 202, Section 1) is amended to read:

"22-5-1.1. LOCAL SCHOOL BOARD MEMBERS--ELECTED FROM DISTRICTS.--Members of local school boards in districts having a population in excess of sixteen thousand shall reside in and be elected from single-member districts. Once, following every federal decennial census, the local school board shall divide the school district into a number of election districts equal in number to the number of members on the school board. Such election districts shall be contiguous and compact and as equal in population as is practicable; provided that the local school board of any district having a population of sixteen thousand or less may provide for single-member districts as provided in this
section."

Section 11

Section 11. Section 22-5-3 NMSA 1978 (being Laws 1969, Chapter 103, Section 2, as amended) is amended to read:

"22-5-3. SCHOOL BOARD MEMBERSHIP--OPTIONAL FORM.--

A. The local school board of any school district in this state may by resolution provide for the local board of that district to be composed of seven qualified electors of the state who reside within the district. The resolution shall provide that the board consist of seven separate positions, and each such position shall be designated by number. Qualified electors seeking election to the school board shall file and run for only one of the numbered positions.

B. If the resolution provided for in this section is adopted, it shall go into effect within thirty days after its adoption unless a petition signed by the qualified electors of the school district in a number equal to twenty percent of all the voters in the district voting at the last regular school board election is presented to the local board within such thirty days asking that an election be held on the question of increasing the membership of the local board to seven members.

C. Upon receipt and verification of the petition, the local school board shall within thirty days call a special school election to vote upon the question of increasing the membership of the local school board in that district to seven members.

D. If the voters of the school district approve the increase in the local school board's membership to seven members, the resolution shall be in effect.

E. A resolution adopted pursuant to Subsection A of this section shall conform to the requirements of Section 1-22-5 NMSA 1978 and shall provide for the election of two additional school board members at a special school district election. One new member shall be elected to serve until the second regular school board election following the special school district election. The second new member shall be elected to serve until the third regular school board election following such special school district election. Thereafter, persons elected to fill the additional new positions on the board shall be elected for terms as provided by law."

Section 12

Section 12. Section 22-5-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 28, as amended) is amended to read:

"22-5-4. LOCAL SCHOOL BOARDS--POWERS--DUTIES.--A local school board shall have the following powers or duties:

A. subject to the regulations of the state board, supervise and control all public schools within the school district and all property belonging to or in the possession of the school ditrict;

B. employ a superintendent of schools for the school district and fix his salary;

C. delegate administrative and supervisory functions of the local school board to the superintendent of schools;

D. subject to the provisions of law, approve or disapprove the employment, termination or discharge of all employees and certified school personnel of the school district upon a recommendation of employment, termination or discharge by the superintendent of schools; provided that any employment relationship shall continue until final decision of the board. Any employment, termination or discharge without the prior recommendation of the superintendent is void;

E. apply to the state board for a waiver of certain provisions of the Public School Code relating to length of school day, staffing patterns, subject area or the purchase of instructional materials for the purpose of implementing a collaborative school improvement program for an individual school;

F. fix the salaries of all employees and certified school personnel of the school district;

G. contract, lease, purchase and sell for the school district;

H. acquire and dispose of property;

I. have the capacity to sue and be sued;

J. acquire property by eminent domain as pursuant to the procedures provided in the Eminent Domain Code;

K. issue general obligation bonds of the school district;

L. repair and maintain all property belonging to the school district;

M. for good cause and upon order of the district court, subpoena witnesses and documents in connection with a hearing concerning any powers or duties of the local school boards;

N. except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code;

O. adopt regulations pertaining to the administration of all powers or duties of the local school board;

P. accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the school district or the public school to which it is given; and

Q. offer and, upon compliance with the conditions of such offer, pay rewards for information leading to the arrest and conviction or other appropriate disciplinary disposition by the courts or juvenile authorities of offenders in case of theft, defacement or destruction of school district property. All such rewards shall be paid from school district funds in accordance with regulations that shall be promulgated by the department of education."

Section 13

Section 13. Section 22-5-4.3 NMSA 1978 (being Laws 1986, Chapter 33, Section 9) is amended to read:

"22-5-4.3. SCHOOL DISCIPLINE POLICIES.--

A. Local school boards shall establish student discipline policies and shall file them with the department of education. The local school board shall involve parents, school personnel and students in the development of these policies, and public hearings shall be held during the formulation of these policies in the high school attendance areas within each district or on a district-wide basis for those districts that have no high school.

B. Each school district discipline policy shall establish rules of conduct governing areas of student and school activity, detail specific prohibited acts and activities and enumerate possible disciplinary sanctions, which sanctions may include corporal punishment, in-school suspension, school service, suspension or expulsion.

C. An individual school within a district may establish a school discipline policy, provided that parents, school personnel and students are involved in its development and a public hearing is held in the school prior to its adoption. If an individual school adopts a discipline policy in addition to the local school board's district discipline policy, it shall submit its policy to the local school board for approval.

D. No school employee who in good faith reports any known or suspected violation of the school discipline policy or in good faith attempts to enforce the policy shall be held liable for any civil damages as a result of such report or of his efforts to enforce any part of the policy."

Section 14

Section 14. Section 22-5-4.6 NMSA 1978 (being Laws 1990, Chapter 52, Section 3) is amended to read:

"22-5-4.6. COLLABORATIVE SCHOOL IMPROVEMENT PROGRAMS.--

A. A local school board may approve an individual school's plan to implement a collaborative school improvement program upon a finding that the plan is in the best interest of the school and is supported by the participating teaching staff.

B. The input and concerns of parents, students, school personnel and members of the community shall be solicited and considered in the development and adoption of a collaborative school improvement program.

C. If necessary for the implementation of a collaborative school improvement program, the local school board may apply to the state board for a waiver of Public School Code provisions relating to length of school day, staffing patterns, subject areas or purchase of instructional material. The state board may approve a request for a waiver upon a finding that the local school board has demonstrated accountability for student learning through alternative planning and that the participating teaching staff supports the implementation of a collaborative school improvement program. The local school board shall provide the state board with a program budget that shows the type and number of students served, the type and number of personnel involved and all expenditures of the waiver.

D. A teacher participating in the development and implementation of a collaborative school improvement program may contact the state board to comment on the local school board's waiver request if he communicated his opinion in writing to the local school board at the time the local school board approved implementation of the program."

Section 15

Section 15. Section 22-5-8 NMSA 1978 (being Laws 1967, Chapter 16, Section 31, as amended) is amended to read:

"22-5-8. TERM OF OFFICE.--

A. The full term of office of a member of a local school board shall be four years from March 1 succeeding his election to office at a regular school district election.

B. Any member of a local school board whose term of office has expired shall continue in that office until his successor is elected and qualified."

Section 16

Section 16. Section 22-5-11 NMSA 1978 (being Laws 1986, Chapter 33, Section 12) is amended to read:

"22-5-11. LOCAL SCHOOL BOARDS--SALARY SCHEDULE.--

A. Prior to the beginning of each school year, each local school board shall file with the department of education a district salary schedule, which salary schedule shall incorporate any salary increases or compensation measures specifically mandated by the legislature.

B. No local school board shall reduce the district salary schedule established pursuant to Subsection A of this section without the prior written approval of the state superintendent. The state superintendent shall give written notice to the legislative finance committee and the department of finance and administration of any approved reduction of any school district's salary schedule, including the reasons for the request for reduction and the grounds for approval."

Section 17

Section 17. Section 22-7-6 NMSA 1978 (being Laws 1977, Chapter 308, Section 6) is amended to read:

"22-7-6. PETITION.--

A. A separate petition shall be initiated for each named member.

B. The petition shall be on eight and one-half inch by fourteen inch paper.

C. All information written on the petition form shall be in compliance with the federal Voting Rights Act of 1965, as amended.

D. Each face sheet of a petition shall contain the following:

(1) a space for the initiation date;

(2) a notice at the top of the sheet stating: "Recall is a local decision to be funded by local money. Additional state funds will not be advanced to support recall.";

(3) a space for the name of the named member;

(4) a space for the name of the person, group or organization initiating the petition;

(5) a space in which to list the specific charges in support of the recall of the named member that constitute malfeasance in office, misfeasance in office or violation of oath of office; and

(6) a notice stating "Signatures are valid for a maximum of one hundred ten days from date of initiation.".

E. The remaining portion of the face sheet shall be substantially in the following form:

"I, the undersigned, a registered voter in the county of _____, New Mexico, and a resident of the_____school district, hereby petition for the recall of the local school board member named on the face sheet of this petition.

1._____ _____ _____ _____ _____
Usual Signature Name Printed Address As City Date
As Registered Registered

2._____ _____ _____ _____ _____".
Usual Signature Name Printed Address As City Date
As Registered Registered

F. One completed face sheet or duplicate thereof shall be the first page of all circulated petitions.

G. Each subsequent page of the petition shall have approximately twenty-five lines numbered one to twenty-five and shall be substantially in the form as provided in Subsection E of this section."

Section 18

Section 18. Section 22-7-13 NMSA 1978 (being Laws 1977, Chapter 308, Section 13, as amended) is amended to read:

"22-7-13. SPECIAL RECALL ELECTION.--

A. The date of the special recall election shall be set no later than ninety days after the date of the determination by the county clerk.

B. The question to be submitted to the voters at the special recall election shall be whether or not the named member shall be recalled.

C. A special recall election may be held in conjunction with a regular or a special school district election.

D. Whenever a special recall election is called, the county clerk shall give public notice of the special recall election by publishing information regarding the election once each week for four consecutive weeks. The first publication of the information shall be made between forty- five and sixty days before the date of the special recall
election.

Information regarding the election shall be in compliance with the federal Voting Rights Act of 1965, as amended, and shall include the date when the special recall election will be held, the question to be submitted to the voters, a brief description of the boundaries of each precinct, the location of each polling place, the hours each polling place will be open and the date and time of the closing of the registration books by the county clerk as required by law.

E. The ballot shall be in compliance with the federal Voting Rights Act of 1965, as amended, and shall present the voter the choice of voting "for the removal of the named member" or "against the removal of the named member".

F. All special recall elections shall be held in compliance with the federal Voting Rights Act of 1965, as amended.

G. Except as otherwise provided in the Local School Board Member Recall Act, special recall elections in a school district shall be conducted as provided in the Election Code."

Section 19

Section 19. Section 22-8-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 63, as amended) is amended to read:
"22-8-9. BUDGETS--MINIMUM REQUIREMENTS.--

A. No budget for a school district shall be approved by the department that does not provide for:

(1) a school year consisting of at leastone hundred eighty full instructional days or the equivalent thereof, exclusive of any release time for in-service training; or

(2) a variable school year consisting of a minimum number of instructional hours established by the state board; and

(3) a pupil-teacher ratio or class or teaching load as provided in Section 22-2-8.2 NMSA 1978.

B. The state board shall, by regulation, establish the requirements for a teaching day, the standards for an instructional hour and the standards for a full-time certified classroom instructor and for the equivalent thereof.

C. The local school board shall submit a plan for the implementation of an alternate school year to the state superintendent for his approval.

D. The provisions of Subsection C and Paragraph (2) of Subsection A of this section shall be construed to apply only to school districts with a MEM of 1,000 or fewer."

Section 20

Section 20. Section 22-8-12.1 NMSA 1978 (being Laws 1978, Chapter 128, Section 5, as amended) is amended to read:

"22-8-12.1. BUDGET REQUESTS.--

A. Each local school board shall submit annually on or before October 15 to the department:

(1) an estimate for the succeeding fiscal year of:

(a) the membership of qualified students to be enrolled in the basic program;

(b) the full-time-equivalent membership of students to be enrolled in approved early childhood education programs; and

(c) the membership of students to be enrolled in approved special education programs;

(2) all other information necessary to calculate program costs; and

(3) any other information related to the financial needs of the school district as may be requested by the department.

B. All information requested pursuant to Subsection A of this section shall be submitted on forms prescribed and furnished by the department and shall comply with the manual of accounting and budgeting published by the department.

C. The department shall:

(1) review the financial needs of each school district for the succeeding fiscal year; and

(2) submit annually, on or before November 30, to the secretary of finance and administration the recommendations of the state board for:

(a) amendments to the public school finance formula;

(b) appropriations for the succeeding fiscal year to the public school fund for inclusion in the executive budget document; and

(c) appropriations for the succeeding fiscal year for pupil transportation and instructional materials."

Section 21

Section 21. Section 22-8-20 NMSA 1978 (being Laws 1991, Chapter 85, Section 3) is amended to read:

"22-8-20. BASIC PROGRAM UNITS.--The number of basic program units is determined by multiplying the basic program MEM in each grade by the corresponding cost differential factor as follows:

Grades	Cost Differential Factor
1	1.2
2 and 3	1.18
4 through 6	1.0
7 through 12	1.25."

Section 22

Section 22. Effective July 1, 1994, Section 22-8-20 NMSA 1978 (being Laws 1991, Chapter 85, Section 3, as amended by Section 21 of this act if it becomes law) is amended to read:

"22-8-20. BASIC PROGRAM UNITS.--The number of basic program units is determined by multiplying the basic program MEM in each grade by the corresponding cost differential factor as follows:

Grades	Cost Differential Factor
1	1.2
2 and 3	1.18
4 through 6	1.045
7 through 12	1.25."

Section 23

Section 23. Section 22-8-25 NMSA 1978 (being Laws 1981, Chapter 176, Section 5, as amended) is amended to read:

"22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--DEFINITIONS-- DETERMINATION OF AMOUNT.--

A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that the school district's operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost.

B. "Local revenue", as used in this section, means ninety-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents ($.50) to each one thousand dollars ($l,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act.

C. "Federal revenue", as used in this section, means ninety-five percent of receipts to the school district, excluding amounts that, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:

(1) the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; and

(2) grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Sections 236 through 240 of Title 20 of the United States Code, commonly known as "PL 874 funds", or an amount equal to the revenue the district was entitled to receive if no application was made for such funds but deducting from those grants the additional amounts to which school districts would be entitled because of the provisions of Subparagraph (D) of Paragraph (2) of Subsection (d) of Section 238 of Title 20 of the United States Code.

D. To determine the amount of the state equalization guarantee distribution, the state superintendent shall:

(1) calculate the number of program units to which each school district is entitled using the membership of the fortieth day of the school year, except for school districts with a MEM of 200 or less where the number of program units shall be calculated on the fortieth day membership of either the prior year or the current year, whichever is greater, for all programs except special education, which shall be calculated by using the membership on December 1 of the school year; or

(2) calculate the number of program units to which a school district operating under an approved variable school calendar is entitled using the membership on an appropriate date established by the state board;

(3) using the results of the calculations in Paragraph (l) or (2) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district;

(4) calculate the local and federal revenues as defined in this section; and

(5) deduct the sum of the calculations made in Paragraph (4) of this subsection from the program cost established in Paragraph (3) of this subsection.

E. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deduction made in Paragraph (5) of Subsection D of this section.

F. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June l of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a district has received more state equalization guarantee funds than its entitlement, a refund shall be made by the district to the state general fund.

G. Notwithstanding the methods of calculating the state equalization guarantee distribution in this section and Laws 1974, Chapter 8, Section 22, if a school district received funds under Section 2391 of Title 42 U.S.C.A. and if the federal government takes into consideration grants authorized by Sections 236 through 240 of Title 20 of the United States Code and all other revenues available to the school district in determining the level of federal support for the school district for the sixty-fourth and succeeding fiscal years, the state equalization guarantee distribution for school districts receiving funds under this subsection shall be computed as follows:

$$\frac{\text{fiscal year program cost excluding special education for the year for which the state equalization guarantee distribution is being computed}}{\text{prior fiscal year state equalization guarantee distribution excluding prior fiscal year program cost excluding special education}} \times$$

plus special education funding in accordance with Paragraphs (l) or (2) and (3) of Subsection D of this section and Section 22-8-21 NMSA 1978 plus an amount that

would be produced by applying a rate of eight dollars forty-two and one-half cents ($8.425) to each one thousand dollars ($l,000) of net taxable value of property as defined in the Property Tax Code for property taxation purposes in the school district and to each one thousand dollars ($l,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act equals the fiscal year state equalization guarantee distribution for the year for which the state equalization guarantee distribution is being computed.

If at any time grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Sections 236 through 240 of Title 20 of the United States Code, commonly known as "PL 874 funds", are reduced or are no longer available, the state equalization guarantee distribution shall be computed by the formula contained in this subsection plus an increase by fifty percent of the amount the prior year's PL 874 funds exceed PL 874 funds for the year for which the state equalization guarantee distribution is being computed."

Section 24

Section 24. Section 22-8-27 NMSA 1978 (being Laws 1967, Chapter 16, Section 77, as amended) is amended to read:

"22-8-27. TRANSPORTATION EQUIPMENT.--Local school boards may, with the approval of the state transportation director and the state superintendent, establish a systematic program for the purchase of necessary school bus transportation equipment from the annual budget allocation for school transportation within the school district."

Section 25. Section 22-10-3.2 NMSA 1978 (being Laws 1988, Chapter 48, Section 1) is amended to read:

"22-10-3.2. CERTIFIED SCHOOL PERSONNEL AND SCHOOL NURSES--REQUIRED TRAINING PROGRAM.--

A. All certified school personnel and school nurses shall be required to complete training in the detection and reporting of child abuse and neglect and substance abuse. This requirement shall be completed within the person's first year of employment by a school district in the state.

B. Pursuant to the policy and regulations adopted by the state board, the department of education shall develop a training program, including training materials and necessary training staff, to meet the requirement of Subsection A of this section to make the training available in every school district in the state. The department of education shall coordinate the development of the program with appropriate staff at the human services department and the department of health.

C. The training program developed pursuant to this section shall be made available by the department of education to the deans of every college of education in New Mexico for use in providing such training to students seeking elementary and secondary education certification."

Section 26

Section 26. Section 22-10-10 NMSA 1978 (being Laws 1967, Chapter 16, Section 112, as amended) is amended to read:

"22-10-10. COMMUNICABLE DISEASES--PROHIBITED EMPLOYMENT--PENALTY.--

A. No person afflicted with a communicable disease in a transmissible state dangerous to the health of students shall be employed in a public or private school in this state.

B. The department of health after consultation with the state board shall adopt and issue regulations designating those communicable diseases in a transmissible stage that are dangerous to the health of students.

C. Each person employed in a public or private school, including bus drivers, shall present to the governing authority of the school where employed, upon initial employment, a certificate from a licensed physician stating that the person is free from all communicable diseases in a transmissible stage dangerous to the health of students.

D. The certficate from a licensed physician shall be according to a form prescribed by the department of health and approved by the state board. The certificate must be obtained from a licensed physician not more than ninety days prior to the date of employment.

E. Any person violating the provisions of this section by not obtaining a certificate from a licensed physician as required is guilty of a petty misdemeanor."

Section 27

Section 27. Section 22-10-14 NMSA 1978 (being Laws 1986, Chapter 33, Section 22, as amended) is amended to read:

"22-10-14. TERMINATION DECISIONS--LOCAL SCHOOL BOARD--GOVERNING AUTHORITY OF A STATE AGENCY-- PROCEDURES.--

A. A local school board or governing authority of a state agency may decline to reemploy a certified school instructor with less than three years of consecutive service in the same classification for any reason it deems sufficient. Upon

request of the certified school instructor, the superintendent or administrator shall provide written reasons for the decision to terminate. The reasons shall be provided within ten working days of the request. The reasons shall not be publicly disclosed by the superintendent, administrator, local school board or governing authority. The reasons shall not provide a basis for contesting the decision under the School Personnel Act.

B. A certified school instructor who has been employed by a school district or state agency for three consecutive years and who receives a notice of termination pursuant to either Section 22-10-12 NMSA 1978 or Subsection A of this section, may request an opportunity to make a statement to the local school board or governing authority on the decision to terminate him by submitting a written request to the local superintendent or administrator within five working days from the date written notice of termination is served upon him. The certified school instructor may also request in writing the reasons for the action to terminate him. The local superintendent or administrator shall provide written reasons for the notice of termination to the certified school instructor within five working days from the date the written request for a meeting and the written request for the reasons were received by the local superintendent or administrator. Neither the local superintendent or administrator nor the local school board or governing authority shall publicly disclose its reasons for termination.

C. A local school board or governing authority may not refuse to reemploy a certified school instructor who has been employed by a school district or state agency for three consecutive years without just cause.

D. The certified school instructor's request pursuant to Subsection B of this section shall be granted if he responds to the local superintendent's or administrator's written reasons as provided in Subsection B of this section by submitting in writing to the local superintendent or administrator a contention that the decision to terminate him was made without just cause. The written contention shall specify the grounds on which it is contended that the decision was without just cause and shall include a statement of the facts that the certified school instructor believes support his contention. This written statement shall be submitted within ten working days from the date the certified school instructor receives the written reasons from the local superintendent or administrator. The submission of this statement constitutes a representation on the part of the certified school instructor that he can support his contentions and an acknowledgment that the local school board or governing authority may offer the causes for its decision and any relevant data in its possession in rebuttal of his contentions.

E. A local school board or governing authority shall meet to hear the certified school instructor's statement in no less than five or more than fifteen working days after the local school board or governing authority receives the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act. The certified school instructor and the local superintendent or administrator may each be accompanied by a person of his choice. First, the

superintendent shall present the factual basis for his determination that just cause exists for the termination of the employee, limited to those reasons provided to the certified school instructor pursuant to Subsection B of this section. Then, the certified school instructor shall present his contentions, limited to those grounds specified in Subsection D of this section. The local school board or governing authority may offer such rebuttal testimony as it deems relevant. All witnesses may be questioned by the local school board or governing authority, the certified school instructor or his representative and the local superintendent or administrator or his representative. The local school board or governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable. No record shall be made of the proceeding. The local school board or governing authority shall notify the certified school instructor and the local superintendent or administrator of its decision in writing within five working days from the conclusion of the meeting.

Section 28

Section 28. Section 22-10-16 NMSA 1978 (being Laws 1967, Chapter 16, Section 118, as amended) is amended to read:

"22-10-16. EXCEPTED FROM PROVISIONS.--Sections 22- 10-12 through 22-10-15 NMSA 1978 do not apply to the following:

A. a person not holding a standard certificate;

B. a certified school instructor employed to fill the position of a certified school instructor entering military service; and

C. a person not qualified to teach."

Section 29

Section 29. Section 22-13-3 NMSA 1978 (being Laws 1973, Chapter 357, Section 1, as amended) is amended to read:

"22-13-3. EARLY CHILDHOOD EDUCATION PROGRAMS REQUIRED.--

A. In accordance with state board regulations, every local school board shall establish and conduct early childhood education programs.

B. The state board shall adopt and promulgate regulations providing for:

(1) minimum standards for the conduct of early childhood education programs; and

(2) qualifications of any person teaching in those programs.

C. The cost of operating early childhood education programs shall be included in the budget prepared for the school district.

D. As used in this section, "early childhood education programs" means kindergarten programs for every child who has attained his fifth birthday prior to September 1 of the school year, except for those children who are eligible for and participating in federal headstart programs in any class B county with a population in excess of ninety-five thousand, established by a local school board for the development or enrichment of persons within the school district.

E. The provisions of this section shall be effective with the 1988-89 school year, and waivers may be granted upon the request of the parent or legal guardian pursuant to Section 22-12-2 NMSA 1978."

Section 30

Section 30. Section 22-14-5 NMSA 1978 (being Laws 1967, Chapter 16, Section 195) is amended to read:

"22-14-5. VOCATIONAL EDUCATION DIVISION--POWERS-- DUTIES.--Subject to the policies of the state board, the vocational education division of the department of education shall:

A. provide vocational education to qualified individuals;

B. act as the representative of the state board in administering any state plan or federal aid funds relating to vocational education;

C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational education program;

D. enter into reciprocal agreements with other states to provide vocational education;

E. accept gifts or grants to be used for vocational education;

F. enforce regulations for the administration of laws relating to vocational education; and

G. conduct research and compile statistics relating to vocational education."

Section 31

Section 31. Section 22-14-8 NMSA 1978 (being Laws 1967, Chapter 16, Section 197, as amended) is amended to read:

"22-14-8. VOCATIONAL REHABILITATION DIVISION-- POWERS--DUTIES.--Subject to the policies of the state board, the vocational rehabilitation division of the departmenenforce regulations for the administration of laws relating to vocational rehabilitation;

A. provide vocational rehabilitation to qualified individuals;

B. act as the representative of the state board in administering any state plan or federal aid funds relating to vocational rehabiliatiaion;

C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational rehabilitation program;

D. enter into reciprocal agreements with other states to provide vocational rehabilitation;

E. accept gifts or grants to be used for vocational rehabilitation;

F. enforce regulations for the administration of laws relating to vocational rehabilitation;

G. conduct research and compile statistics relating to vocational rehabilitation; and

H. coordinate programming related to the transition of persons with disabilities from secondary and post-secondary education programs to employment or vocational placement."

Section 32

Section 32. Section 22-14-21 NMSA 1978 (being Laws 1953, Chapter 163, Section 1, as amended) is amended to read:

"22-14-21. PRODUCTS OF CLIENTS OF THE COMMISSION FOR THE BLIND--PURCHASING AGENT TO DETERMINE VALUE.--It is the duty of the state purchasing agent to determine the fair market value of all products manufactured by clients of the commission for the blind and offered for sale to the state, or any other governmental agency or political subdivision thereof having its own purchasing agency, by the commission for the blind and approved for that use by the state purchasing agent, to revise the prices from time to time in accordance with changing market conditions and to make such rules and regulations regarding specifications, time of delivery and other relevant matters as are necessary to carry out the purpose of Sections 22-14-21 through 22-14-23 NMSA 1978."

Section 33

Section 33. Section 22-14-22 NMSA 1978 (being Laws 1953, Chapter 163, Section 2, as amended) is amended to read:

"22-14-22. PURCHASES BY STATE AGENCIES AND SUBDIVISIONS.--Except as hereinafter provided, all products thereafter procured by or for the state, or any governmental agency or political subdivision thereof having its own purchasing agency, shall be procured in accordance with applicable specifications of the state purchasing agent from the commission for the blind or duly established agencies or branches thereof whenever the products are available at the price determined, as provided in Section 22-14-21 NMSA 1978, to be a fair market price for the product so manufactured, and no advertisement or notice for bids from other suppliers shall be necessary."

Section 34. Section 22-14-23 NMSA 1978 (being Laws 1953, Chapter 163, Section 3, as amended) is amended to read:"22-14-23. APPLICATION OF FUNDS.--All money received by the commission for the blind or any duly established agency or branch thereof from the sale of products manufactured by clients of the commission for the blind to the state, any subdivision thereof or any other purchaser shall be placed in a special fund, which shall be used only for ordinary and necessary business expenses and to purchase raw materials, supplies and capital improvements for the manufacturing of products and to pay such compensation to the clients manufacturing the products as may be determined to be reasonable by the commission for the blind."

Section 35

Section 35. Section 22-15-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 206, as amended) is amended to read:

"22-15-2. DEFINITIONS.--As used in the Instructional Material Law:

A. "division" or "bureau" means the instructional material bureau in the department of education;

B. "director" or "chief" means the chief of the bureau;

C. "instructional material" means school textbooks and other educational media;

D. "multiple list" means a written list of those instructional materials approved by the state board;

E. "membership" means the total enrollment of qualified students on the fortieth day of the school year entitled to the free use of instructional material pursuant to the Instructional Material Law; and

F. "additional pupil" means a pupil in a school district's, state intitution's or private school's current year's certified forty-day membership above the number certified in the school district's, state institution's or private school's prior year's forty-day membership."

Section 36. Section 22-15-3 NMSA 1978 (being Laws 1967, Chapter 16, Section 207, as amended) is amended to read:

"22-15-3. BUREAU--CHIEF.--

A. The "instructional material bureau" is created within the department of education.

B. With approval of the state board, the state superintendent shall appoint a chief of the bureau."

Section 37

Section 37. Section 22-15-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 208, as amended) is amended to read:

"22-15-4. BUREAU--DUTIES.--Subject to the policies and regulations of the state board, the bureau shall:

A. administer the provisions of the Instructional Material Law;

B. enforce regulations for the handling, safekeeping and distribution of instructional material and for inventory and accounting procedures to be followed by school districts, state institutions, private schools and adult basic education centers pursuant to the Instructional Material Law;

C. withdraw or withhold the privilege of participating in the free use of instructional material in case of any violation of or noncompliance with the provisions of the Instructional Material Law or any regulations adopted pursuant thereto; and

D. enforce regulations relating to the use and operation of instructional material depositories in the instructional material distribution process."

Section 38

Section 38. Section 22-15-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 210, as amended) is amended to read:

"22-15-6. DISBURSEMENTS FROM THE INSTRUCTIONAL MATERIAL FUND.--Disbursements from the instructional material fund shall be by warrant of the

department of finance and administration upon vouchers issued by the department of education."

Section 39. Section 22-15-7 NMSA 1978 (being Laws 1967, Chapter 16, Section 211, as amended) is amended to read:

"22-15-7. STUDENTS ELIGIBLE--DISTRIBUTION.--

A. Any qualified student or person eligible to become a qualified student attending a public school, a state institution or a private school approved by the state board in any grade from first through the twelfth grade of instruction is entitled to the free use of instructional material. Any student enrolled in an early childhood education program as defined by Section 22-13-3 NMSA 1978 or person eligible to become an early childhood education student as defined by that section attending a private early childhood education program approved by the state board is entitled to the free use of instructional material. Any student in an adult basic education program approved by the state board is entitled to the free use of instructional material.

B. Instructional material shall be distributed to school districts, state institutions, private schools and adult basic education centers as agents for the benefit of students entitled to the free use of the instructional material.

C. Any school district, state institution, private school or adult basic education center as agent receiving instructional material pursuant to the Instructional Material Law is responsible for distribution of the instructional material for use of eligible students and for the safekeeping of the instructional material."

Section 40

Section 40. Section 22-15-8 NMSA 1978 (being Laws 1967, Chapter 16, Section 212, as amended) is amended to read:

"22-15-8. MULTIPLE LIST--SELECTION.--

A. The state board shall adopt a multiple list to be made available to students pursuant to the Instructional Material Law. The state board shall ensure that parents and other community members are involved in the adoption process at the state level.

B. Pursuant to the provisions of the Instructional Material Law, each school district, state institution, private school or adult basic education center as agent may select instructional material for the use of its students from the multiple list adopted by the state board. Local school boards shall give written notice to parents and other community members and shall invite parental involvement in the adoption process at the district level. Local school boards shall also give public notice, which notice may include publication in a newspaper of general circulation in the school district."

Section 41

Section 41. Section 22-15-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 213, as amended) is amended to read:

"22-15-9. INSTRUCTIONAL MATERIAL ACCOUNTS--CREDIT ALLOCATIONS.--

A. The department of education shall establish a separate instructional material account for each school district, state institution, private school or adult basic education center in the state having students in attendance entitled to the free use of instructional material pursuant to the Instructional Material Law.

B. On or before July 1 of each year, the department of education shall allocate credit to the instructional material account of each school district, state institution or private school not less than ninety percent of its estimated entitlement as determined from the estimated forty-day membership for the next school year. A school district's, state institution's or private school's entitlement is that portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for transportation charges and emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. The allocation for adult basic education shall be based on a full-time-equivalency obtained by multiplying the total previous year's enrollment by .25. For the purpose of this allocation, additional pupils shall be counted as four pupils.

On or before January 15 of each year, the department of education shall recompute each entitlement using the forty-day membership for that year, except for adult basic education, and shall allocate the balance of the annual appropriation compensating for any over- or under-estimation of credit made in the first allocation.

In the event the funds remaining for this allocation are insufficient to compensate for an over- or under-estimation of credit made in the first allocation, the final recomputed over- or under-allocation of credit shall be carried forward by the department of education to be credited or debited to the allocation for the ensuing school year.

C. An amount not to exceed thirty percent of total credit allocations attributed to each individual instructional material account shall, at the request of the local school district, or the appropriate governing body and institution shall be distributed directly to each public school district, state institution or adult basic education center for instructional materials not included on the multiple list provided for in Section 22-15-8 NMSA 1978.

D. Any balance remaining in an instructional material account of a school district, state institution, private school or adult basic education center at the end of the fiscal year shall remain available for expenditure in subsequent years."

Section 42

Section 42. Section 22-15-10 NMSA 1978 (being Laws 1967, Chapter 16, Section 214, as amended) is amended to read:

"22-15-10. SALE OR LOSS OR RETURN OF INSTRUCTIONAL MATERIAL.--

A. With the approval of the chief, instructional material distributed to a school district, state institution, private school or adult basic education center pursuant to the Instructional Material Law may be sold at a price determined by officials of the school district, state institution, private school or adult basic education center. The selling price shall not exceed the cost of the instructional material to the state.

B. A school district, state institution, private school or adult basic education center as agent may hold the parent, guardian or student responsible for the loss, damage or destruction of instructional material while the instructional material was in the possession of the student. A school district may withhold the grades, diploma and transcripts of the student responsible for damage or loss of instructional material until the parent, guardian or student has paid for the damage or loss. When a parent, guardian or student is unable to pay for damage or loss, the school district shall work with the parent, guardian or student to develop an alternative program in lieu of payment. Where a parent or guardian is determined to be indigent according to guidelines established by the state board of education, the local school district shall bear the cost.

C. All money collected by a school district, state institution, private school or adult basic education center as agent for the sale, loss, damage or destruction of instructional material received pursuant to the Instructional Material Law shall be transmitted to the department of education. The department shall credit the instructional material account of the school district, state institution, private school or adult basic education center and deposit the money received with the state treasurer for credit to the instructional material fund. The department shall account for and distribute materials pursuant to procedures established by the department.

D. Upon order of the chief, a school district, state institution, private school or adult basic education center shall transfer as ordered to the department of education or its designee instructional material purchased from the instructional material fund which is in usable condition and for that there is no use expected by the respective schools."

Section 43

Section 43. Section 22-15-12 NMSA 1978 (being Laws 1967, Chapter 16, Section 216, as amended) is amended to read:

"22-15-12. ANNUAL REPORT.--Annually, at a time specified by the department of education, each local school board of a school district and each governing authority of a state institution, private school or adult basic education center receiving instructional material pursuant to the Instructional Material Law shall file a report with the department of education."

Section 44

Section 44. Section 22-15-13 NMSA 1978 (being Laws 1967, Chapter 16, Section 217, as amended) is amended to read:

"22-15-13. CONTRACTS WITH PUBLISHERS.--

A. The state board may enter into a contract with a publisher or a publisher's authorized agent for the purchas paper, binding, printing, illustrations, subject matter and authorship as the copy filed with the state board;

B. Payment for instructional material purchased by the state board shall be made only upon performace of the contract and the delivery and receipt of the instructional material.

C. Each publisher or publisher's authroized agent contracting with the state for the sale of instructional material shall agree:

(1) to file a copy of each item of instructional material to be furnished under the contract with the state board with a certificate attached identifying it as an exact copy of the item of instructional material to be furnished under the contract;

(2) that the instructional material furnished pursuant to the contract shall be of the same quality in regard to paper, binding, printing, illustrations, subject matter and authorship as the copy filed with the state board; and

(3) that if instructional material under the contract is sold elsewhere in the United States for a price less than that agreed upon in the contract with the state, the price to the state shall be reduced to the same amount."

Section 45

Section 45. Section 22-15-14 NMSA 1978 (being Laws 1967, Chapter 16, Section 218, as amended) is amended to read:

"22-15-14. REPORTS--BUDGETS.--

A. Annually, the department of education shall submit a budget for the ensuing fiscal year to the department of finance and administration showing the

expenditures for instructional material to be paid out of the instructional material fund, including reasonable transportation charges and emergency expenses.

B. Upon request, the department of education shall make reports to the state board concerning the administration and execution of the Instructional Material Law."

Section 46

Section 46. Section 22-16-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 220, as amended by Laws 1979, Chapter 53, Section 1 and also by Laws 1979, Chapter 305, Section 5) is amended to read:

"22-16-2. STATE TRANSPORTATION DIVISION--DUTIES.-- Subject to the policies of the state board, the state transportation division of the department of education shall:

A. establish standards for school bus transportation.

B. establish standards for school bus design and operation pursuant to Section 22-16-11 NMSA 1978;

C. establish and approve school bus routes for the transportation of students:

(1) to and from public schools; and

(2) to and from public school attendance centers and schools or centers providing approved vocational and special education programs;

D. enforce those regulationsadopted by the state board relating to school bus transportation;

E. audit records of school bus contractors or school district-owned bus operations in accordance with regulations promulgated by the state transportation director; and

F. establish standards, inspect and certify for safety vehicles defined as school buses by the Motor Vehicle Code."

Section 47

Section 47. Section 22-16-3 NMSA 1978 (being Laws 1967, Chapter 16, Section 221) is amended to read:

"22-16-3. SCHOOL BUS SERVICE CONTRACTS.--

A. All contracts entered into by a school district to provide school bus service to students attending public school within the school district shall be approved by the local school board and the state transportation director. The contracts shall be in writing on forms approved by the state board.

B. A school district may enter into a school bus service contract for a term not to exceed four years. A school bus service contract may provide, at the expiration of the term of the contract, for annual renewal of the school bus service contract on the same terms and conditions at the option of the local school board if approval is granted by the state transportation director.

C. In the event a contract with a school bus operator is terminated, the buses owned by the operator that are used pursuant to his school bus service contract shall be appraised by three qualified appraisers appointed by the local school board and approved by the state transportation director. The operator succeeding to the contract shall purchase, with the approval of the operator whose contract was terminated, all of the buses owned by the former operator at their appraised value."

Section 48

Section 48. Section 22-16-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 224, as amended) is amended to read:

"22-16-6. REIMBURSEMENT OF PARENTS OR GUARDIANS.-- A local school board may, subject to regulations adopted by the state board and with the approval of the state transportation director, provide per capita or per mile reimbursement to a parent or guardian in cases where regular school bus transportation is impractical because of distance, road conditions, sparseness of population or in cases where the local school board has authorized a parent to receive reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone. A schedule providing for the reimbursement of parents and guardians in an amount that is reasonable and comparable to that which would be paid to a school bus contractor for the transportation of pupils, when computation for payment excludes the factors of size and age of school bus equipment and the driver's salary, shall be established by the state transportation division of the department of education with the approval of the state board."

Section 49. Section 22-22-5 NMSA 1978 (being Laws 1972, Chapter 16, Section 5) is amended to read:

"22-22-5. VARIABLE SCHOOL CALENDAR--ACTION BY DEPARTMENT AND BOARD.--

A. The state board shall make rules and regulations pursuant to the Variable School Calendar Act necessary to establish procedures for making application, requiring reports and maintaining supervision of operations of a district under a variable

school calendar. In addition, the state board may make rules and regulations necessary to implement the provisions of the Variable School Calendar Act.

B. The state board may suspend or modify existing rules and regulations pertaining to school district operations upon recommendation of the state superintendent, when those rules and regulations prevent or impede the implementation of the Variable School Calendar Act."

Section 50

Section 50. Section 22-24-4 NMSA 1978 (being Laws 1975, Chapter 235, Section 4, as amended) is amended to read:

"22-24-4. FUND CREATED--USE.--

A. There is created the "public school capital outlay fund". Balances remaining in the fund at the end of each fiscal year shall not revert.

B. Money in the fund may be used only for capital expenditures deemed by the council necessary for an adequate educational program, and the capital expenditures are limited to the purchase, or construction of temporary or permanent classrooms.

C. The council may authorize the purchase by the property control division of the general services department of property to be loaned to school districts to meet a temporary requirement. Payment for these purchases shall be made from the fund. Title and custody to the property shall rest in the property control division. The council shall authorize the lending of the property to school districts upon request and upon finding that sufficient need exists. Application for use or return of state-owned portable classroom buildings shall be submitted by public school districts to the council. Expenses of maintenance of the property while in the custody of the property control division shall be paid from the fund; expenses of maintenance and insurance of the property while in the custody of a school district shall be the responsibility of the school district. The council may authorize the permanent disposition of the property by the property control division with prior approval of the state board of finance.

D. Applications for assistance from the fund shall be made by local school districts to the council in accordance with requirements of the council.

E. The council shall review all requests for assistance from the fund and shall allocate funds only for those capital outlay projects that cannot be financed by the school district from other sources and that meet the criteria of the Public School Capital Outlay Act."

Section 51

Section 51. Section 22-24-6 NMSA 1978 (being Laws 1975, Chapter 235, Section 6, as amended) is amended to read:

"22-24-6. COUNCIL CREATED--ORGANIZATION--DUTIES.--

A. There is created the "public school capital outlay council", consisting of the:

(1) secretary of finance and administration or his designee;

(2) superintendent of public instruction or his designee;

(3) the governor or his designee;

(4) president of the New Mexico school boards association or his designee;

(5) the director of the construction industries division of the regulation and licensing department or his designee;

(6) the president of the state board of education or his designee; and

(7) the director of the legislative education study committee or his designee.

B. The council shall investigate all applications for assistance from the fund and shall certify the approved applications to the secretary of finance and administration for distribution of funds.

C. The council shall elect a chairman from among the members. The council shall meet at the call of the chairman.

D. The department of education shall account for all distributions and shall make annual reports to the legislative education study committee and to the legislative finance committee."

Section 52

Section 52. Section 22-26-6 NMSA 1978 (being Laws 1983, Chapter 163, Section 6) is amended to read:

"22-26-6. ELECTION RESULTS--CERTIFICATION.--The certification of the results of an election held on the question of imposition of a public school buildings tax shall be made in accordance with the School Election Law, and a copy of the certificate of results shall be mailed immediately to the state superintendent."

Section 53

Section 53. TEMPORARY PROVISION--DIRECTIONS TO COMPILER.--

A. Section 10-3-2 NMSA 1978 (being Laws 1967, Chapter 131, Section 1, as amended) is recompiled as a new section of the Public School Code, Section 22-5-12 NMSA 1978.

B. Section 22-14-10 NMSA 1978 (being Laws 1971, Chapter 324, Section 4) is recompiled as Section 22-14- 30 NMSA 1978.

C. Section 66-7-365 NMSA 1978 (being Laws 1978, Chapter 35, Section 469) is recompiled as a new section of the Public School Code, Section 22-16-11 NMSA 1978.

Section 54

Section 54. REPEAL.--Section 22-5-2, 22-5-4.1, 22-5-8.1, 22-6-5, 22-14-6, 22-16-4.1 and 22-16-7 NMSA 1978 (being Laws 1969, Chapter 103, Section 1, Laws 1981, Chapter 296, Section 1, Laws 1983, Chapter 237, Section 1, Laws 1967, Chapter 16, Section 39, Laws 1971, Chapter 324, Section 1, Laws 1979, Chapter 305, Section 6 and Laws 1967, Chapter 16, Section 225, as amended) are repealed.

Section 55. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 616

CHAPTER 227

RELATING TO EDUCATION; ENACTING THE CHARTER SCHOOLS ACT; AMENDING AND ENACTING CERTAIN SECTIONS OF THE PUBLIC SCHOOL CODE.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Charter Schools Act".

Section 2

Section 2. DEFINITIONS.--As used in the Charter Schools Act:

A. "charter school" means an individual school within a school district, authorized by the state board to develop and implement an alternative educational curriculum and authorized by law to develop and utilize a school-based budget; and

B. "state board" means the state board of education.

Section 3

Section 3. PURPOSE.--The purpose of the Charter Schools Act is to enable individual schools to restructure their educational curriculum to encourage the use of different and innovative teaching methods and to enable individual schools to be responsible for site-based budgeting and expenditures.

Section 4

Section 4. CHARTER SCHOOLS AUTHORIZED.--

A. The state board may authorize any school within local school districts to become a charter school.

B. The state board may authorize the existence of a charter school for a period not to exceed five years. At the end of five years, a charter school may reapply to the state board to continue operation of the charter school.

C. The state board shall not authorize the existence of more than five charter schools in the state.

Section 5

Section 5. CHARTER SCHOOLS CREATED.--

A. Individual schools wishing to become charter schools shall apply through their local school board to the state board for authorization to become charter schools. In transmitting the application to the state board, the local school board may include a recommendation regarding the establishment of that charter school.

B. The state board may authorize the existence of a charter school upon a finding that:

(1) not less than sixty-five percent of the teachers in the school have signed a petition in support of that school becoming a charter school;

(2) parents of children in the proposed charter school have had substantial involvement in the development of the charter school proposal and support the establishment of the charter school;

(3) the school proposing to become a charter school has submitted to the state board a comprehensive plan for implementing alternative education curricula at the school; and

(4) the school proposing to become a charter school shall provide a detailed proposed budget to meet anticipated educational and administrative costs of the charter school.

Section 6

Section 6. CHARTER SCHOOLS--COMPLIANCE WITH PUBLIC SCHOOL CODE.--A charter school shall comply with all provisions of the Public School Code; provided that the charter school may request and the state board may grant a waiver of certain provisions of the Public School Code for the purpose of operating the charter school. The state board may grant waivers to a charter school for the purpose of providing class size and structure flexibility, alternative curriculum opportunities and alternative budget opportunities.

Section 7

Section 7. STATE BOARD REGULATIONS.--The state board shall adopt and publish rules to provide for the implementation of the Charter Schools Act.

Section 8

Section 8. A new section of the Public School Finance Act is enacted to read:

"CERTAIN SCHOOL DISTRICT BUDGETS.--In those school districts with authorized charter schools, each charter school shall submit to the local school board a school-based budget. The budget shall be based upon the projected total MEM at that school and the projected number of program units generated by students at that individual school. The budget shall be submitted to the local school board for approval or amendment. Upon final approval of the budget by the local school board, the individual school budget shall be included in the budget submission to the department of education required pursuant to the Public School Finance Act and required pursuant to the Charter Schools Act."

Section 9

Section 9. Section 22-8-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 60, as amended) is amended to read:

"22-8-6. BUDGETS--SUBMISSION--FAILURE TO SUBMIT.--

A. Prior to April 15 of each year, each local school board shall submit to the department an estimated budget for the school district for the ensuing fiscal year. Upon written approval of the state superintendent, the date for the submission of the estimated budget as required by this section may be extended to a later date fixed by the state superintendent.

B. The estimated budget required by this section may include:

(1) estimates of the cost of insurance policies for periods up to five years if a lower rate may be obtained by purchasing insurance for the longer term; or

(2) estimates of the cost of contracts for the transportation of students for terms extending up to four years.

C. The estimated budget required by this section shall include a proposed breakdown for charter schools in the local school district, by individual charter school, of the membership projected for each charter school, the total program units generated at that charter school and approximate anticipated disbursements and expenditures at each charter school.

D. If a local school board fails to submit a budget pursuant to this section, the department shall prepare the estimated budget for the school district for the ensuing fiscal year. A local school board shall be considered as failing to submit a budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or if the budget submitted does not comply with the law or the manual of accounting and budgeting of the department."

Section 10

Section 10. Section 22-8-15 NMSA 1978 (being Laws 1967, Chapter 16, Section 70, as amended) is amended to read:

"22-8-15. ALLOCATION LIMITATION.--

A. The department shall determine the allocations to each school district from each of the distributions of the public school fund, subject to the limits established by law.

B. The local school board, in each local school district with authorized charter schools, shall allocate the appropriate distributions of the public school fund to individual charter schools pursuant to each charter school's school-based budget approved by the local school board and the department. The local school board may retain an amount not to exceed the school district's administrative cost relevant to that charter school.

C. The local school board in each local school district with authorized charter schools, shall establish an individual charter school account to receive public school fund disbursements for each charter school." HB 888

CHAPTER 228

RELATING TO EDUCATION; AMENDING SECTIONS OF THE PUBLIC SCHOOL CODE PERTAINING TO CLASS LOAD, TEACHING LOAD, STAFFING PATTERNS AND BASIC PROGRAM UNITS.

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

Section 1

Section 1. Section 22-2-8.2 NMSA 1978 (being Laws 1986, Chapter 33, Section 3, as amended) is amended to read:

"22-2-8.2. STAFFING PATTERNS--CLASS LOAD--TEACHING LOAD.--

A. The individual class load for elementary school teachers shall not exceed twenty students for kindergarten; provided that any teacher in kindergarten with a class load of fifteen to twenty students shall be entitled to the assistance of an instructional assistant.

B. The average class load for elementary school teachers at an individual school shall not exceed twenty-two students when averaged among grades one, two and three; provided that any teacher in grade one with a class load of twenty-one or more shall be entitled to the full-time assistance of an instructional assistant.

C. Effective with the 1994-95 school year, the average class load for an elementary school teacher at an individual school shall not exceed twenty-four students when averaged among grades four, five and six.

D. The daily teaching load per teacher for grades seven through twelve shall not exceed one hundred sixty students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed one hundred thirty-five with a maximum of twenty-seven students per class, and the daily teaching load for teachers of required English courses in grades nine through twelve shall not exceed one hundred fifty students with a maximum of thirty students per class.

E. Students receiving special education services integrated into a regular classroom for any part of
the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in

determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the district.

F. The state superintendent may waive the individual school class load requirements established in this section. Waivers shall be applied for annually and a waiver shall not be granted for more than two consecutive years. Waivers may only be granted if a school district demonstrates:

(1) no portable classrooms are available;

(2) no other available sources of funding exist to meet its need for additional classrooms;

(3) the district is planning alternatives to increase building capacity, for implementation within one year; and

(4) the parents of all children affected by the waiver have been notified in writing:

(a) of the statutory class load requirements;

(b) that the district has made a decision to deviate from these class load requirements; and

(c) of the district plan to achieve compliance with the class load requirements.

G. If a waiver is granted pursuant to Subsection F of this section to an individual school, the average class load for elementary school teachers at that school shall not exceed twenty students in grade one and shall not exceed twenty-five students when averaged among grades two, three, four, five and six.

H. Each local school district shall report to the department of education the size and composition of classes subsequent to the fortieth day and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the local school district's budget by the state superintendent.

I. The department of education shall report to the legislative education study committee by November 30 of each year regarding each local school district's ability to meet class load requirements imposed by law.

J. Notwithstanding the provisions of Subsection F of this section, the state board may waive the individual class load and teaching load requirements established in this section upon a demonstration of a viable alternative curricular plan and a finding by the state board that the plan is in the best interest of the district and that, on an

annual basis, the plan has been presented to and is supported by the affected teaching staff. The department of education shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee.

K. Effective with the 1987-88 school year, certified school instructors shall not be required to perform noninstructional duties except in emergency situations as defined by the state board. For purposes of this subsection, "noninstructional duties" means noon hall duty, cafeteria duty, ground duty and bus duty. It is the intent of the legislature to maintain the provision of this subsection; provided, however, that for the 1993-94 school year, "noninstructional duties" shall mean only noon hall duty, noon ground duty and noon cafeteria duty."

Section 2

Section 2. Section 22-8-20 NMSA 1978 (being Laws 1991, Chapter 85, Section 3) is amended to read:

"22-8-20. BASIC PROGRAM UNITS.--The number of basic program units is determined by multiplying the basic program MEM in each grade by the corresponding cost differential factor as follows:

Grades	Cost Differential Factor
1	1.2
2 and 3	1.18
4 through 6	1.0
7 through 12	1.25."

Section 3

Section 3. Effective July 1, 1994, Section 22-8-20 NMSA 1978 (being Laws 1991, Chapter 85, Section 3, as amended by Section 2 of this act if it becomes law) is amended to read:

"22-8-20. BASIC PROGRAM UNITS.--The number of basic program units is determined by multiplying the basic program MEM in each grade by the corresponding cost differential factor as follows:

Grades	Cost Differential Factor
1	1.2

2 and 3	1.18
4 through 6	1.045
7 through 12	1.25."

HB 184

CHAPTER 229

RELATING TO EDUCATION; AMENDING CERTAIN SECTIONS OF THE PUBLIC SCHOOL CODE PERTAINING TO PROGRAMMING COORDINATION.

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

Section 1. Section 22-13-7 NMSA 1978 (being Laws 1972, Chapter 95, Section 3, as amended) is amended to read:

"22-13-7. SPECIAL EDUCATION--RESPONSIBILITY.--

A. The state board shall make, adopt and keep current a state plan for special education policy, programs and standards.

B. The department of education with the approval of the state board shall set standards for diagnosis and screening of and educational offerings for exceptional children in public schools, in private, nonsectarian, nonprofit training centers and in state institutions under the authority of the secretary of health.

C. The state board shall establish and maintain a program of evaluation of the implementation and impact of all programs for exceptional children in the public schools. This program shall be operated with the cooperation of local school districts. Portions of the program may be subcontracted, and periodic reports regarding the efficacy of programs for exceptional children shall be mde to the legislative education study committee.

D. The department of education shall coordinate programming related to the transition of persons with disabilities from secondary and post-secondary education programs to employment or vocational placement."

Section 2. Section 22-14-8 NMSA 1978 (being Laws 1967, Chapter 16, Section 197, as amended) is amended to read:

"22-14-8. VOCATIONAL REHABILITATION DIVISION--POWERS--DUTIES.--Subject to the policies of the state board, the vocational rehabilitation division shall:

A. provide vocational rehabilitation to qualified individuals;

B. act as the representative of the state board in administering any state plan or federal aid funds relating to vocational rehabilitation;

C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational rehabilitation program;

D. enter into reciprocal agreements with other states to provide vocational rehabilitation;

E. accept gifts or grants to be used for vocational rehabilitation;

F. adopt regulations for the administration of laws relating to vocational rehabilitation; and

G. conduct research and compile statistics relating to vocational rehabilitation."HB 652

CHAPTER 230

RELATING TO EDUCATION; AMENDING SECTION 22-2-8.4 NMSA 1978 (BEING LAWS 1986, CHAPTER 33, SECTION 5, AS AMENDED) TO ALLOW FOR RECEIPT OF A DIPLOMA AFTER LEAVING SCHOOL.

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

Section 1

Section 1. Section 22-2-8.4 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended) is amended to read:

"22-2-8.4. GRADUATION REQUIREMENTS.--

A. At the end of the eighth grade or during the ninth grade, each student shall prepare an individual program of study for grades nine through twelve. The program of study shall be signed by a student's parent or guardian.

B. Beginning with students entering the ninth grade in the 1986-87 school year, successful completion of a minimum of twenty-three units shall be required for graduation. These units shall be as follows:

(1) four units in English, with major emphasis on grammar and literature;

(2) three units in mathematics;

(3) two units in science, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography, and government and economics;

(5) one unit in physical fitness;

(6) one unit in communication skills, with major emphasis on writing and speaking, which may include a language other than English; and

(7) nine elective units. Only the following elective units shall be counted toward meeting the requirements for graduation: fine arts, i.e., music, band, chorus and art; practical arts; physical education; languages other than English; speech; drama; vocational education; mathematics; science; English; R.O.T.C.; social science; computer science; health education; and other electives approved by the state board.

C. Effective with the 1987-88 school year, final examinations shall be administered to all students in all classes offered for credit.

D. Beginning with students entering the ninth grade in the 1986-87 school year, no student shall receive a high school diploma who has not passed a state competency examination in the subject areas of reading, English, math, science and social science. If a student exits from the school system at the end of grade twelve without having passed a state competency examination, he shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If, within five years after a student exits from the school system he takes and passes the state competency examination, he may receive a high school diploma.

E. The state board may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code." HB 927

CHAPTER 231

RELATING TO PUBLIC PURCHASES; AUTHORIZING CERTAIN GOVERNMENTAL UNITS TO ENTER INTO CERTAIN ENERGY EFFICIENCY CONTRACTS; CREATING A FUND; PROVIDING POWERS AND DUTIES; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 10 of this act may be cited as the "Public Building Energy Efficiency Act".

Section 2

Section 2. DEFINITIONS.--As used in the Public Building Energy Efficiency Act:

A. "energy conservation measure" means a training program or facility alteration designed to reduce energy consumption or operating costs and may include:

(1) insulation of the building structure or systems within the building;

(2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;

(3) automated or computerized energy control systems;

(4) heating, ventilating or air conditioning system modifications or replacements;

(5) replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(6) energy recovery systems;

(7) solar heating and cooling systems or other renewable energy systems;

(8) cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings; or

(9) energy conservation measures that provide long-term operating cost reductions;

B. "governmental unit" means an agency, institution or instrumentality of the state; a municipality; a county; or a school district;

C. "guaranteed energy savings contract" means a contract for the evaluation and recommendation of energy conservation measures and for the implementation of one or more of those measures, and which contract provides that all

payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make the payments for the energy conservation measures; and

D. "qualified provider" means a person or business experienced in the design, implementation and installation of energy conservation measures and who meets the experience qualifications developed by the energy, minerals and natural resources department.

Section 3

Section 3. ENERGY EFFICIENCY CONTRACTS AUTHORIZED--ENERGY SAVINGS GUARANTEE REQUIRED.--

A. A governmental unit may enter into a guaranteed energy savings contract with a qualified provider to reduce energy or operating costs if, after review of the energy efficiency proposal from the qualified provider, the governmental unit finds that:

(1) the amount the governmental unit would spend on the energy conservation measures recommended in the proposal is not likely to exceed the amount to be saved in energy and operational costs over ten years from the date of installation if the recommendations in the proposal were followed; and

(2) the qualified provider can provide a written guarantee that the energy or operating cost savings will meet or exceed the costs of the system.

B. A guaranteed energy savings contract shall include a written guarantee from the qualified provider that annual savings shall meet or exceed the cost of the energy conservation measures.

C. A guaranteed energy savings contract may extend beyond the fiscal year in which it becomes effective and may provide for payments over a period of time not to exceed ten years; provided, such payments shall be made only from special funds authorized for that purpose pursuant to the Public Building Energy Efficiency Act or other law.

D. A governmental unit may enter into an installment payment contract or lease-purchase agreement for the purchase and installation of energy conservation measures pursuant to a guaranteed energy savings contract, but only in accordance with the provisions of the Public Building Energy Efficiency Act.

Section 4

Section 4. GUARANTEED ENERGY SAVINGS CONTRACT--PERFORMANCE BOND REQUIRED.--No governmental unit shall enter into a guaranteed energy savings

contract unless a performance bond that meets the requirements of this section is delivered by the qualified provider to the governmental unit and that bond becomes binding on the parties upon the execution of the contract. The qualified provider shall provide a performance bond satisfactory to the governmental unit and its approving agency executed by a surety company authorized to do business in this state and approved in federal circular 570 published by the United States treasury department or by the state board of finance. The bond shall be in an amount equal to the amount of the guarantee given by the qualified provider in the guaranteed energy savings contract.

Section 5

Section 5. CONTRACT APPROVAL REQUIRED.--

A. No governmental unit shall enter into a guaranteed energy savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that contract, unless the contracts and agreements are reviewed and approved as follows:

(1) for school districts, by the superintendent of public instruction;

(2) for agencies, institutions and instrumentalities of the state, by the secretary of general services; and

(3) for municipalities and counties, by the secretary of finance and administration.

B. The approval required under this section shall be given upon:

(1) a determination that the contracts and agreements comply with the provisions of the Public Building Energy Efficiency Act and other applicable law; and

(2) certification by the energy, minerals and natural resources department that the qualified provider meets the experience requirements set by the department and the guaranteed energy savings from the energy conservation measures proposed appear to be accurately estimated and reasonable.

Section 6

Section 6. CONTRACTS AND AGREEMENTS NOT A GENERAL OBLIGATION OF THE GOVERNMENTAL UNIT.--Payment obligations of a governmental unit pursuant to a guaranteed energy savings contract with a qualified provier and any installment payment contract or lease-purchase agreement pursuant to a guaranteed energy savings contract are not general obligations of the governmental unit and are collectible only from revenues pledged for that purpose in accordance with the Public Building Energy Efficiency Act.

Section 7

Section 7. PUBLIC SCHOOL ENERGY EFFICIENCY FUND CREATED--USE.--

A. The "public school energy efficiency fund" is created as a special fund in the state treasury. The fund shall consist of money transferred to the fund, from year to year, from the income of the permanent fund and land income of which the common schools are the beneficiary. No other money from any school district or state source shall be deposited or paid into the public school energy efficiency fund.

B. Annually, after the calculation of the state equalization guarantee distributions has been made, the superintendent of public instruction shall determine the sum of the deductions made in the state equalization guarantee distributions of school districts pursuant to Paragraph (6) of Subsection D of Section 22-8-25 NMSA 1978 and shall certify that amount to the secretary of finance and administration. Income from the permanent fund and land income of which the common schools are the beneficiary equal to that amount shall be transferred from the common school current fund to the public school energy efficiency fund.

C. Money in the public school energy efficiency fund is appropriated to the state department of public education solely for the purpose of disbursing money to school districts to make payments pursuant to any guaranteed energy savings contract between the school district and a qualified provider or any installment contract or lease-purchase agreement for the purchase and installation of energy conservation measures pursuant to that guaranteed energy savings contract.

D. Disbursements from the public school energy efficiency fund shall be made only to school districts and only upon certification by the superintendent of public instruction that the disbursement is for a payment authorized by the Public Building Energy Efficiency Act.

E. The superintendent of public instruction shall submit to the legislative finance committee prior to each regular legislative session a list of school districts proposing to enter into approved guaranteed energy savings contracts in the succeeding fiscal year. The list shall include information on the amount of the school district's proposed annual payments and specific amounts that utility and operational budget items are guaranteed to be reduced to achieve the savings to make the payments.

F. Any unexpended or unencumbered balance remaining in the public school energy efficiency fund at the end of any fiscal year shall be transferred to the public school fund.

Section 8

Section 8. MUNICIPALITIES--USE OF CERTAIN REVENUES AUTHORIZED.--Upon adoption of an ordinance by an affirmative vote of a majority of the members of the governing body at any regular or special meeting of the governing body called for this purpose, a municipality may pledge any or all revenues not otherwise pledged or obligated from gross receipts taxes received by the municipality pursuant to Section 7-1-6.4 NMSA 1978 and Subsections A and E of Section 7-1-6.12 NMSA 1978 for payments pursuant to a guaranteed energy savings contract with a qualified provider and any installment payment contract or lease-purchase agreement pursuant to that guaranteed energy savings contract. The ordinance shall declare the necessity for the guaranteed energy savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund, and the municipality shall not use any other revenues to make such payments. At the end of each fiscal year, any money remaining in the special fund after payment obligations are met may be transferred to any other fund of the municipality.

Section 9

Section 9. COUNTIES--USE OF CERTAIN REVENUES AUTHORIZED.--Upon adoption of an ordinance by an affirmative vote of a majority of the members of the board of county commissioners at any regular or special meeting of the board called for this purpose, a county may pledge any or all of the revenue not otherwise pledged or obligated from the first one-eighth of one percent increment and of one-half of the revenue from the third one-eighth of one percent increment of the county gross receipts tax transferred to the county pursuant to Subsection B of Section 7-1-6.13 NMSA 1978 and any or all of the revenue from the distribution related to the first one-eighth of one percent increment made pursuant to Section 7-1-6.16 NMSA 1978 for the purpose of making payments pursuant to a guaranteed energy savings contract with a qualified provider or any installment payment contract or lease-purchase agreement pursuant to that guaranteed energy savings contract. The ordinance shall declare the necessity for the guaranteed energy savings contract and related contracts or agreements and shall designate the source of the pledged revenues. Any revenues pledged for such contract payments shall be deposited in a special fund, and the county shall not use any other county or state revenue to make such payments. At the end of each fiscal year, any money remaining in the special fund after the payment obligations are met may be transferred to any other fund of the county.

Section 10

Section 10. STATE INSTITUTIONS AND BUILDINGS--USE OF CERTAIN REVENUES AUTHORIZED.--Income from lands granted for the use of certain institutions and public buildings and deposited in income funds for such institutions and buildings pursuant to Section 19-1-17 NMSA 1978 may be appropriated and pledged for payments pursuant to any guaranteed energy savings contract or related lease-purchase agreement or installment payment contract pursuant to the Public Building Energy Efficiency Act. Any money so appropriated shall be deposited in a special fund

or account of the institution or fund and that revenue and no other revenue shall be used to make such payments to the Public Building Energy Efficiency Act.

Section 11

Section 11. Section 6-6-12 NMSA 1978 (being Laws 1968, Chapter 72, Section 8, as amended) is amended to read:

"6-6-12. EXEMPTIONS FROM BATEMAN ACT.--Insurance contracts not exceeding five years, lease-purchase agreements, lease agreements, contracts providing for the operation or provision and operation of a jail by an independent contractor entered into by a local public body set out in Section 6-6-11 NMSA 1978 and guaranteed energy savings contracts and installment payment contracts or lease-purchase agreements pursuant to guaranteed energy savings contracts are exempt from the provisions of Section 6-6-11 NMSA 1978, and such contracts, lease-purchase agreements, lease agreements and jail contracts are declared not to constitute the creation of debt."

Section 12

Section 12. Section 13-1-139 NMSA 1978 (being Laws 1984, Chapter 65, Section 112) is amended to read:

"13-1-139. COST OR PRICING DATA NOT REQUIRED.--The cost or pricing data relating to the award of a contract shall not be required when:

A. the procurement is based on competitive sealed bid;

B. the contract price is based on established catalogue prices or market prices;

C. the contract price is set by law or regulation;

D. the contract is for professional services; or

E. the contract is awarded pursuant to the Public Building Energy Efficiency Act."

Section 13

Section 13. Section 13-1-150 NMSA 1978 (being Laws 1984, Chapter 65, Section 123, as amended) is amended to read:

"13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars ($25,000), may

be entered into for any period of time deemed to be in the best interests of the state agency or a local public body not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is twenty-five thousand dollars ($25,000) or more, the term shall not exceed eight years, including all extensions and renewals, except that for any such contract entered into pursuant to the Public Building Energy Efficiency Act, the term shall not exceed ten years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. A contract for professional services, except for services required to support or operate federally certified medicaid, financial assistance and child support enforcement management information or payment systems, may not exceed a term of four years, including all extensions and renewals, except that a multi-term contract for the services of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding."

Section 14

Section 14. Section 22-8-25 NMSA 1978 (being Laws 1981, Chapter 176, Section 5, as amended) is amended to read:

"22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--DEFINITIONS-- DETERMINATION OF AMOUNT.--

A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that the school district's operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost.

B. "Local revenue", as used in this section, means ninety-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents ($.50) to each one thousand dollars ($l,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act.

C. "Federal revenue", as used in this section, means ninety-five percent of receipts to the school district, excluding amounts which, if taken into account in the computation of the state equalization guarantee distribution,
result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:

(l) the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; and

(2) grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Sections 236 through 240 of Title 20 of the United States Code (commonly known as "PL 874 funds") or an amount equal to the revenue the district was entitled to receive if no application was made for such funds but deducting from those grants the additional amounts to which school districts would be entitled because of the provisions of Subparagraph (D) of Paragraph (2) of Subsection (d) of Section 238 of Title 20 of the United States Code.

D. To determine the amount of the state equalization guarantee distribution, the state superintendent shall:

(l) calculate the number of program units to which each school district is entitled using the membership of the fortieth day of the school year, except for school districts with a MEM of 200 or less where the number of program units shall be calculated on the fortieth day membership of either the prior year or the current year, whichever is greater, for all programs except special education, which shall be calculated by using the membership on December 1 of the school year; or

(2) calculate the number of program units to which a school district operating under an approved year-round school calendar is entitled using the membership on an appropriate date established by the state board;

(3) using the results of the calculations in Paragraph (l) or (2) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district;

(4) calculate the local and federal revenues as defined in this section;

(5) deduct the sum of the calculations made in Paragraph (4) of this subsection from the program cost established in Paragraph (3) of this subsection; and

(6) deduct the total amount of guaranteed energy savings contract payments that the state superintendent determines will be made to the school district from the public school energy efficiency fund during the fiscal year for which the state equalization guarantee distribution is being computed.

E. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (5) and (6) of Subsection D of this section.

F. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal

revenues specified in this section received from June l of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a district has received more state equalization guarantee funds than its entitlement, a refund shall be made by the district to the state general fund.

G. Notwithstanding the methods of calculating the state equalization guarantee distribution in this section and Laws 1974, Chapter 8, Section 22, if a school district received funds under Section 2391 of Title 42 U.S.C.A. and if the federal government takes into consideration grants authorized by Sections 236 through 240 of Title 20 of the United States Code and all other revenues available to the school district in determining the level of federal support for the school district for the sixty-fourth and succeeding fiscal years, the state equalization guarantee distribution for school districts receiving funds under this subsection shall be computed as follows:

$$\text{state equalization guarantee distribution} = \frac{\text{fiscal year program cost excluding special education for the year for which the state equalization guarantee distribution is being computed}}{\text{prior fiscal year program cost excluding special education}} \times \text{prior fiscal year state equalization guarantee distribution}$$

plus special education funding in accordance with Paragraphs (1) or (2) and (3) of Subsection D of this section and Section 22-8-21 NMSA 1978 plus an amount that would be produced by applying a rate of eight dollars forty-two and one-half cents ($8.425) to each one thousand dollars ($1,000) of net taxable value of property as defined in the Property Tax Code for property taxation purposes in the school district and to each one thousand dollars ($1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act, and then reduced by the total amount of guaranteed energy savings contract payments, if any, that the state superintendent determines will be made to the school district from the public school energy efficiency fund during the fiscal year for which the state equalization guarantee distribution is being computed, equals the fiscal year state equalization guarantee distribution for the year for which the state equalization guarantee distribution is being computed.

If at any time grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Sections 236 through 240 of Title 20 of the United States Code (commonly known as "PL 874 funds") are reduced or are no longer available, the state equalization guarantee distribution shall be computed by the formula contained in this subsection plus an increase by fifty percent of the amount the

prior year's PL 874 funds exceed PL 874 funds for the year for which the state equalization guarantee distribution is being computed." HB 353

CHAPTER 232

RELATING TO EDUCATION; ENACTING THE REGIONAL COOPERATIVE EDUCATION ACT; AUTHORIZING REGIONAL EDUCATION COOPERATIVES; ESTABLISHING POWERS AND DUTIES; CREATING FUNDS; AMENDING AND ENACTING CERTAIN PROVISIONS OF THE PUBLIC SCHOOL CODE; MAKING AN APPROPRIATION.

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

Section 1

Section 1. A new section of the Public School Code is enacted to read:

"SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Regional Cooperative Education Act"."

Section 2

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

"DEFINITIONS.--As used in the Regional Cooperative Education Act:

A. "council" means a regional education coordinating council;

B. "cooperative" means a regional education cooperative; and

C. "fund" means an educational cooperative fund."

Section 3

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

"REGIONAL EDUCATION COOPERATIVES AUTHORIZED.--

A. The state board may authorize the existence and operation of regional education cooperatives. Upon authorization by the state board, local school boards may join with other local school boards or other state-supported educational institutions to form cooperatives for the purpose of providing education-related services to qualified school-age residents of participating educational entities. Regional education cooperatives shall be deemed individual state agencies administratively attached to the department of education.

B. The state board shall, by regulation, establish minimum criteria for the establishment and operation of cooperatives. The state board shall also establish procedures for oversight of cooperatives to ensure compliance with state board regulation. Regional education cooperatives shall be exempt from the provisions of the Personnel Act."

Section 4

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

"REGIONAL EDUCATION COORDINATING COUNCILS CREATED--MEMBERSHIP.--

A. Subject to regulations adopted by the state board, each cooperative shall be governed by a regional education coordinating council.

B. Councils shall be composed of the superintendents or chief administrative officers of each local school district or state-supported educational institution participating in the cooperative.

C. Members of each council shall elect a chairman from its members. Meetings shall be held at the call of the chairman. A meeting of a majority of the members of the council constitutes a quorum for the purpose of conducting business."

Section 5

Section 5. A new section of the Public School Code is enacted to read:

"REGIONAL EDUCATION COORDINATING COUNCILS--DUTIES.--

A. Each council shall oversee the function and operation of a cooperative. At the direction of the council, the cooperative shall provide:

(1) education-related services to all entities participating in the cooperative;

(2) technical assistance and staff development opportunities to all entities participating in the cooperative;

(3) cooperative purchasing capabilities and fiscal management opportunities to all entities participating in the cooperative; or

(4) such additional services to participating entities as may be determined by the council to
be appropriate.

B. Pursuant to regulation of the state board, each council shall:

(1) adopt a budget and administrative guidelines as necessary to carry out the purposes of the cooperative; and

(2) hire an executive director and necessary additional staff."

Section 6

Section 6. A new section of the Public School Code is enacted to read:

"EDUCATIONAL COOPERATIVE FUNDS CREATED.--"Educational cooperative funds" are established in the state treasury. The state treasurer shall establish individual educational cooperative funds for each cooperative authorized by the state board. Money in each fund is appropriated to the individual council for the purpose of carrying out the provisions of the Regional Cooperative Education Act. Money in each fund may be distributed on warrants issued by the department of finance and administration pursuant to vouchers signed by the director of the cooperative or his designee. Any unencumbered or unexpended balance remaining in the funds at the end of each fiscal year shall not revert to the general fund."

Section 7

Section 7. Section 22-11-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 126, as amended) is amended to read:

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

A. "member" means any employee except for a participant coming within the provisions of the Educational Retirement Act;

B. "regular member" means:

(1) a person regularly employed as a teaching, nursing or administrative employee of a state educational institution except for:

(a) a participant; or

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

(2) a person regularly employed as a teaching, nursing or administrative employee of a junior college or community college created pursuant to Chapter 21, Article 13 NMSA 1978;

(3) a person regularly employed as a teaching, nursing or administrative employee of a technical and vocational institute created pursuant to the Technical and Vocational Institute Act;

(4) a person regularly employed as a teaching, nursing or administrative employee of the New Mexico boys' school, the New Mexico girls' school, the Los Lunas medical center, a school district or as a certified school instructor of a state institution or agency providing an educational program and holding a standard or substandard certificate issued by the state board;

(5) a person regularly employed by the department of education or the board holding a standard or substandard certificate issued by the state board at the time of commencement of such employment;

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

(7) a person regularly employed by the New Mexico activities association holding a standard certificate issued by the state board at the time of commencement of such employment; or

(8) a person regularly employed by a regional education cooperative holding a standard certificate issued by the state board at the time of commencement of such employment;

C. "provisinal member" means a person not eligible to be a regular member but who is employed by a local administrative unit designated in Subsection B of this section; provided, however, that employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico are not provisional members;

D. "local administrative unit" means an employing agency however constituted that is directly responsible for the payment of compensation for the employment of members or participants;

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

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

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

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

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

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

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

L. "allowed service-credit" means that period of time during which a member has performed certain nonservice-employment with which he may be accredited, as provided in the Educational Retirement Act, for the purpose of computing retirement or disability benefits;

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

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

O. "board" means the educational retirement board;

P. "fund" means the educational retirement fund;

Q. "director" means the educational retirement director;

R. "medical authority" means a medical doctor within the state or as provided in Subsection D of Section 22-11-36 NMSA 1978 either designated or employed by the board to examine and report on the physical condition of applicants for or recipients of disability benefits;

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

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

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

V. "qualifying state educational institution" means the university of New Mexico, New Mexico state university, the New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university and western New Mexico university;

W. "participant" means:

(1) a person regularly employed as a faculty or professional employee of a qualifying state educational institution who first becomes employed with such an educational institution on or after July 1, 1991 and who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; and

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

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

Section 8

Section 8. Section 22-11-19 NMSA 1978 (being Laws 1967, Chapter 16, Section 142) is amended to read:

"22-11-19. REGULAR OR PROVISIONAL MEMBERSHIP--OPTIONAL COVERAGE.--

A. Any person qualified to be a regular or provisional member covered by a retirement program established for federal civil service employees shall have six months after the commencement of employment to file a written notice with the director of his election not to be covered by the Educational Retirement Act. If the person so elects, he may withdraw any contributions made pursuant to the Educational Retirement Act.

B. Any person qualified to be a regular or provisional member and who was employed by a regional education cooperative on July 1, 1993 shall have the right to exempt himself from Educational Retirement Act coverage within thirty days and such exemption shall be irrevocable as long as the person is employed by a regional cooperative."

Section 9

Section 9. A new section of the Educational Retirement Act, Section 22-11-19.2 NMSA 1978, is enacted to read:

"22-11-19.2. REGULAR OR PROVISIONAL MEMBERSHIP--REGIONAL EDUCATION COOPERATIVES.--Any person employed by a regional education cooperative and qualified to be a regular or provisional member shall have the right to acquire earned service credit for periods of employment with the regional education cooperative when the member was neither covered nor retired under the Educational Retirement Act, under the following conditions:

A. both the member and the administrative unit contributions, at the rates in effect during the periods of employment and applied to earnings of the member during such periods, are paid to the fund, together with interest, at a rate equal to the board's actuarial earnings assumption rate at the time of purchase;

B. both member and administrative unit contributions, together with interest, are paid by the member; or

C. the member tenders payment of his contributions, together with interest and the local administrative unit by which he was employed may, but shall not be obligated to, pay the administrative unit contributions, together with interest."

Section 10

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 47

CHAPTER 233

RELATING TO EDUCATION; PROVIDING FOR A STUDY REGARDING AND THE EVENTUAL DIVISION OF THE ALBUQUERQUE PUBLIC SCHOOL DISTRICT.

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

Section 1

Section 1. DIVISION OF THE ALBUQUERQUE PUBLIC SCHOOL DISTRICT.--

A. Effective July 1, 1993, the state board of education shall study the feasibility of dividing the Albuquerque public school district into five or less separate school districts.

B. The study shall determine the most equitable means of apportioning the current student population, the property tax base and bonded indebtedness of the current district and the human and capital resources of the district between the newly proposed districts. In conducting the study, the state board shall appoint a sixteen-member committee who shall include representatives of every region in the Albuquerque public school district. The Albuquerque public school board shall appoint no more than four advisory members who shall participate in the study.

C. Prior to July 1, 1994, the state board of education shall make a determination about the feasibility of dividing the Albuquerque public school district based on the results of the study undertaken pursuant to Subsection B of this section. The state board shall comply with the equitable distribution requirements set forth in Subsection B of this section. HB 577

CHAPTER 234

RELATING TO PUBLIC SCHOOLS; PROVIDING FLEXIBILITY FOR SCHOOL BUS ROUTE WAIVERS; AMENDING A CERTAIN SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 22-16-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 222, as amended) is amended to read:

"22-16-4. SCHOOL BUS ROUTES--LIMITATIONS--EXCEPTIONS--MINIMUM REQUIREMENTS.--

A. Bus routes shall be approved annually.

B. Except as provided in Subsections C and D of this section, no school bus route shall be approved or maintained for distances less than:

(1) one mile one way for students in grades kindergarten through six;

(2) one and one-half miles one way for students in grades seven through nine; and

(3) two miles one way for students in grades ten through twelve.

C. In school districts having hazardous walking conditions as determined by the local school board and confirmed by the state transportation director, students of any grade may be transported a lesser distance than that provided in Subsection B of this section. General standards for determining hazardous walking conditions shall be

established by the state transportation division with the approval of the state board, but the standards shall be flexibly and not rigidly applied by the local school board and the state transportation director to prevent accidents and help ensure student safety.

D. Exceptional children whose handicaps require transportation and three- and four-year-old children who meet the state board approved criteria and definition of developmentally disabled may be transported a lesser distance than that provided in Subsection B of this section.

E. Except as provided in Subsections F and G of this section, no bus route serving less than ten students shall be approved or maintained. No approved bus routes shall be disapproved during a school year as long as there are students to be served unless a more economical arrangement is agreed to by the local school board, the bus operators concerned and the parents or guardians of the students served and confirmed by the state transportation division.

F. A bus route serving less than ten students may be approved and maintained if the students served include one or more exceptional children whose handicaps require transportation.

G. A bus route serving less than ten students may be approved and maintained under unusual circumstances as determined by the local school board and approved by the state transportation director." HB 842

CHAPTER 235

RELATING TO EDUCATION; AMENDING A CERTAIN SECTION OF THE PUBLIC SCHOOL CODE RELATING TO THE CREATION OF SCHOOL DISTRICTS.

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

Section 1

Section 1. Section 22-4-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 15, as amended) is amended to read:

"22-4-2. NEW SCHOOL DISTRICTS--CREATION.--

A. The state board may order the creation of a new school district:

(1) upon receipt of and according to a resolution requesting the creation of the new school district by the local school board of the existing school district;

(2) after review by the local school board and upon receipt of a petition bearing signatures verified by the county clerk of the affected area of sixty

percent of the registered voters residing within the geographic area desiring creation of a new school district; or

(3) upon recommendation of the state superintendent and upon a determination by the state board that creation of a new district would meet the standards set forth in Subsection B of this section.

B. Within ninety days of receipt of the local school board resolution, receipt of the voters' petition or receipt of a recommendation by the state superintendent, the state board shall conduct a public hearing to determine whether:

(1) the existing school district and the new school district to be created will each have a minimum membership of five hundred;

(2) a high school program is to be taught in the existing school district and in the new school district to be created unless an exception is granted to this requirement by the state board; and

(3) creating the new school district is in the best interest of public education in the existing school
district and in the new school district to be created and in the best interest of public education in the state." HB 63

CHAPTER 236

RELATING TO EDUCATION; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 21-1-36 NMSA 1978 (being Laws 1988, Chapter 117, Section 1) is amended to read:

"21-1-36. NEW MEXICO COOPERATIVE EDUCATION PROGRAM-PURPOSE.--The purpose of the New Mexico cooperative education program is to provide an opportunity for students in New Mexico post-secondary educational institutions to combine academic and employment experience by creating and expanding cooperative education programs in New Mexico colleges and universities, thereby enhancing the educational benefits and job training received by students who participate in cooperative education. The program shall encourage cooperative education for students from groups most severely underrepresented in specified fields of study or employment, particularly women and minorities in engineering."

Section 2

Section 2. Section 21-1-37 NMSA 1978 (being Laws 1988, Chapter 117, Section 2) is amended to read:

"21-1-37. NEW MEXICO COOPERATIVE EDUCATION PROGRAM CREATED--ADMINISTRATION --DUTIES.--There is created the "New Mexico cooperative education program" which shall be administered by the commission on higher education. The New Mexico cooperative education program shall supplement existing cooperative education programs to allow cooperative education to incorporate employment experience in rural areas, small businesses and fields not included in traditional campus-based programs. The commission shall establish procedures to identify employment opportunities for cooperative education throughout New Mexico in private, governmental and nonprofit sectors and shall work with the public post-secondary institutions to encourage involvement of students in the cooperative education program. The commission shall identify those groups of students and fields of study or employment for which the most severe underrepresentation exists and for which cooperative education shall be encouraged. The program shall include:

A. parallel cooperative education, in which students who are enrolled full-time in public post-secondary institutions may be employed a maximum of twenty hours in a
career-related work assignment;

B. alternating cooperative education, in which students who are enrolled full-time in public post-secondary institutions may alternate employment in a career-related field with academic study; and

C. summer cooperative education, in which students who are enrolled full-time in public post-secondary institutions may be employed in a career-related work assignment during the summer months."HB 693

CHAPTER 237

RELATING TO EDUCATION; AMENDING AND ENACTING CERTAIN SECTIONS OF THE PUBLIC SCHOOL CODE PERTAINING TO THE CREATION OF NEW SCHOOL DISTRICTS.

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

Section 1. Section 22-8-18 NMSA 1978 (being Laws 1974, Chapter 8, Section 8, as amended) is amended to read:

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

A. The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs

(1) through (4) in this subsection by the instruction staff training and experience index and adding the program units itemized as Paragraphs (5) through (7) in this subsection. The itemized program units are as follows:

(1) early childhood education;

(2) basic education;

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

(4) bilingual multicultural education;

(5) size adjustment;

(6) enrollment growth or new district adjustment; and

(7) special education units derived from class D special education MEM in private, nonsectarian, nonprofit training centers.

B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural and vocational education and other remedial or enrichment programs. It is the responsibility of the local school board to determine its priorities in terms of the needs of the community served by that board. Funds generated under the Public School Finance Act are discretionary to local school boards, provided that the special program needs as enumerated in this section are met."

Section 2

Section 2. A new section of the Public School Finance Act, Section 22-8-23.2 NMSA 1978, is enacted to read:

"22-8-23.2. NEW DISTRICT ADJUSTMENT--ADDITIONAL PROGRAM UNITS.--

A. A newly created school district is eligible for additional program units. The number of additional program units to which a newly created school district is entitled under this subsection is the number of units computed in the following manner:

(MEM for current year) x .147 = Units

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

B. A school district whose membership decreases as a result of the establishment of a newly created school district is eligible for additional program units. The number of additional program units to which that district is entitled under this subsection is the number of units computed in the following manner:

(MEM for prior year - MEM for current year) x .17 = Units

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

C. As used in this section, "newly created school district" means a local school district not in existence during the immediately preceding school year."

Section 3

Section 3. Section 22-8-24 NMSA 1978 (being Laws 1974, Chapter 8, Section 15, as amended) is amended to read:

"22-8-24. INSTRUCTIONAL STAFF TRAINING AND EXPERIENCE INDEX--DEFINITIONS--FACTORS--CALCULATIONS.--

A. For the purpose of calculating the instructional staff training and experience index, the following definitions and limitations shall apply:

(1) "instructional staff" means the personnel assigned to the instructional program of the school district, excluding principals, substitute teachers, instructional aides, secretaries and clerks;

(2) the number of instructional staff to be counted in calculating the instructional staff training and experience index is the actual number of full-time equivalent instructional staff on the October payroll;

(3) the number of years of experience to be used in calculating the instructional staff training and experience index is that number of years of experience allowed for salary increment purposes on the salary schedule of the school district; and

(4) the academic degree and additional credit hours to be used in calculating the instructional staff training and experience index is the degree and additional semester credit hours allowed for salary increment purposes on the salary schedule of the school district.

B. The factors for each classification of academic training by years of experience are provided in the following table:

Academic Classification	Years of Experience 0 - 2	3 - 5	6 - 8	9 - 15	Over 15
Bachelor's degree or less	.75	.90	1.00	1.05	1.05
Bachelor's degree plus 15 credit hours	.80	.95	1.00	1.10	1.15
Master's degree or bachelor's degree plus 45 credit hours	.85	1.00	1.05	1.15	1.20
Master's degree plus 15 credit hours	.90	1.05	1.15	1.30	1.35
Post-master's degree or master's degree plus 45 credit hours	1.00	1.15	1.30	1.40	1.50.

C. The instructional staff training and experience index for each school district shall be calculated in accordance with instructions issued by the state superintendent. The following calculations shall be computed:

(1) multiply the number of full-time equivalent instructional staff in each academic classification by the numerical factor in the appropriate "years of experience" column provided in the table in Subsection B of this section;

(2) add the products calculated in Paragraph (1) of this subsection; and

(3) divide the total obtained in Paragraph (2) of this subsection by the total number of full-time equivalent instructional staff.

D. In the event that the result of the calculation of the training and experience index is 1.0 or less, the district's factor shall be no less than 1.0.

E. In the event that a new school district iscreated, the training and experience index for that district is 1.12." HB 950

CHAPTER 238

RELATING TO EDUCATION; AMENDING A SECTION OF THE PUBLIC SCHOOL FINANCE ACT PERTAINING TO BILINGUAL MULTICULTURAL EDUCATION PROGRAM UNITS.

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

Section 1

Section 1. Section 22-8-22 NMSA 1978 (being Laws 1974, Chapter 8, Section 13, as amended) is amended to read:

"22-8-22. BILINGUAL MULTICULTURAL EDUCATION PROGRAM UNITS.--The number of bilingual multicultural education program units is determined by multiplying the full-time-equivalent MEM in programs implemented in accordance with the provisions of the Bilingual Multicultural Education Act by the cost differential factor 0.35, effective July 1, 1990; 0.4, effective July 1, 1991; .425, effective July 1, 1992; 0.45, effective July 1, 1993; and 0.5, effective July 1, 1994." HB 896

CHAPTER 239

RELATING TO PUBLIC EMPLOYEES RETIREMENT; PROVIDING FOR CORRECTION OF ERRORS AND OMISSIONS; ENACTING A NEW SECTION OF THE PUBLIC EMPLOYEES RETIREMENT ACT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. A new section of the Public Employees Retirement Act is enacted to read:

"CORRECTION OF ERRORS AND OMISSIONS--ESTOPPEL.--

A. If an error or omission in an application or its supporting documents results in an overpayment to a member or beneficiary of a member, the association shall correct the error or omission and adjust all future payments accordingly. The association shall recover all overpayments made for a period of up to one year prior to the date the error or omission was discovered.

B. A person who is paid more than the amount that is lawfully due him as a result of fraudulent information provided by the member or beneficiary shall be liable for the repayment of that amount to the association plus interest on that amount at the rate set by the board plus all costs of collection, including attorneys' fees if necessary. Recovery of such overpayments shall extend back to the date the first payment was made based on the fraudulent information.

C. Statements of fact or law made by board members or employees of the board or the association shall not estop the board or the association from acting in accordance with the applicable statutes."

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. HB 147

CHAPTER 240

RELATING TO MENTAL HEALTH; AMENDING THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 RELATED TO MENTAL ILLNESS AND COMPETENCY.

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

Section 1

Section 1. Section 31-9-1 NMSA 1978 (being Laws 1988, Chapter 107, Section 1 and Laws 1988, Chapter 108, Section 1, as amended) is amended to read:

"31-9-1. DETERMINATION OF COMPETENCY--RAISING THE ISSUE.--Whenever it appears that there is a question as to the defendant's competency to proceed in a criminal case, any further proceeding in the cause shall be suspended until the issue is determined. Unless the case is dismissed upon motion of a party, when the question is raised in a court other than the district court or a metropolitan court, the proceeding shall be suspended and the cause transferred to the district court. If the question of a defendant's competency is raised in the metropolitan court and the court determines that the defendant is incompetent to proceed in a criminal case, the cause, if not dismissed upon motion of a party, shall be transferred to the district court."

Section 2

Section 2. Section 31-9-1.1 NMSA 1978 (being Laws 1988, Chapter 107, Section 2 and Laws 1988, Chapter 108, Section 2) is amended to read:

"31-9-1.1. DETERMINATION OF COMPETENCY--EVALUATION AND DETERMINATION.--The defendant's competency shall be professionally evaluated by a psychologist or psychiatrist or other qualified professional recognized by the district court as an expert and a report shall be submitted as ordered by the court. A hearing on the issue of the competency of an incarcerated defendant charged with a felony shall be held by the district court within a reasonable time, but in no event later than thirty days after notification to the court of completion of the diagnostic evaluation. In the case of an incarcerated defendant not charged with a felony, the court shall hold a hearing and

determine his competency within ten days of notification to the court of completion of the diagnostic evaluation."

Section 3

Section 3. Section 31-9-1.2 NMSA 1978 (being Laws 1988, Chapter 107, Section 3 and Laws 1988, Chapter 108, Section 3) is amended to read:

"31-9-1.2. DETERMINATION OF COMPETENCY--COMMITMENT--REPORT.--

A. When, after hearing, a court determines that a defendant is not competent to proceed in a criminal case and the court does not find that the defendant is dangerous, the court may dismiss the criminal case without prejudice in the interests of justice. Upon dismissal, the court may advise the district attorney to consider initiation of proceedings under the Mental Health and Developmental Disabilities Code.

B. When a district court determines that a defendant is incompetent to stand trial, but does not dismiss the criminal case, and the district court at that time makes a specific finding that the defendant is dangerous, the district court may order treatment to attain competency to proceed in a criminal case for a period not to exceed one year. The court shall enter an appropriate transport order which also provides for return of the defendant to the local facilities of the court upon completion of the treatment. The defendant so committed shall be provided with treatment available to involuntarily committed persons, and:

(1) the defendant shall be detained by the department of health in a secure, locked facility; and

(2) the defendant, during the period of commitment, shall not be released from that secure facility except pursuant to an order of the district court which committed him.

C. As used in Sections 31-9-1 through 31-9-1.5 NMSA 1978, "dangerous" means that, if released, the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 or 30-9-13 NMSA 1978.

D. Within thirty days of an incompetent defendant's admission to a facility to undergo treatment to attain competency to proceed in a criminal case, the person supervising the defendant's treatment shall file with the district court, the state and the defense an initial assessment and treatment plan and a report on the defendant's amenability to treatment to render him competent to proceed in a criminal case, an assessment of the facility's or program's capacity to provide appropriate treatment for the defendant and an opinion as to the probability of the defendant's attaining competency within a period of one year from the date of the original finding of incompetency to proceed in a criminal case."

Section 4

Section 4. Section 31-9-1.3 NMSA 1978 (being Laws 1988, Chapter 107, Section 4 and Laws 1988, Chapter 108, Section 4) is amended to read:

"31-9-1.3. DETERMINATION OF COMPETENCY--NINETY-DAY REVIEW--REPORTS--CONTINUING TREATMENT.--

A. Within ninety days of the entry of the order committing an incompetent defendant to undergo treatment, the district court, sitting without a jury, shall conduct a hearing, unless waived by the defense, and shall determine:

(1) whether the defendant is competent to stand trial or to plead; and, if not,

(2) whether the defendant is making progress under treatment toward attainment of competency within one year from the date of the original finding of incompetency.

B. At least seven days prior to the review hearing, the treatment supervisor shall submit a written progress report to the court, the state and the defense indicating:

(1) the clinical findings of the treatment supervisor and the facts upon which the findings are based;

(2) the opinion of the treatment supervisor as to whether the defendant has attained competency or as to whether the defendant is making progress under treatment toward attaining competency within one year from the date of the original finding of incompetency; and

(3) if the defendant is receiving medication, information from the prescribing physician indicating the type, the dosage and the effect of the medication on the defendant's appearance, actions and demeanor.

C. If the district court finds the defendant to be competent, the district court shall set the matter for trial, provided that if the defendant is in need of continued care or treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the district court may enter any order it deems appropriate for the continued care or treatment of the defendant by the facility or program pending the conclusion of the criminal proceedings.

D. If the district court finds that the defendant is still not competent to proceed in a criminal case, but that he is making progress toward attaining competency, the district court may continue or modify its original treatment order entered pursuant to Section 31-9-1.2 NMSA 1978, provided that:

(1) the question of the defendant's competency shall be reviewed again not later than one year from the original determination of incompetency to proceed in a criminal case; and

(2) the treatment supervisor shall submit a written progress report as specified in Subsection B of this section at least seven days prior to such hearing.

E. If the district court finds that the defendant is still not competent and that he is not making progress toward attaining competency such that there is not a substantial probability that he will attain competency within one year from the date of the original finding of incompetency, the district court shall proceed pursuant to Section 3l-9-l.4 NMSA 1978. However, if the defendant is in need of continued care and treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the district court may enter any order it deems appropriate for the continued care or treatment by the facility or program pending the conclusion of the proceedings."

Section 5

Section 5. Section 31-9-1.4 NMSA 1978 (being Laws 1988, Chapter 107, Section 5 and Laws 1988, Chapter 108, Section 5) is amended to read:

"31-9-1.4. DETERMINATION OF COMPETENCY--INCOMPETENT DEFENDANTS.--If at any time the district court determines that there is not a substantial probability that the defendant will become competent to proceed in a criminal case within a reasonable period of time not to exceed one year from the date of the original finding of incompetency, the district court may:

A. set the matter for hearing pursuant to Section 31-9-1.5 NMSA 1978;

B. release the defendant from custody and dismiss with prejudice the charges against him; or

C. dismiss the criminal case without prejudice in the interests of justice. The district court may refer the
defendant to the district attorney for possible initiation of proceeding under the Mental Health and Developmental Disabilities Code."

Section 6

Section 6. Section 31-9-1.5 NMSA 1978 (being Laws 1988, Chapter 107, Section 6 and Laws 1988, Chapter 108, Section 6) is amended to read:

"31-9-1.5. DETERMINATION OF COMPETENCY--EVIDENTIARY HEARING.--

A. As provided for in Subsection A of Section 31-9-1.4 NMSA 1978, a hearing to determine the sufficiency of the evidence shall be held. Such hearing shall be

conducted by the district court without a jury. The state and the defendant may itroduce evidence relevant to the question of the defendant's guilt of the crime charged. The district court may admit hearsay or affidavit evidence on secondary matters such as testimony to establish the chain of possession of physical evidence, laboratory reports, authentication of transcripts taken by official reporters, district court and business records and public documents.

B. If the evidence does not establish by clear and convincing evidence that the defendant committed a crime, the district court shall dismiss the criminal case with prejudice; however, nothing herein shall prevent the state from initiating proceedings under the provisions of the Mental Health and Developmental Disabilities Code.

C. If the district court finds by clear and convincing evidence that the defendant committed a crime and has not made a finding of dangerousness, pursuant to Subsections B and C of Section 39-1-1.2 NMSA 1978, the district court shall dismiss the charges without prejudice. The state may initiate proceedings pursuant to the provisions of the Mental Health and Developmental Disabilities Code.

D. If the district court finds by clear and convincing evidence that the defendant committed a crime and has previously made a finding that the defendant is dangerous pursuant to Subsections B and C of Section 31-9-1.2 NMSA 1978:

(1) the defendant shall be detained by the department of health in a secure, locked facility;

(2) the defendant shall not be released from that secure facility except pursuant to an order of the
district court which committed him or upon expiration of the period of time equal to the maximum sentence to which the defendant would have been subject had the defendant been convicted in a criminal proceeding;

(3) significant changes in the defendant's condition, including but not limited to trial competency and dangerousness, shall be reported in writing to the district court, state and defense; and

(4) at least every two years the district court shall conduct a hearing upon notice to the parties and the department of health charged with detaining the defendant. At the hearing the court shall enter findings on the issues of trial competency and dangerousness:

(a) upon a finding that the defendant is competent to proceed in a criminal case, the court shall continue with the criminal proceeding;

(b) if the defendant continues to be incompetent to proceed in a criminal case, the court shall review the defendant's competency and

dangerousness every two years until expiration of the period of commitment equal to the maximum sentence to which the defendant would have been subject had he or she been convicted in a criminal proceeding; and

(c) if the defendant is not committed pursuant to Sections 31-9-1 through 31-9-1.5 NMSA 1978, or if the court finds upon its two-year review hearing that the defendant is no longer dangerous, as defined in Subsection C of Section 31-9-1.2 NMSA 1978, the defendant shall be released."

Section 7

Section 7. Section 43-1-1 NMSA 1978 (being Laws 1976, Chapter 43, Section 1, as amended by Laws 1989, Chapter 94, Section 2 and also by Laws 1989, Chapter 128, Section 1) is amended to read:

"43-1-1. MENTAL CONDITION OF CRIMINAL DEFENDANTS--EVALUATION--TREATMENT.--

A. Whenever a district court finds it necessary to obtain an evaluation of the mental condition: of a defendant in a criminal case; or a defendant found incompetent to proceed in a criminal case for whom involuntary hospitalization pursuant to the Mental Health and Developmental Disabilities Code is being considered, the court shall order an evaluation from a qualified professional available to the local facilities of the court or from a qualified professional at a local mental health center designated by the secretary of health, and whenever the court finds it desirable to use state personnel or facilities to assist in making the evaluation, the court shall in its order for an evaluation require service upon the secretary of health of the court's order for evaluation. The secretary of health shall arrange for a qualified professional furnished by the state to visit the defendant in local facilities available to the court or shall designate suitable available facilities. If the secretary of health designates a local mental health center or a state facility for the defendant's evaluation within forty-eight hours of service of the evaluation order, the secretary of health shall notify the court of such designation. The court shall then enter an appropriate transport order which also provides for the return of the defendant to the local facilities of the court. The defendant shall be transported by the county to facilities designated by the secretary of health for the purpose of making an evaluation. Misdemeanor defendants shall be evaluated locally.

B. If the secretary of health elects to have the defendant retained at the district court's local facilities, the qualified professional furnished by the state will visit the local facilities not later than two weeks from the time of service of the court's evaluation order upon the secretary of health and:

(1) after the evaluation of the defendant is completed, the qualified professional furnished by the state shall be available for deposition to declare his

findings. The usual rules of evidence governing the use and admission of the deposition shall prevail; and

(2) if the secretary of health finds that the qualified professional will be unable to initiate the evaluation within two weeks from the time of service of the court's evaluation order upon the secretary of health, then the secretary of health shall call upon the county sheriff of the county in which the defendant is incarcerated and have the defendant transported to facilities designated by the secretary of health for the purpose of conducting the evaluation.

C. If the secretary of health elects to have the defendant transported to the facilities designated by the secretary of health for the purpose of evaluation, the evaluation shall be commenced as soon as possible after the admission of the defendant to the facility, but, in no event, shall the evaluation be commenced later than seventy-two hours after the admission. The defendant, at the conclusion of the evaluation, shall be returned by the county sheriff to the local facilities of the court upon not less than three days' notice. After the evaluation is completed, the qualified professional furnished by the state shall be available for deposition to declare his findings. The usual rules of evidence governing the use and admissibility of the deposition shall prevail.

D. Documents reasonably required by the secretary of health to show the medical and forensic history of the defendant shall be furnished by the court when required.

E. After an evaluation and upon reasonable notice, the district court may commit a dangerous defendant pursuant to Section 31-9-1.2 NMSA 1978 or may dismiss the charges without prejudice and refer the defendant to the district attorney for possible initiation of proceedings under the Mental Health and Developmental Disabilities Code. A defendant so committed under the Mental Health and Developmental Disabilities Code shall be treated as any other patient committed involuntarily. When deemed by the secretary of health to be medically appropriate, a dangerous defendant committed pursuant to Section 31-9-1.2 NMSA 1978 may be returned by the county sheriff to the custody of the court upon not less than three days' notice.

F. All acts to be performed by the secretary of health pursuant to this section may be performed by the secretary's designee."

Section 8

Section 8. Section 43-1-15 NMSA 1978 (being Laws 1977, Chapter 279, Section 14, as amended) is amended to read:

"43-1-15. CONSENT TO TREATMENT--ADULT CLIENTS.--

A. No psychosurgery, convulsive therapy, experimental treatment or behavior modification program involving aversive stimuli or substantial deprivations shall be administered to any client without proper consent. If the client is capable of understanding the proposed nature of treatment and its consequences and is capable of informed consent, his consent shall be obtained before the treatment is performed.

B. If the mental health or developmental disabilities professional or physician who is proposing this or any other course of treatment or any other interested person believes that the client is incapable of informed consent, he may petition the court for the appointment of a treatment guardian to make a substitute decision for the client. This petition shall be served on the client and his attorney. A hearing on the petition shall be held within three court days. At the hearing, the client shall be represented by counsel and shall have the right to be present, to present witnesses and to cross-examine opposing witnesses. If after the hearing the court finds that the client is not capable of making his own treatment decisions, the court may order the appointment of a treatment guardian. The treatment guardian shall make a decision on behalf of the client whether to accept treatment, depending on whether the treatment appears to be in the client's best interest and is the least drastic means for accomplishing the treatment objective. In making his decision, the treatment guardian shall consult with the client and consider his expressed opinions, if any, even if those opinions do not constitute valid consent or rejection of treatment. He shall give consideration to any previous decisions made by the client in similar circumstances when the client was able to make treatment decisions. If a client, who is not a resident of a medical facility and for whom a treatment guardian has been appointed, refuses to comply with the decision of the treatment guardian, the treatment guardian may apply to the court for an enforcement order. Such an order may authorize any peace officer to take the client into custody and to transport him to an evaluation facility and may authorize the facility forcibly to administer treatment. The treatment guardian shall consult with the physician or other professional who is proposing treatment, the client's attorney and interested friends or relatives of the client as he deems appropriate in making his decision. If the client, physician or other professional wishes to appeal the decision of the treatment guardian, he may do so, filing an appeal with the court within three calendar days of receiving notice of the treatment guardian's decision. In such a decision, the client shall be represented by counsel. The court may overrule the treatment guardian's decision if it finds that decision to be against the best interest of the client.

C. When the court appoints a treatment guardian, it shall specify the length of time during which he may exercise his powers, up to a maximum period of one year. If at the end of his guardianship period the treatment guardian believes that the client is still incapable of making his own treatment decisions, he shall petition the court for
reappointment or for appointment of a new treatment guardian. The guardianship shall be extended or a new guardian shall be appointed only if the court finds the client is, at the time of the hearing, incapable of understanding and expressing an opinion regarding

treatment decisions. The client shall be represented by counsel and shall have the right to be present and present evidence at all such hearings.

D. If during a period of a treatment guardian's power the treatment guardian, the client, the treatment provider, a member of the client's family or the client's attorney believes that the client has regained competence to make his own treatment decisions, he shall petition the court for a termination of the treatment guardianship. If the court finds the client is capable of making his own treatment decisions, it shall terminate the power of the treatment guardian and restore to the client the power to make his own treatment decisions.

E. A treatment guardian shall only have those powers enumerated in the code, unless the treatment guardian has also been appointed a guardian under the Probate Code pursuant to Section 45-5-303 NMSA 1978. Any person carrying out the duties of a treatment guardian as provided in this section shall not be liable in any civil or criminal action so long as the treatment guardian is not acting in bad faith or with malicious purpose.

F. If a licensed physician believes that the administration of psychotropic medication is necessary to protect the client from serious harm which would occur while the provisions of Subsection B of this section are being satisfied, he may administer the medication on an emergency basis. When medication is administered to a client on an emergency basis, the treating physician shall prepare and place in the client's medical records a report explaining the nature of the emergency and the reason that no treatment less drastic than administration of psychotropic medication without proper consent would have protected the client from serious harm." HB 525

CHAPTER 241

RELATING TO DOMESTIC AFFAIRS; AMENDING A SECTION OF THE NMSA 1978 TO LIMIT THE USE OF MEDIATION IN CHILD CUSTODY DISPUTES WHEN IT IS ASSERTED THAT DOMESTIC VIOLENCE OR CHILD ABUSE HAS OCCURRED.

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

Section 1

Section 1. Section 40-4-8 NMSA 1978 (being Laws 1977, Chapter 286, Section 1) is amended to read:

"40-4-8. CONTESTED CUSTODY--APPOINTMENT OF GUARDIAN AD LITEM.--

A. In any proceeding for the disposition of children when custody of minor children is contested by any party, the court may appoint an attorney at law as guardian ad litem on the court's motion or upon application of any party to appear for and

represent the minor children. Expenses, costs and attorneys' fees for the guardian ad litem may be allocated among the parties as determined by the court.

B. When custody is contested, the court:

(1) shall refer that issue to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend mediation unless the court specifically finds that:

(a) the following three conditions are satisfied: 1) the mediator has substantial training concerning the effects of domestic violence or child abuse on victims; 2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering from an imbalance of power as a result of the alleged domestic violence; and 3) the mediation process contains appropriate provisions and conditions to protect against an imbalance of power between the parties resulting from the alleged domestic violence or child abuse; or

(b) in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence; (2) may order, in addition to or in lieu of the provisions of Paragraph (1) of this subsection, that each of the parties undergo individual counseling in a manner that the court deems appropriate, if the court finds that the parties can afford the counseling; and

(3) may use, in addition to or in lieu of the provisions of Paragraph (1) of this subsection, auxiliary services such as professional evaluation by application of Rule 11-706 of the New Mexico Rules of Evidence or Rule 1-053 of the Rules of Civil Procedure for the District Courts.

C. As used in this section:

(1) "child abuse" means:

(a) that a child has been physically, emotionally or psychologically abused by a parent;

(b) that a child has been: 1) sexually abused by a parent through criminal sexual penetration, incest or criminal sexual contact of a minor as those acts are defined by state law; or 2) sexually exploited by a parent through allowing, permitting or encouraging the child to engage in prostitution and allowing, permitting, encouraging or engaging the child in obscene or pornographic photographing or filming or depicting a child for commercial purposes as those acts are defined by state law;

(c) that a child has been knowingly, intentionally or negligently placed in a situation that may endanger the child's life or health; or

(d) that a child has been knowingly or intentionally tortured, cruelly confined or cruelly punished; provided that nothing in this paragraph shall be construed to imply that a child who is or has been provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner of the church or denomination, is for that reason alone a victim of child abuse within the meaning of this paragraph; and

(2) "domestic violence" means one parent causing or threatening physical harm or assault or inciting imminent fear of physical, emotional or psychological harm to the other parent."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 757

CHAPTER 242

RELATING TO TAXATION; AMENDING PROVISIONS OF THE TAX ADMINISTRATION ACT; LIMITING THE AUTHORITY TO LEVY ON PROPERTY.

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

Section 1

Section 1. Section 7-1-31 NMSA 1978 (being Laws 1965, Chapter 248, Section 33, as amended) is amended to read:

"7-1-31. SEIZURE OF PROPERTY BY LEVY FOR COLLECTION OF TAXES.--

A. The secretary or secretary's delegate may proceed to collect tax from a delinquent taxpayer by levy upon all property or rights to property of such person and the conversion thereof to money by appropriate means.

B. A levy is made by taking possession of property pursuant to authority contained in a warrant of levy or by the service, by the secretary or secretary's delegate or any sheriff, of the warrant upon the taxpayer or other person in possession of property or rights to property of the taxpayer, upon the taxpayer's employer or upon any person or depositary owing or who will owe money to or holding funds of the taxpayer, ordering him to reveal the extent thereof and surrender it to the secretary or secretary's delegate forthwith or agree to surrender it or the proceeds therefrom in the future, but in any case on the terms and conditions stated in the warrant."

Section 2

Section 2. Section 7-1-32 NMSA 1978 (being Laws 1965, Chapter 248, Section 34, as amended) is amended to read:

"7-1-32. CONTENTS OF WARRANT OF LEVY.--A warrant of levy shall:

A. bear on its face a statement of the authority for its service and compelling compliance with its terms, shall be attested by the secretary and shall bear the seal of the department;

B. identify the taxpayer whose liability for taxes is sought to be enforced, the amount thereof and the date or approximate date on which the tax became due;

C. order the person on whom it is served to reveal the amount of property or rights to property in his own possession that belong to the taxpayer and the extent of his own interest therein, and to reveal the amount and kind of property or rights to property of the taxpayer that are, to the best of his knowledge, in the possession of others;

D. order the person on whom it is served to surrender the property forthwith but may allow him to agree in writing to surrender the property or the proceeds therefrom on a certain date in the future when the taxpayer's right to it would otherwise mature;

E. order the employer of the taxpayer to surrender wages or salary of the taxpayer in excess of the amount exempt under Section 7-1-36 NMSA 1978 owed by the employer to the taxpayer at the time of service of the levy and which may become owing by the employer to the taxpayer subsequent to the service of the levy until the full amount of the liability stated on the levy is satisfied or until notified by the secretary or the secretary's delegate;

F. state on its face the penalties for willful failure by any person upon whom it is served to comply with its terms; and

G. state that the state of New Mexico claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties."

Section 3

Section 3. Section 7-1-33 NMSA 1978 (being Laws 1965, Chapter 248, Section 35, as amended) is amended to read:

"7-1-33. SUCCESSIVE SEIZURES.--Whenever any property or right to property upon which levy has been made by virtue of Section 7-1-31 NMSA 1978 is not sufficient to satisfy the claim for which levy is made, the secretary or secretary's delegate may

thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property or rights to property subject to levy of the person against whom the claim exists, until the amount due from him is fully paid. Successive levies are not necessary in the case of a levy served on an employer of the taxpayer with respect to wages or salary of the taxpayer."

Section 4

Section 4. Section 7-1-34 NMSA 1978 (being Laws 1965, Chapter 248, Section 36, as amended) is amended to read:

"7-1-34. SURRENDER OF PROPERTY SUBJECT TO LEVY--PENALTY.--

A. Any person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made shall surrender the property or rights, or discharge such obligation, to the secretary or the secretary's delegate, except that part of the property or right as is, at the time of such demand, the subject of a bona fide attachment, execution, levy or other similar process, unless the person is entitled to and does redeem it according to the provisions of Section 7-1-47 NMSA 1978.

B. Upon demand of the secretary or the secretary's delegate, any employer owing a taxpayer wages or salary subject to levy upon which a levy has been made shall surrender to the secretary or the secretary's delegate each subsequent pay period that portion of the taxpayer's wages or salary not exempted under Section 7-1-36 NMSA 1978 and not subject to a prior bona fide attachment, execution, levy, garnishment or similar process, until the amount of the levy is satisfied in full or until notified by the secretary or the secretary's delegate. The secretary or secretary's delegate shall notify the employer promptly when the levy has been satisfied.

C. Any person who wrongfully fails or refuses to surrender or redeem, as required by this section, any property or rights to property levied upon, upon demand by the secretary or the secretary's delegate, is liable for a civil penalty in an amount equal to the lesser of the value of the property or rights not so surrendered or the amount of the taxes for the collection of which such levy has been made.

D. Notwithstanding any other provision of law, the surrender by a person in possession of or obligated with respect to property, rights to property or proceeds from the sale or other disposition of property subject to levy upon which a levy has been made by the secretary or the secretary's delegate of such property or rights to property, discharges such obligation to the department. A surrender by a person shall be a defense against the assertion of any obligation or liability to the delinquent taxpayer or any other person with respect to such property or rights to property arising from a surrender or payment.

E. The term "person", as used in this section, includes an officer or employee of a corporation or a member or employee of a partnership, who, as such officer, employee or member, is under a duty to surrender the property or rights to property or to discharge the obligation."

Section 5

Section 5. Section 7-1-36 NMSA 1978 (being Laws 1965, Chapter 248, Section 38) is amended to read:

"7-1-36. PROPERTY EXEMPT FROM LEVY.--

A. There shall be exempt from levy the money or property of a delinquent taxpayer in a total amount or value not in excess of one thousand dollars ($1,000).

B. In addition to the property exempt under Subsection A of this section, there shall also be exempt from levy on an employer of the taxpayer the greater of the following portions of the taxpayer's disposable earnings:

(1) seventy-five percent of the taxpayer's disposable earnings for any pay period; or

(2) an amount each week equal to forty times the federal minimum hourly wage rate. The superintendent of the regulation and licensing department shall provide a table giving equivalent exemptions for pay periods of other than one week.

C. As used in this section:

(1) "disposable earnings" means that part of a taxpayer's wages or salary remaining after deducting the amounts that are required by law to be withheld; and

(2) "federal minimum hourly wage" means the current highest federal minimum hourly wage rate for an eight-hour day and a forty-hour week. It is immaterial whether the employer is exempt under federal law from paying the federal minimum hourly wage rate."

Section 6

Section 6. Section 7-1-37 NMSA 1978 (being Laws 1965, Chapter 248, Section 39, as amended) is amended to read:

"7-1-37. ASSESSMENT AS LIEN.--

A. If any person liable for any tax neglects or refuses to pay the tax after assessment and demand for payment as provided in Section 7-1-17 NMSA 1978 or if

any person liable for tax pursuant to Section 7-1-63 NMSA 1978 neglects or refuses to pay after demand has been made, unless and only so long as such a person is entitled to the protection afforded by a valid order of a United States court entered pursuant to Section 362 or 1301 of Title 11 of the United States Code, as amended or renumbered, the amount of the tax shall be a lien in favor of the state upon all property and rights to property of the person.

B. The lien imposed by Subsection A of this section shall arise at the time both assessment and demand, as provided in Section 7-1-17 NMSA 1978, have been made or at the time demand has been made pursuant to Section 7-1-63 NMSA 1978 and shall continue until the liability for payment of the amount demanded is satisfied or extinguished.

C. As against any mortgagee, pledgee, purchaser, judgment creditor, person claiming a lien under Sections 48-2-1 through 48-11-9 NMSA 1978, lienor for value or other encumbrancer for value, the lien imposed by Subsection A of this section shall not be considered to have arisen or have any effect whatever until notice of the lien has been filed as provided in Section 7-1-38 NMSA 1978."

Section 7

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 688

CHAPTER 243

RELATING TO JUVENILE DETENTION; AUTHORIZING A COUNTY TO SEEK REIMBURSEMENT FOR CERTAIN EXPENSES.

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

Section 1

Section 1. REIMBURSEMENT FOR EXPENSES ATTENDANT TO TEMPORARY DETENTION OF A CHILD--REIMBURSEMENT FOR ANCILLARY SERVICES--CIVIL ACTION.--

A. When a child is detained in a facility for the temporary detention of children that is administered or financed by a county and the child subsequently is found to be delinquent or enters into a consent decree, the board of county commissioners may seek reimbursement from the child's parent, guardian or legal custodian for the amount of money expended by the county for the care and support of the child during his period of detention. The child support guidelines set forth in Section 40-4-11.1 NMSA 1978 may be used to calculate a reasonable payment.

B. When a child is detained in a facility for the temporary detention of children that is administered or financed by the county and the child subsequently is found to be delinquent or enters into a consent decree, the board of county commissioners may seek reimbursement from the child's parent, guardian or legal custodian for the amount of money expended by the county for the provision of ancillary services to the child. Ancillary services include psychiatric, psychological or medical services provided by the county to the child. The child support guidelines set forth in Section 40-4-11.1 NMSA 1978 may be used for the purpose of determining the amount of money owed by a parent, guardian or legal custodian for the provision of ancillary services to that parent's child.

C. When a parent, guardian or legal custodian refuses or fails to reimburse a county for the expenses incurred by a county pursuant to Subsection A or B of this section, the board of county commissioners may initiate a civil action against the parent, guardian or legal custodian to recover the amount of money owed to the county. HB 796

CHAPTER 244

RELATING TO TOBACCO PRODUCTS; ENACTING THE TOBACCO PRODUCTS ACT; PROHIBITING SALES TO MINORS; PROVIDING PENALTIES.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Tobacco Products Act".

Section 2

Section 2. DEFINITION.--As used in the Tobacco Products Act, "minor" means an individual who is less than eighteen years of age.

Section 3

Section 3. TOBACCO--PROHIBITED SALES.--

A. No person shall knowingly sell, offer to sell, barter or give any tobacco product to any minor.

B. No minor shall procure or attempt to procure any tobacco products for his own use or for use by any other minor.

C. No person shall sell, offer to sell or deliver a tobacco product in a form other than an original factory-sealed package.

Section 4

Section 4. DOCUMENTARY EVIDENCE OF AGE AND IDENTITY.--Evidence of the age and identity of the person may be shown by any document that contains a picture of the person issued by a federal, state, county or municipal government, including a motor vehicle driver's license or an identification card issued to a member of the armed forces.

Section 5

Section 5. REFUSAL TO SELL TOBACCO PRODUCTS TO PERSON UNABLE TO PRODUCE IDENTITY CARD.--Any person selling goods at retail or wholesale may refuse to sell tobacco products to any person who is unable to produce an identity card as evidence that he is eighteen years of age or over.

Section 6

Section 6. PRESENTING FALSE EVIDENCE OF AGE OR IDENTITY.--No minor shall present any written, printed or photostatic evidence of age or identity that is false for the purpose of procuring or attempting to procure any tobacco products."

Section 7

Section 7. VENDING MACHINES--RESTRICTIONS ON SALES OF TOBACCO PRODUCTS.--

A. Tobacco products may be sold by vending machines in the following locations only:

(1) in locations not held open to the public, including controlled areas within factories, businesses and offices;

(2) in age-controlled locations where minors are not permitted unless accompanied by a parent or guardian; or

(3) in locations where alcoholic beverages are offered for sale for the purpose of consumption on the premises.

Section 8

Section 8. DISTRIBUTION OF TOBACCO PRODUCTS AS FREE SAMPLES PROHIBITED--EXCEPTION.--

A. A person who sells, distributes, promotes or advertises tobacco products shall not provide free samples of tobacco products to a minor.

B. The provisions of Subsection A of this section shall not apply to an individual who provides free samples of tobacco products to a family member or to an acquaintance on private property not held open to the public.

Section 9

Section 9. SIGNS--POINT OF SALE.--A person, firm, corporation, partnership or other entity engaged in the sale at retail of tobacco products shall prominently display in the place where tobacco products are sold and where a tobacco product vending machine is located, a printed sign or decal that reads as follows:

"A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A TOBACCO PRODUCT IS SUBJECT TO A FINE OF UP TO $1,000.

A PERSON WHO SELLS A TOBACCO PRODUCT TO A PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO $1,000.".

Section 10

Section 10. MONITORED COMPLIANCE--INSPECTIONS.--The alcohol and gaming division of the regulation and licensing department and the appropriate law enforcement authorities in each county and municipality shall conduct random, unannounced inspections of facilities where tobacco products are sold to ensure compliance with the provisions of the Tobacco Products Act.

Section 11

Section 11. PREEMPTION.--When a municipality or county adopts an ordinance or a regulation pertaining to sales of tobacco products, the ordinance or regulation shall be consistent with the provisions of the Tobacco Products Act."

Section 12

Section 12. PENALTY.--

A. Any person who violates any provision of Subsection A of Section 3 or Sections 5, 7, 8 or 9 of the Tobacco Products Act is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Each violation is a separate and distinct offense.

B. Any minor who violates any provision of Subsection B of Section 3 or Section 6 of the Tobacco Products Act shall be punished by a fine not to exceed one hundred dollars ($100) or forty-eight hours of community service.

Section 13

Section 13. REPEAL.--Sections 30-48-1 through 30-48-7 NMSA 1978 (being Laws 1991, Chapter 210, Sections 1 through 7) are repealed.

Section 14

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 582

CHAPTER 245

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSES; AMENDING THE NURSING HOME ADMINISTRATORS ACT.

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

Section 1

Section 1. Section 61-13-2 NMSA 1978 (being Laws 1970, Chapter 61, Section 2) is amended to read:

"61-13-2. DEFINITIONS.--As used in the Nursing Home Administrators Act:

A. "board" means the board of nursing home administrators;

B. "nursing home administrator" means any individual who is responsible for planning, organizing, directing and controlling the operation of a nursing home or who shares such functions with one or more persons in operating a nursing home;

C. "nursing home" means any nursing institution or facility required to be licensed under state law as a nursing facility by the public health division of the department of health, whether proprietary or nonprofit, including skilled nursing home facilities, and whether a separate entity or a part of a medical institutional facility; and

D. "practice of nursing home administration" means the planning, organizing, directing and control of the operation of a nursing home."

Section 2

Section 2. Section 61-13-4 NMSA 1978 (being Laws 1970, Chapter 61, Section 3, as amended) is amended to read:

"61-13-4. BOARD OF NURSING HOME ADMINISTRATORS.--

A. There is created the "board of nursing home administrators", consisting of seven members appointed by the governor. Two members of the board shall be

practicing nursing home administrators licensed under the Nursing Home Administrators Act, one member shall be a hospital administrator, one member shall be a practicing physician licensed in this state and three members shall be from the public.

B. All initial appointments to the board shall be for a term of three years. Subsequently, the term of each member expires on June 30 in the third year after his appointment. In the case of a vacancy on the board, the governor shall, withi ninety days of the occurrence of the vacancy, appoint a member to fill the unexpired portion of the term. Board members shall be citizens of the United States and residents of the state, and not more than one member shall be an employee of any state or other public agency."

Section 3

Section 3. Section 61-13-6 NMSA 1978 (being Laws 1970, Chapter 61, Section 5) is amended to read:

"61-13-6. DUTIES OF THE BOARD.--It is the duty of the board to:

A. formulate, adopt and regularly revise such rules and regulations not inconsistent with law as may be necessary to adopt and enforce standards for licensing nursing home administrators and to carry into effect the provisions of the Nursing Home Administrators Act;

B. approve for licensure applicants for:

(1) initial licensure;

(2) annual renewal of current, active licenses;

(3) reciprocity;

(4) reinstatement of revoked or suspended licenses; and

(5) reactivation of inactive or expired licenses;

C. cause the prosecution or enjoinder of all persons violating the Nursing Home Administrators Act and deny, suspend or revoke licenses in accordance with the provisions of the Uniform Licensing Act;

D. submit a written annual report to the governor and the legislature detailing the actions of the board and including an accounting of all money received and expended by the board;

E. employ such administrative personnel as may be necessary for the efficient operation of the Nursing Home Administrators Act; and

F. maintain a register of licensees and a record of all applicants for licensure received by the board."

Section 4

Section 4. Section 61-13-8 NMSA 1978 (being Laws 1970, Chapter 61, Section 7, as amended) is amended to read:

"61-13-8. LICENSURE OF NURSING HOME ADMINISTRATORS.--

A. The board shall issue a license as a nursing home administrator to each applicant who files an application in the form and manner prescribed by the board, accompanied by the required fee, and who furnishes evidence satisfactory to the board that he:

(1) is of good moral character;

(2) has successfully completed a course of study for a baccalaureate degree and has been awarded such degree from an accredited institution in a course of study approved by the board as being adequate preparation for nursing home administrators;

(3) demonstrates professional competence by passing an examination in nursing home administration as prepared and published by the professional examination service or such other nationally recognized examination as the board shall prescribe in its rules and regulations;

(4) demonstrates knowledge of state regulations governing the operation of nursing homes in a manner as the board shall prescribe in its rules and regulations; and

(5) has successfully completed an internship or administrator-in-training program as prescribed by the board in its rules and regulations."

Section 5

Section 5. Section 61-13-9 NMSA 1978 (being Laws 1970, Chapter 61, Section 8) is amended to read:

"61-13-9. EDUCATIONAL PROGRAMS.--The board shall:

A. approve or establish appropriate courses of study within and without the state to enable applicants for licensure to attain the requisite professional skill to qualify them to sit for the examination for licensure; and

B. approve or establish appropriate courses of study to further the professional qualifications of licensees through continuing educational programs."

Section 6

Section 6. Section 61-13-10 NMSA 1978 (being Laws 1970, Chapter 61, Section 9) is amended to read:

"61-13-10. LICENSURE BY EXAMINATIONS BY BOARD.--

A. Upon investigation of the application and other evidence submitted, the board shall, not less than thirty days prior to any scheduled examination, notify each applicant that the application and evidence submitted is satisfactory or unsatisfactory and rejected. If rejected, the notice shall state the reasons for rejection.

B. Examinations shall be held at least twice each year at such a time and place as the board may determine, and at other times as in the opinion of the board the number of applicants for licensure warrants.

C. The board shall administer the national standards examination in a manner specified by the national examination service with which it contracts."

Section 7

Section 7. Section 61-13-11 NMSA 1978 (being Laws 1970, Chapter 61, Section 10) is amended to read:

"61-13-11. LICENSURE WITHOUT EXAMINATION.--The board shall issue a nursing home administrator's license, without examination, to any person who holds a nursing home administrator's license current and in good standing, in another jurisdiction, provided that the board finds that the standards of licensure in the other jurisdiction are at least the substantial equivalent of those prevailing in this state and that the applicant meets the qualifications of the Nursing Home Administrators Act."

Section 8

Section 8. Section 61-13-13 NMSA 1978 (being Laws 1970, Chapter 61, Section 12) is amended to read:

"61-13-13. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE.--The board may refuse to issue or may suspend or revoke any license in accordance with the procedures as contained in the Uniform Licensing Act, upon the grounds that the licensee or applicant:

A. is guilty of fraud or deceit in procuring or attempting to procure a license to practice as a nursing home administrator;

B. is convicted of a felony;

C. is guilty of gross incompetence;

D. is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice as a nursing home administrator;

E. is guilty of failing to comply with any of the provisions of the Nursing Home Administrators Act or any rules or regulations of the board adopted and filed in accordance with the State Rules Act;

F. has been declared mentally incompetent by regularly constituted authorities; provided that the revocation shall only be in effect during the period of such incompetency; or

G. is guilty of substandard performance and conduct, including but not limited to the following:

(1) he has been convicted of a misdemeanor substantially relating to the practice of nursing home administration;

(2) he has been found by a court of law, the board, an agency responsible for the certification and licensure of nursing homes, a state medicaid fraud and abuse unit or any other duly recognized state agency to be responsible for the neglect or abuse of nursing home residents or the misappropriation of their personal funds or property;

(3) he has been found by a state nursing home licensing board, an agency responsible for the certification and licensure of nursing homes or any other duly recognized state agency as responsible for substandard care in a nursing home;

(4) he has been found to have falsified records related to the residents or employees of a nursing home on the basis of race, religion, color, national origin, sex, age or handicap in violation of federal or state laws; or

(5) he has had a license revoked, suspended or denied by another state for any of the reasons contained in this section." HB 829

CHAPTER 246

RELATING TO ENVIRONMENTAL IMPROVEMENT; REQUIRING METHODS OF FURNISHING EVIDENCE OF FINANCIAL RESPONSIBILITY BE APPROVED BY THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY; REQUIRING POLITICAL SUBDIVISIONS OF THE STATE TO PROVIDE EVIDENCE OF FINANCIAL

RESPONSIBILITY FOR SOLID WASTE GENERATORS; AMENDING THE SOLID WASTE ACT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. A new section of the Solid Waste Act is enacted to read:

"LEGISLATIVE FINDINGS.--The legislature finds:

A. the federal environmental protection agency, effective April 9, 1994, will require owners and operators of solid waste facilities to meet certain specified financial assurance criteria;

B. the only exceptions allowed will be "owners or operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States";

C. the federal environmental protection agency does not consider political subdivisions of a state to be "state or federal government entities";

D. the Solid Waste Act currently exempts political subdivisions of the state from the requirement to show financial responsibility;

E. if New Mexico fails to require financial assurance from political subdivisions of the state, New Mexico may lose primacy over solid waste control, and political subdivisions of the state will in any event be required in 1994 to provide a showing of financial responsibility; and

F. it is in the best interest of the state to retain primacy in the field of solid waste control."

Section 2

Section 2. A new section of the Solid Waste Act is enacted to read:

"REVIEW OF CONTRACTS AND LEASES.--All leases and contracts for the operation of landfills, transfer stations, recycling facilities and composting facilities between local government entities and private parties shall be reviewed by the attorney general, who shall provide recommendations on legal issues to the department and the local public entity at least fifteen days prior to the approval of the contract or within thirty days after his receipt of the contract, whichever is later."

Section 3

Section 3. Section 74-9-24 NMSA 1978 (being Laws 1990, Chapter 99, Section 24) is amended to read:

"74-9-24. SOLID WASTE FACILITY PERMIT--ISSUANCE AND DENIAL--GROUNDS--NOTIFICATION OF DECISION--PERMIT RECORDING REQUIREMENT.--

A. The director, within one hundred eighty days after the application is deemed complete and after a public hearing, shall issue a permit, issue a permit with terms and conditions or deny a permit application. The director may deny a permit application on the basis of information in the application or evidence presented at the hearing, or both, if he makes a finding that granting the permit would be contradictory to or in violation of the Solid Waste Act or any regulation adopted under it. He may also deny a permit application if the applicant fails to meet the financial responsibility requirements established by the board under Subsection A of Section 74-9-8 NMSA 1978 and Section 74-9-35 NMSA 1978.

B. The director may deny any permit application or revoke a permit if he has reasonable cause to believe that any person required to be listed on the application pursuant to Section 74-9-20 NMSA 1978 has:

(1) knowingly misrepresented a material fact in applicaton for a permit;

(2) refused to disclose or failed to disclose the information required under the provisions of Section 74-9-21 NMSA 1978;

(3) been convicted of a felony or other crime involving moral turpitude within ten years immediately preceding the date of the submission of the permit application;

(4) been convicted of a felony, within ten years immediately preceding the date of the submission of the permit application, in any court for any crime defined by state or federal statutes as involving or being restraint of trade, price-fixing, bribery or fraud;

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

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

C. In making a finding under Subsection B of this section, the director may consider aggravating and mitigating factors presented by any party at the hearing.

D. If an applicant whose permit is being considered for denial or revocation on any basis provided in this section has submitted an affirmative action plan that has been approved in writing by the director and plan approval includes a period of operation under a conditional permit or license that will allow the applicant a reasonable opportunity to affirmatively demonstrate its rehabilitation, the director may issue a conditional license for a reasonable period of time of operation. In approving an affirmative action plan intended to affirmatively demonstrate rehabilitation, the director may consider the following factors: implementation by the applicant of formal policies; training programs and management control to minimize and prevent the occurrence of future violations; installation by the applicant of internal environmental auditing programs; the discharge of individuals convicted of any crimes set forth in Subsection B of this section; and such other factors as the director may deem relevant.

E. Within sixty days of the date of the closing of the hearing on a permit application, the director shall notify the applicant by certified mail of the issuance, denial or issuance with conditions of a permit and the reasons therefor. Any person who has made a written request to the director to be notified of the action taken on the application shall be given written notice of the director's action.

F. No permit for the operation of a solid waste facility shall be valid until the permit or a notice of the permit and a legal description of the property on which the facility is located are filed and recorded in the office of the county clerk in each county in which the facility is located.

G. Except as otherwise provided by law:

(1) each permit issued for a publicly owned and publicly operated new or repermitted existing landfill, transfer station, recycling facility or composting facility shall remain in effect throughout the active life of the landfill, transfer station, recycling facility or composting facility as described in the approved permit or for twenty years, whichever is less. Each permit issued for a publicly owned landfill, transfer station, recycling facility or composting facility that is privately operated pursuant to a contract of no more than four years duration entered into in accordance with the state or local procurement code shall remain in effect throughout the active life of the landfill, transfer station, recycling facility or composting facility as described in the approved permit or for twenty years, whichever is less. Each time the contract is renewed, the director shall review the contract to determine whether the term of the permit shall be governed by this paragraph or Paragraph (2) of this section. Each permit shall be reviewed by the department of environment at least once every ten years. The review shall address the operation, compliance history, financial assurance and technical requirements for the landfill, transfer station, recycling facility or composting facility. At the time of the review there shall be public notice in the manner prescribed by Section 74-9-22 NMSA 1978. If the secretary of environment determines that there is significant public interest, a nonadjudicatory hearing shall be held as part of the review. The secretary may require appropriate modifications of the permit, including modifications

necessary to make the permit terms and conditions consistent with statutes, regulations or judicial decisions;

(2) each permit issued for a privately owned new or repermitted existing landfill, transfer station, recycling facility or composting facility shall remain in effect for ten years, or for the active life of the facility, whichever is less. Each permit issued for a publicly owned landfill, transfer station, recycling facility or composting facility that is leased to a private person, or that is operated by a private person pursuant to a contract of more than four years duration, shall remain in effect for ten years, or for the active life of the landfill or facility, whichever is less. Each permit shall be reviewed at least every five years by the department of environment. Interested parties may petition the department for review, in addition to the five-year review, provided that the director shall have discretion to determine whether there is good cause for such an additional review. The review shall address the operation, compliance history, financial assurance and technical requirements for the landfill, transfer station, recycling facility or composting facility. At the time of the review there shall be public notice in the manner prescribed by Section 74-9-22 NMSA 1978. If the secretary of environment determines that there is significant public interest, a nonadjudicatory hearing shall be held as part of the review. The secretary may require appropriate modifications of the permit, including modifications necessary to make the permit terms and conditions consistent with statutes, regulations or judicial decisions; and

(3) the term of permits for facilities not specified by this subsection shall be governed by existing or amended regulations adopted by the board.

H. The director shall issue separate special waste permits for all solid waste facilities that transfer, process, transform, recycle or dispose of special waste pursuant to regulations adopted by the board."

Section 4

Section 4. Section 74-9-35 NMSA 1978 (being Laws 1990, Chapter 99, Section 35) is amended to read:

"74-9-35. FINANCIAL RESPONSIBILITY FOR SOLID WASTE GENERATORS AND OPERATORS OF SOLID WASTE FACILITIES.--

A. The board shall adopt regulations establishing financial responsibility requirements. The regulations shall be designed to assure that there are adequate sources of funds to provide for:

(1) closure, post-closure inspection and maintenance and environmental monitoring and control;

(2) removal and disposal of buildings, fences, roads and other improvements;

(3) reclamation of affected or contaminated lands and waters;

(4) construction of any solid waste cover or containment system required as a condition of any solid waste facility permit;

(5) stabilization, removal and off-site treatment or disposal of any contaminated material that is being stored or treated;

(6) decontamination, dismantling and removal of any solid waste storage, treatment or disposal equipment;

(7) operation of any environmental monitoring systems or pollution control systems that are required as a condition of any solid waste facility permit or by order of the director; and

(8) conducting, only for landfill disposal facilities, periodic post-closure inspections of cover systems, surface water diversion structures, monitor wells or systems, pollutant detection and control systems and performing maintenance activities to correct deficiencies that are discovered.

B. Sources of funds provided to meet financial responsibility requirements established in this section shall be available during the operating life of the solid waste facility and for a post-closure period to be set by the board.

C. The amount of any financial responsibility requirement shall be established by the director in accordance with procedures contained in regulations of the board, but shall not be less than an amount sufficient to satisfy the purposes specified in Subsection A of this section.

D. The acceptable methods of furnishing evidence of financial responsibility shall be specified by the board and shall include evidence of trust funds, performance bonds, insurance and irrevocable letters of credit in combination with other methods specified in this section; provided that irrevocable letters of credit shall not constitute more than fifty percent of the total financial responsibility required. Methods for evidencing financial responsibility for local governments shall include all methods approved by the federal environmental protection agency. Local government owners of solid waste facilities may determine the method of evidencing financial responsibility required of private operators under contract or agreement with the local government. Such evidence of financial assurance shall be approved by the director. All documents evidencing financial assurances provided pursuant to this section shall be payable to the New Mexico governmental entity or entities that own or operate the solid waste facility that is the subject of the financial assurance. If no New Mexico governmental entity or governmental entities own or operate the solid waste facility that is the subject

of the financial assurance, the financial assurance shall provide for payment to the state of New Mexico.

E. The United States, the state of New Mexico and any agency, department, instrumentality, office or institution of those governments shall not be required to provide any financial assurances pursuant to this section. This exemption shall not apply, however, to any private person who contracts with the state of New Mexico or any agency, department, instrumentality, office, institution or political subdivision of the state of New Mexico."

Section 5

Section 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. HB 732

CHAPTER 247

RELATING TO VITAL STATISTICS; PROVIDING INCREASED CRIMINAL PENALTIES FOR CERTAIN VIOLATIONS OF THE VITAL STATISTICS ACT.

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

Section 1

Section 1. Section 24-14-31 NMSA 1978 (being Laws 1961, Chapter 44, Section 29, as amended) is amended to read:

"24-14-31. PENALTIES.--

A. Except for violations of Section 24-14-18 NMSA 1978, any person is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978, who willfully and knowingly:

(1) makes any false statement or supplies any false information in a report, record or certificate required to be filed;

(2) with the intent to deceive, alters, amends or mutilates any report, record or certificate;

(3) uses or attempts to use or furnishes to another for use for any purpose of deception any certificate, record, report or certified copy that has been altered, amended or mutilated or that contains false information; or

(4) neglects or violates any of the provisions of the Vital Statistics Act or refuses to perform any of the duties imposed upon him by that act.

B. Any person who willfully and knowingly permits inspection of or discloses information contained in vital statistics records of adoptions or induced abortions or copies or issues a copy of all or part of any record of an adoption or induced abortion, except as authorized by law, is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 805

CHAPTER 248

RELATING TO LIVESTOCK; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE LIVESTOCK CODE.

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

Section 1

Section 1. Section 77-2-1 NMSA 1978 (being Laws 1967, Chapter 213,Section 1) is amended to read:

"77-2-1. SHORT TITLE--PURPOSE.--Chapter 77 NMSA 1978 may be cited as "The Livestock Code". The Livestock Code shall be liberally construed to carry out its purposes which are to promote greater economy, service and efficiency in the administration of the laws relating to the livestock industry of New Mexico, to control disease, to prevent the theft or illegal movement of livestock and to oversee the New Mexico meat inspection program."

Section 2

Section 2. A new section of The Livestock Code, Section 77-2-1.1 NMSA 1978, is enacted to read:

"77-2-1.1. DEFINITIONS.--As used in The Livestock Code, unless the context clearly indicates otherwise:

A. "animals" or "livestock" means all domestic or domesticated animals used or raised on a farm or ranch including the carcasses thereof and exotic animals in captivity. "Animals" or "livestock" does not include canine or feline animals. For the purpose of the rules and regulations governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of "livestock" or "animal";

B. "bill of sale" means an instrument in substantially the form specified in The Livestock Code by which the owner or his authorized agent transfers to the buyer the title to animals described therein;

C. "board" means the New Mexico livestock board;

D. "bond" means cash or an insurance agreement from a New Mexico licensed surety or insurance corporation pledging surety for financial loss caused to another, including but not limited to certificate of deposit, letter of credit or other surety as may be approved by the United States department of agriculture, packers and stockyards administration or the board;

E. "brand" means a mark, notch or device in a form approved by and recorded with the board as may be sufficient to readily distinguish livestock should they become intermixed with other animals or livestock;

F. "bureau" means the United States department of agriculture animal and plant health inspection service or its successor agencies;

G. "carcasses" means dead or dressed bodies or parts thereof, not less than one-quarter of a carcass;

H. "cattle" means animals of the genus bos raised for consumption only, and does not include any other kind of domestic animals;

I. "dairy cattle" means animals of the genus bos, raised not for consumption but for dairy products and distinguished from meat breed cattle;

J. "disease" or "diseases" means any communicable, infectious or contagious disease or diseases;

K. "estray" means any livestock found running at large upon public or private lands, either fenced or unfenced, whose owner is unknown, or that is branded with a brand which is not on record in the office of the board or is a freshly branded or marked offspring not with its branded or marked mother, unless other proof of ownership is produced;

L. "mark" refers to a sheep ear tag or ownership mark;

M. "meat" means the edible flesh of poultry, birds or animals sold for human consumption and includes livestock, poultry and livestock and poultry products; and

N. "person" includes an individual, firm, partnership, association or corporation."

Section 3

Section 3. Section 77-2-3 NMSA 1978 (being Laws 1967, Chapter 213, Section 3, as amended) is amended to read:

"77-2-3. NEW MEXICO LIVESTOCK BOARD--SCOPE--COMPOSITION--QUALIFICATIONS-- TERMS--MEETINGS.--

A. The New Mexico livestock board is established to govern the livestock industry of the state in the manner required by law.

B. The New Mexico livestock board shall be composed of nine members appointed by the governor and adequately representing the state livestock industry. Seven of the nine members must raise and own cattle or raise and own sheep in this state and be residents of this state. Two members of the board shall not raise or own cattle or sheep but shall be appointed to represent the general public. The two public members also shall be residents of New Mexico. The majority of the members of the board at any given time shall, however, be primarily engaged in the business of raising and owning cattle in this state. The board shall be bipartisan, but no more than five members of the board shall belong to the same political party.

C. The term of office of each member of the New Mexico livestock board shall be six years; provided, that of the members of the board to be appointed after the passage and approval of this act, two shall be appointed for a term of two years, two for a term of four years and three for a term of six years and, upon the expiration of the terms of such appointments, the successors shall be appointed for the full term of six years.

D. The New Mexico livestock board shall elect from their number a chairman, vice-chairman and secretary. The board shall hold two regular meetings in each year, one in June and the other in December. Special meetings may be called by the chairman or by the vice-chairman in the event that the chairman is absent from the state or because the chairman is physically incapacitated or by a majority of the members of the board."

Section 4

Section 4. Section 77-2-7 NMSA 1978 (being Laws 1967, Chapter 213, Section 6, as amended) is amended to read:

"77-2-7. ADDITIONAL POWERS OF THE NEW MEXICO LIVESTOCK BOARD.--

A. In addition to the powers transferred from the cattle and sheep sanitary boards, the board has the following powers to:

(1) exercise general regulatory supervision over the livestock industry of this state in order to protect the industry from theft and contagious or infectious diseases and in order to protect the public from diseased or unwholesome meat or meat products;

(2) appoint and fix the salary of an executive director who shall file an oath and be bonded in an
amount fixed by the board. The executive director shall manage the affairs of the board under the direction of the board. He shall be chosen solely on qualifications and fitness for the office. He shall devote his entire time to the duties of the office;

(3) employ clerical help and purchase equipment;

(4) employ inspectors and other personnel necessary to carry out the purposes of The Livestock Code. All inspectors appointed by the board shall have the same powers as any other peace officer in the enforcement of The Livestock Code;

(5) appoint a state veterinarian and subordinate veterinarians as are necessary to carry out the duties of the board. All veterinarians employed by the board must be licensed by the board of veterinary examiners;

(6) make and publish rules and regulations to control the importation of animals into this state;

(7) establish quarantine, provide its boundaries and give notice of the quarantine and to do all other things necessary to effect the object of the quarantine and to protect the livestock industry of this state from contagious or infectious disease and prevent the spread of disease;

(8) make and publish rules and regulations for meat inspection, including the slaughter and disposition of the carcasses of animals affected with contagious or infectious diseases when the action appears necessary to prevent the spread of any contagion or infection among livestock;

(9) make and publish rules and regulations governing the importation, manufacture, sale, distribution or use within the state of serums, vaccine and other biologicals intended for diagnostic or therapeutic uses with animals and to regulate the importation, manufacture or use of virulent blood or living virus of any diseases affecting animals;

(10) set fees or charges, not to exceed twenty dollars ($20.00) per call for any services rendered by the board or its employees which are deemed necessary by the board and for which no fee has been set by statute;

(11) consider the views of the livestock industry in the administration of The Livestock Code; and

(12) make and publish rules and regulations to otherwise carry out the purposes of The Livestock Code.

B. The board may hold hearings and subpoena witnesses for the purpose of investigating or enforcing The
Livestock Code or rules established thereunder."

Section 5

Section 5. Section 77-2-10 NMSA 1978 (being Laws 1973, Chapter 84, Section 1) is amended to read:

"77-2-10. RECEIPTS AND DISBURSEMENTS--ISSUANCE OF WARRANTS, PURCHASE ORDERS AND CONTRACTS--DEPOSIT OF FUNDS.--

A. All fees and other money collected by the board shall be received and disbursed directly by the board, but receipts and disbursements are subject to audit by the state auditor. The board is not required to submit proposed vouchers, purchase orders or contracts to the department of finance and administration as otherwise required by Section 6-5-3 NMSA 1978.

B. The executive director of the board shall issue warrants in the name of the board against funds of the board in payment of its lawful obligations, issue purchase orders and contract for goods or services in the name of the board. The board shall provide its own warrant, purchase order and contract forms as well as other supplies and equipment.

C. The board shall designate banks where its money is to be deposited.

D. Notwithstanding the provisions of Section 6-10-3 NMSA 1978, the board may establish rules governing the receipt and deposit of fees collected by its inspectors requiring remittance to the board in not more than ten days."

Section 6

Section 6. Section 77-2-12 NMSA 1978 (being Laws 1891, Chapter 34, Section 11, as amended) is amended to read:

"77-2-12. EXECUTIVE DIRECTOR--DUTIES, OATH AND BOND.--The executive director of the board shall keep records of inspections of brands and earmarks as deemed necessary by the board and shall perform such other duties as are prescribed by the board. He shall take and subscribe an oath faithfully to perform all of his duties as executive director of the board and shall enter into bond in an amount to be fixed by the board, with good and sufficient sureties, to be approved by the board, conditioned for the faithful performance of his duties."

Section 7

Section 7. Section 77-2-15 NMSA 1978 (being Laws 1937, Chapter 205, Section 2, as amended) is amended to read:

"77-2-15. SPECIAL TAXES--LEVY--INDEMNITY FUNDS--COLLECTION.--

A. Each year it is the duty of the board of county commissioners of each county at its first meeting after the return of the assessment of the property for taxation by the county assessors of each county to levy a special tax at a rate to be fixed each year by the New Mexico livestock board. Subject to the provisions of Section 7-37-7.1 NMSA 1978, the New Mexico livestock board shall, in each year, order the levy of a tax in a sum and manner as set forth herein:

(1) for beef cattle, horses, mules, asses and buffalo a sum at a rate not to exceed ten dollars ($10.00) on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code;

(2) for dairy cattle a sum at a rate to be fixed each year by the board not to exceed ten dollars ($10.00) on each one thousand dollars ($1,000) of net taxable value as that term is defined in the Property Tax Code of all dairy-breed cattle in the county; and

(3) for sheep and goats, a sum at a rate not to exceed twenty dollars ($20.00) on each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code.

B. The order imposing the levy of the tax shall be made on or before June 30 in each year and shall be certified to the department of finance and administration by the executive director. The department of finance and administration shall certify the amount of the levy to the board of county commissioners of each county, and such commissioners shall include the levy in their annual levy of taxes. The special tax shall be collected in each county and paid to the state treasurer in the manner provided by law for the collection and payment of other state taxes. Such funds shall be remitted to the board for deposit in the interim receipts and disbursements fund."

Section 8

Section 8. Section 77-2-16 NMSA 1978 (being Laws 1915, Chapter 85, Section 1, as amended) is amended to read:

"77-2-16. FINANCIAL REPORT AND TAX ESTIMATE--STATE LEVY--MAXIMUM RATE.--It is the duty of the board on or before June 30 of each year to make and file with the department of finance and administration a report and estimate showing the amount of money in the custody or under the control of the treasurer of the board, the estimated receipts from all sources and the actual and estimated

expenditures for the current fiscal year. The department of finance and administration shall annually, at the time and in the manner of certifying rates under the Property Tax Code, certify a rate and impose a levy upon all cattle, horses, mules, asses, sheep, goats and buffalo in every county in the state, provided that such levy shall not exceed the amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978."

Section 9

Section 9. Section 77-2-17 NMSA 1978 (being Laws 1915, Chapter 85, Section 2, as amended) is amended to read:

"77-2-17. PAYMENT OF TAX COLLECTIONS TO STATE TREASURER--DISBURSEMENT.--The special tax provided by Section 77-2-16 NMSA 1978 shall be assessed and collected in every county and paid over to the state treasurer as provided by law for the assessment, collection and payment of other state taxes, and all money so collected and paid over on account of such special tax levies shall be transferred each month to the board for deposit in the interim receipts and disbursements fund and shall be used for fees, salaries, wages, costs and expenses as provided for by laws relating to the powers, duties and expenditures of the board."

Section 10

Section 10. Section 77-2-18 NMSA 1978 (being Laws 1889, Chapter 106, Section 21, as amended) is amended to read:

"77-2-18. COMPENSATION OF EMPLOYEES.--The compensation of all employees by or under the board and, in the first instance, all other expenses incurred by or under that board shall be paid by the board or, upon its order, out of the funds provided for in The Livestock Code, such board taking or causing to be taken proper vouchers for all money so expended by them."

Section 11

Section 11. Section 77-2-19 NMSA 1978 (being Laws 1889, Chapter 106, Section 22, as amended) is amended to read:

"77-2-19. LIMITATION ON EXPENDITURES.--The amount of money to be expended by the board in any one year, is limited to the amount set forth in a budget approved by the department of finance and administration."

Section 12

Section 12. Section 77-2-21 NMSA 1978 (being Laws 1893, Chapter 67, Section 3, as amended) is amended to read:

"77-2-21. FEES.--All fees and charges collected pursuant to the provisions of The Livestock Code shall be paid to the executive director of the board to be deposited in the New Mexico livestock board general fund, hereby created. All fees and charges deposited in the New Mexico livestock board general fund may be expended in accordance with a budget approved by the department of finance and administration."

Section 13

Section 13. Section 77-2-23 NMSA 1978 (being Laws 1945, Chapter 22, Section 1) is amended to read:

"77-2-23. VEHICLES OF NEW MEXICO LIVESTOCK BOARD--SUPERVISION.--The board is exempted from the provisions of Sections 15-3-28 and 15-3-30 NMSA 1978, and the same shall not be applicable to any and all motor vehicles owned by the board."

Section 14

Section 14. Section 77-2-25 NMSA 1978 (being Laws 1959, Chapter 291, Section 2) is amended to read:

"77-2-25. INTERIM RECEIPTS AND DISBURSEMENTS FUND CREATED.--There is created the "interim receipts and disbursements fund". All money received by the board from tax levies authorized by this article shall be credited to this fund and deposited in a designated bank in the name of the board. Money shall be disbursed from this fund only upon a warrant issued by the executive director in the name of the board. Disbursements may be made to pay necessary expenses and obligations of the board, which include expenses for salaries, supplies, equipment, rent on office space or other goods and services in accordance with a budget approved by the department of finance and administration. The board shall prescribe any additional administrative procedure necessary to administer this fund."

Section 15

Section 15. Section 77-2-26 NMSA 1978 (being Laws 1959, Chapter 291, Section 3) is amended to read:

"77-2-26. BOARD NOT TO BE ASSESSED FOR GENERAL ADMINISTRATIVE OVERHEAD.--No appropriation for the board shall include an item for general administrative overhead. No charge for general administrative overhead shall be assessed against or appropriated out of the interim receipts and disbursement fund or from any other fund or money administered by the board. No fees or money collected by the board shall be subject to assessment for any charge for general administrative overhead."

Section 16

Section 16. Section 77-2-28 NMSA 1978 (being Laws 1981, Chapter 5, Section 1, as amended) is amended to read:

"77-2-28. TERMINATION OF BOARD LIFE--DELAYED REPEAL.--The New Mexico livestock board is terminated July 1, 1999 unless continued by the legislature pursuant to the Sunset Act. The board shall continue to operate according to all of the provisions of Chapter 77, Article 2 NMSA 1978 until July 1, 2000 for the purpose of winding up its affairs. Effective July 1, 2000, Chapter 77, Article 2 NMSA 1978 is repealed."

Section 17

Section 17. Section 77-2-29 NMSA 1978 (being Laws 1981, Chapter 357, Section 2, as amended) is amended to read:

"77-2-29. FEES.--The following fees shall be fixed by the board for services rendered pursuant to the provisions of Chapter 77 NMSA 1978:

A. an inspection fee not to exceed sixteen cents ($.16) per head to be charged for the importation of sheep pursuant to Section 77-8-3 NMSA 1978; provided that the board shall not increase the fee more than four cents ($.04) in any one fiscal year starting at the fee of eight cents ($.08);

B. an inspection fee not to exceed sixteen cents ($.16) per head to be charged for the exportation of sheep pursuant to Section 77-8-7 NMSA 1978; provided that the board shall not increase the fee more than four cents ($.04) in one any fiscal year starting at the fee of eight cents ($.08);

C. a fee for recording a transfer of a brand pursuant to Section 77-9-7 NMSA 1978 in an amount not to exceed fifty dollars ($50.00);

D. a fee for recording a brand for horses, mules, asses, cattle or sheep pursuant to Section 77-9-10 NMSA 1978 in an amount not to exceed fifty dollars ($50.00);

E. a fee for additional copies of certified copies of brands pursuant to Section 77-9-10 NMSA 1978 in an amount not to exceed five dollars ($5.00) per copy;

F. a fee for the recording of a holding brand pursuant to Section 77-9-16 NMSA 1978 in an amount not to exceed one hundred dollars ($100), which recording shall be valid for one year from the date of recording, and an additional fee in an amount not to exceed one hundred dollars ($100) for each annual renewal thereafter;

G. a fee for the rerecording of brands pursuant to Section 77-9-20 NMSA 1978 in an amount not to exceed fifty dollars ($50.00);

H. a fee for the inspection of cattle, horses, mules and asses pursuant to Section 77-9-38 NMSA 1978 in an amount not to exceed fifty cents ($.50) per head with a minimum charge of two dollars ($2.00) for each inspection request; provided that the board may not increase the inspection fee more than ten cents ($.10) in any one fiscal year;

I. a fee for the inspection of hides pursuant to Section 77-9-54 NMSA 1978 in an amount not to exceed fifty cents ($.50) per hide with a minimum charge of two dollars ($2.00) for each inspection request; provided that the board may not increase the inspection fee more than ten cents ($.10) in any one fiscal year;

J. a payment in lieu of fees on the receipt of livestock at a sales ring pursuant to Section 77-10-4 NMSA 1978 in an amount not to exceed fifty cents ($.50) per head for cattle, horses, mules or asses and not to exceed sixteen cents ($.16) per head for sheep and goats; provided that the board may not increase any payment in lieu of fees more than ten cents ($.10) in any one fiscal year for cattle, nor more than four cents ($.04) in any one fiscal year for sheep and goats;

K. a fee for the handling of the proceeds of the sale of an estray pursuant to Section 77-13-6 NMSA 1978 in an amount not to exceed ten dollars ($10.00); and

L. a fee for the impoundment of trespass livestock or buffalo pursuant to Section 77-14-36 NMSA 1978 in an amount set by the board not to exceed twenty-five dollars ($25.00) per head and a reasonable charge for the moving of trespass livestock or buffalo pursuant to Section 77-14-36 NMSA 1978 to be set by the board."

Section 18

Section 18. Section 77-3-2 NMSA 1978 (being Laws 1909, Chapter 9, Section 2, as amended) is amended to read:

"77-3-2. REPORT OF DISEASED ANIMALS--OFFENSES--EXPENSE RECOVERY--DUTIES OF SHERIFFS.--Any person, firm, corporation, agent or employee having in his possession or under his care any animal which he knows or has reason to believe is affected with a dangerously contagious or infectious disease and does not without unnecessary delay make known to board or some member thereof or to the sheriff of the county in which
the animal is situate to be by him communicated to the board, or any person, corporation or employee or agent thereof who brings into this state, or sells or disposes of any animals known to be affected or any animal having been exposed to such contagion or moves any animal so diseased or exposed from quarantine or moves any animal to or from any districts in the state declared to be infected with such contagious disease or brings into this state any animal of the kind diseased from a district outside

the state that may at any time be legally declared to be affected with such disease without the consent of the board shall upon conviction be fined in a sum not less than fifty dollars ($50.00) and not exceeding five hundred dollars ($500). Any guard or other proper expenses incurred in the quarantining of the animals under the provisions of Sections 77-3-1 through 77-3-4, 77-3-9 and 77-3-10 NMSA 1978, shall be paid by the owner, and if the same is refused, after demand made by order of the board, an action may be brought to recover the same with costs of suit which action may be brought in the name of the state for the use of the board.

It is the duty of all sheriffs to execute all lawful orders of the board."

Section 19

Section 19. Section 77-3-4 NMSA 1978 (being Laws 1909, Chapter 9, Section 3, as amended) is amended to read:

"77-3-4. DEAD ANIMALS--DISPOSAL.--The bodies of all dead animals shall be buried, burned or disposed of by the owners as provided by regulations of the board."

Section 20

Section 20. Section 77-3-5 NMSA 1978 (being Laws 1917, Chapter 30, Section 1) is amended to read:

"77-3-5. INFECTED PASTURES AND BUILDINGS--NOTICES.--If a pasture, building, corral or any yard or enclosure where cattle or sheep have been or may be pastured or confined is infected with or has become dangerous on account of any infectious disease or poisonous weed or plant, the board may post notices in not less than two conspicuous places in or upon such pasture, building, corral or other yard or enclosure sufficient to warn all owners and others in charge of sheep or cattle of the nature of such infection, disease or poisonous weed or plant and of the danger."

Section 21

Section 21. Section 77-3-8 NMSA 1978 (being Laws 1909, Chapter 9, Section 8, as amended) is amended to read:

"77-3-8. DESTRUCTION OF DISEASED ANIMALS--PAYMENT TO THE OWNER--APPRAISAL.--In cases where the board deems it necessary to destroy any diseased, infected or exposed animals in order to prevent the spread of dangerous and fatal disease such as glanders, farcy, tuberculosis, pleuro-pneumonia, rinderpest, foot and mouth disease or any other dangerous and fatal disease, foreign or other, which according to the rules, regulations and standards adopted by the United States department of agriculture animal and plant health inspection service, cannot be extirpated by dipping or means other than the destroying of the diseased or infected animals, the board is authorized to have such animals killed and burned or buried under

such rules and regulations as the board may prescribe. The board shall pay, in cooperation with the United States department of agriculture, to the owners of such slaughtered animals the allowed indemnity determined by the United States department of agriculture animal and plant health inspection service and the board."

Section 22

Section 22. Section 77-3-9 NMSA 1978 (being Laws 1909, Chapter 9, Section 4, as amended) is amended to read:

"77-3-9. ACCEPTANCE OF FEDERAL RULES AND REGULATIONS--COOPERATION.--The board is authorized to accept on behalf of the state the rules and regulations prepared by the secretary of the United States department of agriculture, under and in pursuance of Section 3 of an act of congress, approved May 29, 1884, which stated "An act for the establishment of a bureau of animal industry for the extirpation of diseased cattle and to provide means for the suppression and extirpation of pleuro-pneumonia and other contagious diseases among domestic animals" and to cooperate with the authorities of the United States in the enforcement of the provisions of such act and all other acts relating to diseased livestock."

Section 23

Section 23. Section 77-3-10 NMSA 1978 (being Laws 1909, Chapter 9, Section 5, as amended) is amended to read:

"77-3-10. FEDERAL OFFICERS--POWERS.--The representatives of the United States department of agriculture animal and plant health inspection service under the specific authorization of the board shall have the right of inspection, quarantine and condemnation of animals affected with any contagious, infectious or communicable disease or suspected of being affected or that have been exposed to any such disease and for these purposes are authorized and empowered to enter any grounds or premises in the state. They have power to call upon any peace officers to assist them in the discharge of their duties in carrying out the provisions of the act of congress as provided in Section 77-3-9 NMSA 1978, and it is the duty of the officers to assist them when so requested. The inspectors of the board shall have the same powers and protection as peace officers while engaged in the discharge of their duties."

Section 24

Section 24. Section 77-3-11 NMSA 1978 (being Laws 1949, Chapter 48, Section 1) is amended to read:

"77-3-11. MARKING OR BRANDING OF CATTLE FOUND INFECTED WITH TUBERCULOSIS OR BANG'S DISEASE.--Whenever any cattle within this state are tested for tuberculosis or Bang's disease by the board or its agents or employees or by any authorized agent or employee of the department of agriculture animal and plant

health inspection service, if any animal so tested is found to have a positive reaction to such tests, the animals shall be permanently marked or branded according to the requirements of the board by the owner. The type of brand to be used shall be designated by the board and animals shall be marked or branded by the owner immediately upon instructions from the board."

Section 25

Section 25. Section 77-3-12 NMSA 1978 (being Laws 1949, Chapter 48, Section 2) is amended to read:

"77-3-12. PENALTY.--Any person, firm, company or corporation violating the provisions of Section 77-3-11 NMSA 1978 is guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not less than fifty dollars ($50) nor more than two hundred dollars ($200) for each animal in violation."

Section 26

Section 26. Section 77-3-13 NMSA 1978 (being Laws 1889, Chapter 106, Section 8, as amended) is amended to read:

"77-3-13. DANGEROUS EPIDEMICS--PROCLAMATION--IMPORTS PROHIBITED--PENALTY.-- Whenever it comes to the knowledge of the board or any of its authorized representatives that any contagious or infectious disease, the nature of which is known to be fatal or highly injurious to livestock, pigeons or fowls of any kind, has become epidemic or exists in any locality in any country, state or territory beyond the limits of this state, it shall immediately communicate the fact to the governor in writing, and thereupon, or when the governor shall otherwise have good reason to believe that any such disease so exists or has become epidemic, the governor shall immediately issue and publish by a general proclamation such rules and regulations as the board may adopt and thereby prohibit the importation into this state of any animals subject to the disease which may be so reported except under such restrictions and safeguards as the board deems proper and shall specify for the protection of such animals in this state and may also prohibit the importation into this state of any hoofs, hides, skins or meat of any livestock or any hay, straw fodder, cottonseed or other products or material calculated to carry the infection of such disease. Any person, company or corporation who after the publication of the proclamation receives in charge of any of the animals or any of the products previously provided for in this section, the importation of which into this state has been so prohibited, or shall drive, transport or in any manner convey the animals or products to and within the limits of this state or shall knowingly cause or procure the animals or products to be driven, transported or conveyed into this state in violation of the proclamation by driving, conveying or transporting or aiding therein or causing or procuring to be driven, conveyed or transported into this state any of the animals or any of the products, the importation of which is by the proclamation declared to be unlawful, is guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars ($100) nor more than

five thousand dollars ($5,000) for each offense and is also liable in a civil action for any and all damages and loss sustained by reason of such importation of the animals or of any of the products provided for in this section."

Section 27

Section 27. Section 77-3-14 NMSA 1978 (being Laws 1889, Chapter 106, Section 9, as amended) is amended to read:

"77-3-14. HEALTH CERTIFICATE--INSPECTION--PERMIT--PENALTY.--After the issuance and publication of such proclamation by the governor and while the proclamation continues in force or while the prohibition against the importation of livestock from any other state or country is in force, it is unlawful for any person, company or corporation to drive or transport or cause to procure to be driven or transported into this state any livestock that by any direct or circuitous route might have come from any place or district covered by such prohibitions without first having obtained a certificate of health from a veterinarian or a permit in writing from the board under such rules and regulations as the board prescribes and publishes for the information of the public. Any person failing to comply with this provision after due notice is guilty of a misdemeanor and upon conviction shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) and is also personally liable for all loss and damages sustained by any persons by reason of the introduction of any contagious or infectious disease from the livestock so unlawfully imported into this state. During the time covered by the proclamation, all livestock desiring to enter the state must submit to an inspection, and they shall not be permitted to enter the state until a written or printed permit is issued by the board. Any person may require the person in charge of the livestock to produce the permit for his inspection, and any person refusing to produce the permit at any time within a year from the time the livestock were driven in is guilty of the violation of this law and is subject to all the penalties provided by this section."

Section 28

Section 28. A new section of The Livestock Code, Section 77-3-14.1 NMSA 1978 is enacted to read:

"77-3-14.1. AGID TESTS REQUIRED.--The board shall adopt regulations prohibiting the driving or transporting into this state of any horses or other equidae that have not tested negative to the AGID, or Coggins, test or a United States department of agriculture-approved equivalent test for equine infectious anemia within twelve months prior to the date of entry, the evidence of which test result shall be shown on a health certificate; excepting from regulation only those foals accompanied in shipment by a negative-tested dam, those horses or other equidae consigned directly to slaughter or cattle or sheep."

Section 29

Section 29. Section 77-3-15 NMSA 1978 (being Laws 1889, Chapter 106, Section 11, as amended) is amended to read:

"77-3-15. INVESTIGATION OF SUSPECTED ILLEGAL IMPORTS--OATHS--HEALTH CERTIFICATE OF PERMIT.--Whenever the board, during the continuance in force of any prohibition against the importation into this state of livestock has good reason to believe or suspect that any such livestock against the importation of which prohibition then exists have been or are about to be driven, conveyed or transported into this state in violation of any such prohibition then existing and then in force, it is the duty of the board, either by its own members or through a veterinarian or through one or more of such persons then in their employ as circumstances shall seem to require, to thoroughly investigate the same. They may examine, under oath or affirmation, any person in charge of the livestock or any person cognizant of any facts or circumstances material to the investigations and all facts connected with the driving or transportation of the livestock, including the place or places from which the livestock have been driven or transported; the places or districts through which they have been driven or transported; the length of time and where they have remained, fed or grazed at any designated place or district; what contagious or infectious disease of livestock, if any, they have been exposed to and when and where; and any other facts or circumstances material to the investigation and reduce such testimony to writing in all cases where the certificate of health or the permit in writing provided for in this section shall be refused. The members of the board, a veterinarian and all other persons as aforesaid so in the employ of the board through whom any such investigation shall be made hereby are authorized to administer all oaths and affirmations required in any such investigation. If any such investigation is made by such veterinarian and he is satisfied that the livestock are free from all contagious and infectious disease and will not communicate any disease to any livestock in this state, he shall deliver to the person in charge of the livestock a certificate of health to the effect that the livestock are healthy and entitled to pass into the state, otherwise he shall refuse the same. If such investigation is made by any other persons authorized as specified in this section to make the investigation and they are satisfied that the livestock will not transmit to the livestock in this state any livestock disease and that the facts and circumstances attending their transportation warrant the presumption that such livestock are not from any prohibited areas, a recommendation that the importation of the livestock shall then be permitted, shall be communicated to the board and the board shall upon concurrence give the person in charge of the livestock a written permit to pass the same into the state, otherwise such permit shall be refused."

Section 30

Section 30. Section 77-3-16 NMSA 1978 (being Laws 1889, Chapter 106, Section 12, as amended) is amended to read:

"77-3-16. RULES AND REGULATIONS.--It is the duty of the board to make all useful rules and regulations respecting examinations and investigations for the granting or refusing of certificates of health and permits provided for in the next succeeding

section and give ample publicity thereto so that all persons, companies and corporations who may desire to drive or transport any livestock into the state may be conveniently advised of what will be required to obtain any such certificate or permit during the existence of any prohibition to the importation of livestock into the state and of when, where ad to whom application therefor may be made."

Section 31

Section 31. Section 77-3-17 NMSA 1978 (being Laws 1889, Chapter 106, Section 14, as amended) is amended to read:

"77-3-17. QUARANTINE--SEIZURE OF CATTLE.--Whenever any livestock are driven or transported into the state without obtaining a certificate of health or permit by the person in charge thereof, in any case where a certificate or permit is required and if such livestock have been inspected and an investigation had in relation thereto and the certificate or permit refused, then the livestock may be seized and securely held in quarantine under such reasonable rules and regulations as shall be prescribed therefor by the board and as they may deem necessary to guard against other livestock becoming affected with any such livestock diseases. They shall be held in quarantine for such length of time as the board shall in their opinion deem necessary for the sanitary protection of livestock in this state. If such livestock shall not have been so inspected and an investigation had, then the same shall take place wherever the livestock may be found, and they may be seized and held for that purpose and a certificate of health or permit granted or refused, as the case may require. If refused, the livestock may in like manner be held in quarantine. All the necessary expenses of quarantine and inspection under the provisions of this section shall be paid by the owners of the livestock."

Section 32

Section 32. Section 77-3-18 NMSA 1978 (being Laws 1889, Chapter 106, Section 15, as amended) is amended to read:

"77-3-18. LIENS FOR EXPENSES AND FOR DAMAGES FOR COMMUNICATING DISEASE.--All expenses incurred in and by the inspection and quarantine of livestock under Section 77-3-17 NMSA 1978 shall be a lien on such livestock to secure the payment thereof in favor of the board, as an indemnity for the expenses so incurred. All loss and damages incurred and suffered by any person, company or corporation of any of the provisions of this chapter shall be lien on the livestock so unlawfully imported in favor of the person, company or corporation so incurring or suffering such loss or damage. All liens covered by this section shall take precedence and priority over any other lien or encumbrance on any such livestock existing at the time of their unlawful importation as aforesaid or at any time subsequent thereto. All such liens shall subsist and become effective as security for ultimate payment without any other act or proceeding whatever and after judgment any such lien may be foreclosed by sale of the livestock on execution."

Section 33

Section 33. Section 77-3-19 NMSA 1978 (being Laws 1889, Chapter 106, Section 16, as amended) is amended to read:

"77-3-19. SEIZURE--PROCEDURE--SALE.--In order to enforce Sections 77-3-17 and 77-3-18 NMSA 1978, the board or any member thereof or anyone they may authorize shall seize any livestock that may come into this state during the enforcement of this law without first having obtained a permit. After seizure, the livestock shall be held in close quarantine until the board is satisfied all danger has passed. Either of the parties above named and empowered to make the arrest may call on any party within a reasonable distance to assist in making the seizure of the livestock, and anyone refusing to assist is guilty of a petty misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100) or be imprisoned in the county jail not to exceed three months. When the board is satisfied that there is no further danger from the seized livestock, they may render a bill of costs to the owner or claimant and upon the payment of the sum release the livestock or they may advertise such livestock in a public newspaper for at least two weeks or in a generally accepted industry publication approved by the board and then sell them to the highest bidder retaining only enough to satisfy all expenses incurred or they may turn loose the livestock on the range or return them to the place of entry. All persons who are summoned to assist in seizing the livestock shall be allowed a reasonable compensation for their service to be determined by the board."

Section 34

Section 34. Section 77-4-1 NMSA 1978 (being Laws 1905, Chapter 31, Section 1, as amended) is amended to read:

"77-4-1. INFECTIOUS DISEASE ERADICATION--REGULATIONS.--The board has the power and it is its duty to determine the existence of and employ the most efficient and practical means to prevent, suppress, control and eradicate the disease known as mange or scabies or any contagious or infectious disease among livestock and to direct and regulate the handling, dipping or treating of any livestock when infected or which it may have good reason to believe to have been exposed to any of the diseases; to make and adopt quarantine and sanitary regulations; provided, that all such regulations shall, so far as practicable, conform to the regulations of the United States department of agriculture as they may be from time to time promulgated; and to create and define districts within which such disease exists; provided further, that in determining the districts within this state in which such disease from time to time exists, the board shall cooperate with the United States department of agriculture.

A majority of the board shall constitute a quorum and the board may exercise any of the powers conferred upon it by Sections 77-4-1 through 77-4-8 NMSA 1978 inclusive through committees of its own members specially empowered by resolution."

Section 35

Section 35. Section 77-5-1 NMSA 1978 (being Laws 1929, Chapter 159, Section 1) is amended to read:
"77-5-1. TUBERCULOSIS--EXAMINATIONS.--The board has power to make tests and examinations for the purpose of ascertaining whether or not any domestic animals in the state are affected with tuberculosis. Such tests or examinations shall be made by veterinarians of the board, inspectors of the United States department of agriculture animal and plant health inspection service or other veterinarians authorized by the board to perform such tests and examinations."

Section 36

Section 36. Section 77-5-2 NMSA 1978 (being Laws 1929, Chapter 159, Section 2) is amended to read:

"77-5-2. INFECTED LIVESTOCK--DESTRUCTION.--If, upon making any tests or examinations as provided for in this article, it should appear that any cattle, hogs or poultry are affected with tuberculosis and that the public interest would be best served through the destruction of such animals, it is the duty of the board to cause the destruction thereof in a manner deemed most expedient."

Section 37

Section 37. Section 77-5-3 NMSA 1978 (being Laws 1929, Chapter 159, Section 3) is amended to read:

"77-5-3. SPECIAL AREAS--COOPERATION--REGULATIONS.--The board is hereby authorized to create and supervise tuberculosis-free areas, modified accredited areas and accredited areas and to cooperate with and arrange for such assistance from the United States department of agriculture in carrying out the provisions of this article as it may deem best and just. The board is authorized to adopt and promulgate such rules and regulations which it may deem necessary and proper for the enforcement of the provisions of this article; and such rules and regulations when so adopted and promulgated shall have the same force and effect as if they were an integral part of this article."

Section 38

Section 38. Section 77-5-4 NMSA 1978 (being Laws 1929, Chapter 159, Section 4) is amended to read:

"77-5-4. DAIRY CATTLE--IMPORTATION--TESTS.--All cattle intended for dairy or milking purposes or for the breeding of dairy cattle brought into this state in any manner must be tagged for identification and must be accompanied by a permit from

the board and a certificate signed by some duly qualified veterinarian of the United States department of agriculture or of some state or territory showing record of tuberculine test made immediately prior to shipment and showing that they are free from infection, except in cases where cattle are from accredited herds, modified accredited areas, accredited areas or free areas created and supervised by the United States department of agriculture and state cooperating agency, in which event such cattle must be accompanied by a certificate from a duly qualified veterinarian of the United States department of agriculture or a state recognized veterinarian. Copies of such certificates shall be mailed by the officer making same to the director of the board. Such cattle after coming into the state, if deemed necessary, shall be held for a period of sixty to ninety days or until retested and released in quarantine under such rules as may be provided by the board and shall not be allowed to mingle with nor occupy the same range, pasture, lots, corrals, pens, barns or sheds with other animals. Such cattle shall be tested again before the expiration of the ninety days but no sooner than sixty days by a qualified veterinarian duly authorized by the board and the report of the test filed with the board. Provided, that if any such cattle when retested for tuberculosis shall react and shall be destroyed in accordance with the provisions of this article, the owners of the cattle shall not be reimbursed for the loss of any such imported cattle."

Section 39

Section 39. Section 77-8-3 NMSA 1978 (being Laws 1951, Chapter 188, Section 12, as amended) is amended to read:

"77-8-3. IMPORTATION--NOTICE--INSPECTION--FEES.--

A. Any person intending to bring any sheep into the state from any other country or state shall give notice of his intention to the director of the board by telegraph, certified letter or delivery in person or by telephone to the director or other authorized official of the board so that the notice is received prior to the proposed day of entry. The notice shall state the number of head, the date and place the sheep will be loaded and their destination. The director shall then issue a permit for entry of the sheep into the state, stating in the permit the applicable board regulations to be complied with before or after entry into the state.

B. The shipment shall be accompanied by a health certificate issued by a federal or authorized state inspector or authorized veterinarian that the sheep are healthy and free from scabies or other contagious or infectious disease. On arrival, the inspector shall examine the sheep as to their sanitary condition and inspect and make a record of all the marks and brands on the sheep, which record shall be forwarded to the board office and used for future reference. He shall then issue the shipper or owner a copy of the brand inspection certificate, if the inspector is satisfied all requirements have been met.

C. A fee to be fixed by the board shall be charged and paid by the owner or person in charge of the sheep to the board received by the inspector for the

inspection and certificates. If the inspector finds that the sheep are infected with scabies or other contagious or infectious disease, or the owner or person in charge has not met the entry requirements, he shall require the owner or the person in charge of them to comply with the quarantine, dipping and treating provisions of Section 77-8-2 NMSA 1978 or other applicable statutes and regulations. The provisions of this section shall not apply to sheep loaded on transport vehicles which are being transported from some country or state to another country or state through New Mexico if the sheep are not to be unloaded in this state except in approved rest stations or other quarantine pens for the purpose of feeding and watering the sheep for a period of time not to exceed twenty-four hours."

Section 40

Section 40. Section 77-8-7 NMSA 1978 (being Laws 1951, Chapter 188, Section 16, as amended) is amended to read:

"77-8-7. EXPORTATION--NOTICE--INSPECTION FEES.--

A. Any person intending to ship sheep out of the state shall give notice of his intention to the director of the board or to the inspector for his district by telegraph, certified letter or by delivery in person or by telephone to the director or inspector so that the notice is received at least forty-eight hours previous to the proposed date of shipment. The notice shall state the date and place that the sheep will be loaded and destination of the sheep. The inspector shall examine the sheep as to their sanitary conditions and inspect and make a record of all the marks and brands upon the sheep. He shall not allow sheep bearing any of the marks declared by the law of this state to be unlawful to be shipped except under express authority of the board. He shall also require each person shipping sheep out of the state to exhibit a bill of sale executed as provided by Section 77-8-15 NMSA 1978 or authority in writing to ship the sheep from the recorded owner of all marks and brands upon the sheep unless the person is himself the recorded owner of the marks and brands.

B. The inspector shall issue to the shipper a New Mexico Livestock Board Form-1 certificate of inspectio if he is fully satisfied that the sheep are free from any contagious or infectious disease and that the person shipping has rightful ownership of said sheep as evidenced by the brands or marks and bill of sale as necessary and provided for in this section and all other applicable rules and regulations of the board. This certificate shall authorize the shipping of the sheep out of the state.

C. A fee to be fixed by the board in a sum not to exceed the amount prescribed by law shall be charged for the inspection and certificates, and the inspector shall refuse to issue the above certificates until he has been paid the fee. The inspector shall make a report to the director after each inspection of any matters contained in this section which may be required of him by the director."

Section 41

Section 41. Section 77-8-21 NMSA 1978 (being Laws 1963, Chapter 129, Section 7) is amended to read:

"77-8-21. DIPPING FEES.--If any dipping of sheep is required by law or requested by the owner to be done under the supervision of an inspector or other person authorized by the board, a dipping fee to be set by the board shall be paid to the inspector or other person authorized by the board by the owner or person in charge of the sheep. This dipping fee is not required during an immediate conjunction with an outgoing or incoming inspection if an inspection fee is paid. The inspector or other person authorized by the board shall remit all dipping fees required under this section to the board."

Section 42

Section 42. Section 77-9-1 NMSA 1978 (being Laws 1884, Chapter 47, Section 1, as amended) is amended to read:

"77-9-1. BRANDING AND MARKING OF CATTLE AND SHEEP--OFFENSE--PENALTY.--Animals such as are usually branded shall be branded with the owner's brand as his recorded brand certificate designates. Each drove of cattle or sheep which may be driven into or through any county in this state shall be plainly branded or marked with one uniform brand or mark. The cattle shall be so branded with the distinguishing ranch or road brand of the owner as to show distinctly. Sheep shall be marked distinctly with such mark or device as may be sufficient to distinguish them readily should they become intermixed with other flocks of sheep owned in the state. Any owner or person in charge of such drove which may be driven into or through the state who fails to comply with the provisions of this section shall be guilty of a petty misdemeanor and upon conviction shall be fined not less than fifty dollars ($50.00) nor more than three hundred dollars ($300) for each offense."

Section 43

Section 43. Section 77-9-3 NMSA 1978 (being Laws 1895, Chapter 6, Section 1, as amended) is amended to read:

"77-9-3. NECESSITY OF BRAND--REBRANDING REQUIRED--EXCEPTIONS.--

A. Every person, firm, company or corporation owning horses, mules, asses or any cattle shall have and adopt a brand for the animals. The brand shall be applied with a hot iron on each animal except registered animals which are properly identified and whose owner has been issued a certificate of brand exemption for his herd by the board. Each brand shall be recorded in the office of the board.

B. Any unbranded livestock excepting offspring with a branded mother shall be subject to seizure by any peace officer or any duly authorized livestock

inspector appointed by the board and shall be handled and disposed of in the same manner as is provided for the handling and disposal of estrays.

C. Any livestock that is purchased must be rebranded by the new owner with his recorded brand within thirty days of the purchase date unless he is given special permission by the board or by the former owner to use the recorded brand of the seller appearing on the livestock.

D. This section shall not apply to any person owning horses, mules or asses who has been issued a transportation permit as provided in Section 77-9-42 NMSA 1978 or who has a registration certificate for an animal from a recognized breed association, or to any person owning horses, mules or asses which have been identified by a freeze mark or a freeze brand recorded with the board. Freeze branding or freeze mark identification requires an iron, first submerged in a bath of liquid nitrogen, to be applied on each animal, resulting in a permanent loss of color in the hair or cessation of hair growth where the brand or mark has been applied."

Section 44

Section 44. Section 77-9-4 NMSA 1978 (being Laws 1961, Chapter 4, Section 1, as amended) is amended to read:

"77-9-4. PENALTY FOR FAILURE TO BRAND OR REBRAND--CERTAIN SALES PROHIBITED.--

A. All livestock required to be branded under the provisions of Section 77-9-3 NMSA 1978 shall bear the identical and complete brand recorded in the name of the present owner with the board or, in the alternative, the livestock shall bear the identical and complete brand of a former owner as recorded with the board, in which case, the livestock shall be accompanied by a bill of sale, from the former owner to the person claiming to be the present owner, which meets the requirements of Section 77-9-22 NMSA 1978.

B. The bill of sale must contain a written statement by the former owner granting permission to the present owner to use the recorded brand appearing on the livestock listed in the bill of sale and filed with the board, otherwise the livestock must be rebranded within thirty days from the date of purchase.

C. No person shall sell, buy or receive any livestock in the state unless the livestock is branded or has other means of identification acceptable to the board except livestock directly imported from another state.

D. Any individual, corporation, partnership or association that violates the provisions of either Section 77-9-3 NMSA 1978 or this section is guilty of a petty misdemeanor and upon conviction shall be fined not less than fifty dollars ($50.00) nor more than three hundred dollars ($300) upon conviction for each offense."

Section 45

Section 45. Section 77-9-9 NMSA 1978 (being Laws 1895, Chapter 6, Section 5, as amended) is amended to read:

"77-9-9. BRAND BOOKS.--It is the duty of the New Mexico livestock board to keep a suitable record of all the brands used for the branding of horses, mules, asses and any cattle in this state."

Section 46

Section 46. Section 77-9-11 NMSA 1978 (being Laws 1905, Chapter 30, Section 1, as amended) is amended to read:

"77-9-11. FEES--DISPOSITION.--The fees to be paid to the director of the board for recording brands and for furnishing certified copies thereof shall remain as fixed by law. The fees when received by the director shall be placed to the credit of the New Mexico livestock board general fund."

Section 47

Section 47. Section 77-9-12 NMSA 1978 (being Laws 1895, Chapter 6, Section 11, as amended) is amended to read:

"77-9-12. ONLY CERTIFIED COPIES OF BRANDS TO BE RECORDED BY COUNTY CLERKS.--It is unlawful for any county clerk to record any brand unless the application to record is accompanied by a certificate from the director of the board to the effect that the brand has been recorded in the brand book."

Section 48

Section 48. Section 77-9-13 NMSA 1978 (being Laws 1895, Chapter 6, Section 12, as amended) is amended to read:

"77-9-13. BRAND BOOK.--It is the duty of the executive director of the New Mexico livestock board to publish a brand book in which shall be given a facsimile or copy of all brands recorded in the office of the board together with the owner's name and address. The board is authorized to publish if it deems best to do so a limited number of brand books in addition to the number required by the provisions of this section and to sell them for such price as the board considers reasonable and proper. The price shall not be less than the actual cost of the same. The board is authorized to revise from time to time the state record of brands by the cancellation of obsolete and unused brands and to provide by regulation for due notice of such revision."

Section 49

Section 49. Section 77-9-14 NMSA 1978 (being Laws 1895, Chapter 6, Section 13, as amended) is amended to read:

"77-9-14. MORE THAN ONE BRAND UNLAWFUL--EXCEPTIONS--PENALTY.--

A. It is unlawful for any owner of livestock in originally marking or branding horses, mules, asses or any cattle to make use of or keep up more than one mark or brand; provided, that any owner may own and possess animals in different marks or brands if they were acquired by him by purchase or other lawful manner and evidenced by a bill of sale in writing, properly acknowledged, from the previous owner of the animals having such brands or from the heirs, executors, administrators or legal representatives of the owner. Such animals so acquired shall be branded and marked by and with the recorded, kept-up or running brand and mark of the person acquiring the animal within thirty days from the acquisition unless the present owner is given a written statement by the New Mexico livestock board or by the former owner granting permission and filed with the board for the present owner to use the recorded brand appearing on the livestock. In cases where animals having upon them a duly recorded brand may have had established against them a mortgage or other lien duly recorded in this state, it is lawful for the purpose of identification during the pendency of the lien to brand the increase of the animals in the recorded brand designated in the mortgage or lien.

B. Any person who unlawfully brands any livestock contrary to the provisions of this article is guilty of a misdemeanor and shall upon conviction be punished by confinement in the county jail not to exceed twelve months or fined an amount not to exceed five hundred dollars ($500), or both, for each offense."

Section 50

Section 50. Section 77-9-15 NMSA 1978 (being Laws 1895, Chapter 6, Section 14, as amended) is amended to read:

"77-9-15. BRANDS OF MINORS.--Minors owning horses, mules, asses or any cattle separate from that of the parent or guardian may have a mark and brand which shall be recorded in accordance with the requirement of this article, but the parent or guardian shall be responsible for the proper use of the mark and brand by any minor."

Section 51

Section 51. Section 77-9-16 NMSA 1978 (being Laws 1912, Chapter 55, Section 2, as amended) is amended to read:

"77-9-16. FILING OF FACSIMILE--DESIGNATION OF BRANDS--HOLDING BRAND RENEWAL AND FEE--BRANDING INCREASE--OFFENSES--PENALTY.--It is the duty of every owner of horses, mules, asses or any cattle desiring to use in branding any brand not already duly recorded in the office of the New Mexico livestock board to

file with the director of the New Mexico livestock board a facsimile of the brand. The owner shall designate his kept-up or running brand and may record other brands as holding brands upon animals so owned upon furnishing to the director a full description as to the number, class and locality of all animals branded with the holding brand. A fee in an amount prescribed by law shall be charged for the recording of a holding brand, which recording shall be valid for a period of one year, after which time the recording may be renewed for additional years by the payment of a fee in an amount prescribed by law at each yearly renewal; provided, that it is unlawful for any owner to brand the increase of such animals in any other brand than the recorded, kept-up or running brand of the owner except in the case of mortgaged animals as provided in Section 77-9-14 NMSA 1978. Any person who violates the provisions of this section is guilty of a misdemeanor and shall upon conviction be confined in the county jail for a period not to exceed twelve months or fined an amount not to exceed five hundred dollars ($500), or both, for each offense."

Section 52

Section 52. Section 77-9-18 NMSA 1978 (being Laws 1912, Chapter 55, Section 5, as amended) is amended to read:

"77-9-18. BRANDS--BOARD MAY REJECT.--The board shall have the power to reject any brand offered for record under the provisions of Section 77-9-16 NMSA 1978 when upon satisfactory evidence it is shown to the board that the same is offered for or is of such character that may be used for malicious or deceptive purposes or is not in conformity with the provisions of Section 77-9-16 NMSA 1978."

Section 53

Section 53. Section 77-9-19 NMSA 1978 (being Laws 1912, Chapter 55, Section 6, as amended) is amended to read:

"77-9-19. BRAND--PRIORITY OF RIGHT TO.--The time of record of any brand by the owner in the county wherein the brand was originally recorded before the creation of the board shall determine the priority of right and property in the brand and not the time of filing with the board, provided the brand has been continuously used from the date of original record."

Section 54

Section 54. Section 77-9-20 NMSA 1978 (being Laws 1923, Chapter 146, Section 1, as amended) is amended to read:

"77-9-20. RERECORDING OF BRANDS--NOTICE--PUBLICATION--FEES.--

A. The board shall have the power to and shall cause all brands now on record to be rerecorded whenever it deems it necessary to clear records of unused

brands. For this purpose, the board shall mail a notice, addressed to each owner of any brand now of record with the board at the post office address shown on the brand record, requiring the owners of brands to file with the director of the board an exact facsimile of any brand being on record to the owners. In addition to the above notice, the board shall cause to be published in either English or Spanish or both in at least one newspaper in each county in this state where there is a newspaper a copy of this notice to rerecord. The publication shall continue for at least four consecutive weeks.

B. Within three months from the date of the first publication of the notice to rerecord, it is the duty of all owners of brands of record in the office of the board to file with the director of the board a facsimile of the brands in actual use and recorded by them. A fee for the rerecording of brands shall be fixed by the board in a sum not to exceed the amount prescribed by law for each brand rerecorded, the fee to include one certified copy of the rerecording of the brand to be furnished the owner by the board with the proceeds to be used for the cost of notice given as provided in this section; provided that any excess of money from these fees shall be placed in the proper fund of the New Mexico livestock board. Rerecording shall not be required more often than once in any three-year period."

Section 55

Section 55. Section 77-9-21 NMSA 1978 (being Laws 1971, Chapter 196, Section 1) is amended to read:

"77-9-21. BILLS OF SALE--NECESSITY AND PRESUMPTIONS--DEFINITION OF LIVESTOCK.--

A. No person shall buy, receive, sell, dispose of or have in his possession any livestock in this state unless the person selling or disposing of such livestock gives and the person buying or receiving such livestock takes a written bill of sale giving the number, kind, marks and brand of each animal sold which meets the requirements of Section 77-9-22 NMSA 1978.

B. The possession of livestock without having a written bill of sale meeting the requirements of Section
77-9-22 NMSA 1978 is prima facie evidence of illegal possession against any person charged with theft, unlawful possession, handling, driving or killing any livestock."

Section 56

Section 56. Section 77-9-25 NMSA 1978 (being Laws 1895, Chapter 6, Section 19, as amended) is amended to read:

"77-9-25. SALE BY RANGE DELIVERY--BILL OF SALE.--The owner of horses, mules, asses or any cattle running at large upon any range in this state may dispose of the animals by range delivery while on the range and ungathered by the sale and

delivery of the marks and brands on the animals, but in every such case the purchaser, in order to acquire title to the animals, shall have his conveyance or written transfer of the animals duly acknowledged by the vendor and then recorded in a book kept for that purpose in the office of the county clerk of the county in which the animals range, and the sale or transfer shall be noted on the record of original marks and brands in the name of the purchaser."

Section 57

Section 57. Section 77-9-26 NMSA 1978 (being Laws 1921, Chapter 159, Section 1) is amended to read:

"77-9-26. SALE BY PERSON NOT BRAND OWNER--BILL OF SALE.--Every person, firm or corporation in this state who sells, transfers or delivers to any person, firm or corporation in this state any cattle, horse, sheep, mule or burro which is banded or marked with any brand or mark not the recorded brand or mark of the person, firm or corporation selling, transferring or delivering the animal shall make and deliver to the person, firm or corporation buying or receiving the animal a bill of sale duly acknowledged. The bill of sale shall contain a full description of the animal sold, transferred or delivered giving the brands and marks on the animal and showing from whom the animal was received,
together with the post office address of the person, firm or corporation from whom the animal was received or obtained."

Section 58

Section 58. Section 77-9-27 NMSA 1978 (being Laws 1921, Chapter 159, Section 2) is amended to read:

"77-9-27. VIOLATION--PENALTY.--Any person, firm or corporation violating the provisions of Section 77-9-26 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be fined in a sum not less than twenty-five dollars ($25) and not more than five hundred dollars ($500) or by imprisonment not less than thirty days nor more than six months or by both such fine and imprisonment in the discretion of the court."

Section 59

Section 59. Section 77-9-28 NMSA 1978 (being Laws 1943, Chapter 11, Section 1, as amended) is amended to read:

"77-9-28. IMPORTATION OF ANIMALS--PERMIT REQUIRED--PENALTY.--

A. Every person, firm, company, corporation or common carrier bringing cattle, buffalo, horses, mules, asses or swine into this state by any manner or causing them to be brought in shall, before doing so, obtain a permit in writing or by wire from the board or its authorized representatives. The permit shall contain a list of all the

requirements of the board to be complied with before the animals can be brought into the state and shall also stipulate any requirements of further tests of the livestock for disease as set forth in this section, after the animals are within the state if required by the board. The permit must accompany the animals at the time they enter the state, and the requirements set forth in the permit as to tests for contagious diseases or otherwise must be complied with in every particular before the animals are permitted to enter.

B. No permits are required for cattle transported directly to sales rings or yards which are inspected for health of animals contained therein by the United States department of agriculture or other agency of the United States.

C. Any person, firm, company, corporation or common carrier violating any provisions of this section is guilty of a misdemeanor and shall be punished by a fine of not less than fifteen dollars ($15.00) nor more than one hundred dollars ($100)."

Section 60

Section 60. Section 77-9-29 NMSA 1978 (being Laws 1891, Chapter 34, Section 2, as amended) is amended to read:
"77-9-29. INSPECTION RULES AND REGULATIONS.--In the exercise of the powers and performance of the duties conferred and prescribed by Sections 77-9-30 through 77-9-36 NMSA 1978, the board shall make all necessary rules and regulations respecting the inspection of cattle intended for shipment or to be driven beyond the limits of this state and also respecting the inspection of hides and slaughterhouses in this state and for the government of all employees of the board."

Section 61

Section 61. Section 77-9-30 NMSA 1978 (being Laws 1891, Chapter 34, Section 3, as amended) is amended to read:

"77-9-30. EXPORTED CATTLE--INSPECTION OF BRANDS AND EAR MARKS--RECORD.--It is the duty of the board to cause to be inspected the brands and ear marks upon the cattle shipped or driven out of this state and to cause to be kept and preserved a true and correct record of the result of such inspections in the office of the director of the board. The record shall set forth the date of the inspection, the place where and the person by whom made, the name and post office addresses of the owner, shipper or claimant of the cattle inspected and the names and post office addresses of all persons in charge of the cattle at the time of the inspection, the destination of the cattle as well as a list of all brands and ear marks upon the cattle inspected and the number and classification of the cattle."

Section 62

Section 62. Section 77-9-31 NMSA 1978 (being Laws 1891, Chapter 34, Section 4, as amended) is amended to read:

"77-9-31. EXPORT CATTLE TO BE INSPECTED.--It is the duty of every person shipping or driving any cattle out of this state to hold the cattle for inspection as provided by law, and it is unlawful for any person to ship, drive or in any manner remove beyond the boundaries of this state any herd or band of cattle until they have been inspected."

Section 63

Section 63. Section 77-9-33 NMSA 1978 (being Laws 1891, Chapter 34, Section 7, as amended) is amended to read:

"77-9-33. INSPECTION OF EXPORTED CATTLE--REPORT--INSPECTION OF SLAUGHTERHOUSES.--

A. Every inspector employed by the board under the provisions of Section 77-2-7 NMSA 1978 shall be an inspector of brands and ear marks and also an inspector of hides and slaughterhouses, and it is the duty of the inspectors to inspect the brands and ear marks of all cattle transported or driven out of this state and to make a sworn report to the director of the board of the result of such inspection at least once in every thirty days and oftener if, in the opinion of the board, it is necessary. Every slaughterhouse in this state shall be carefully inspected by the inspectors, and all hides found in slaughterhouses shall be carefully compared with the records of the slaughterhouses and a report in writing setting forth the number of cattle killed at the slaughterhouse since the last inspection, the names of the persons from whom each of the cattle was bought, the brands and marks upon each hide and any information that may be obtained touching the violation by the owner of any slaughterhouse, or any other person, of any of the provisions of Sections 77-17-9 through 77-17-11 NMSA 1978. For the purpose of making an inspection, any inspector employed by the board shall have the right to enter in the day or night any slaughterhouse or other place where cattle are killed in this state and to carefully examine the same and all books and records required by law to be kept therein and to compare the hides found with the records. Any person who hinders or obstructs or attempts to hinder or obstruct any inspector employed by the board in the performance of any of the duties required of him by law is guilty of a misdemeanor and on conviction shall be fined in any sum not exceeding one hundred dollars ($100), at the discretion of the court trying the case.

B. Inspectors appointed by the board shall have authority to arrest persons found in the act or whom they have good reason to believe to be guilty of driving, holding or slaughtering stolen livestock or of violating the inspection laws of the state. Every inspector shall have authority to carry arms and make arrests in any county in the state."

Section 64

Section 64. Section 77-9-35 NMSA 1978 (being Laws 1891, Chapter 34, Section 10, as amended) is amended to read:

"77-9-35. OFFENSE BY INSPECTORS--PENALTY.--Any inspector employed by the board who knowingly makes any false certificate or who knowingly swears falsely as to the truth of any report made by him to the executive director of the board or who accepts any bribe or compensation for the performance or failure to perform any of the duties prescribed by law, except such compensation as may be paid him by the board, shall upon conviction thereof be fined in any sum not exceeding one thousand dollars ($1,000) or imprisoned in the state penitentiary not exceeding five years at the discretion of the court."

Section 65

Section 65. Section 77-9-36 NMSA 1978 (being Laws 1891, Chapter 34, Section 13, as amended) is amended to read:

"77-9-36. EXPORTATION OF LIVESTOCK WITHOUT INSPECTION--PENALTIES.--Any person, firm or corporation who knowingly removes any livestock without having the livestock inspected as required by Article 9 of The Livestock Code is guilty of a felony and upon the first conviction shall be confined in the penitentiary not less than one year nor more than two years or fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) for each offense, or both, in the discretion of the court. Upon a second or subsequent conviction of the crime defined in this section and whether the first conviction had been had in the courts of this or any other state, the person so convicted shall be confined in the penitentiary for not less than two nor more than ten years in the discretion of the court."

Section 66

Section 66. Section 77-9-40 NMSA 1978 (being Laws 1895, Chapter 6, Section 16, as amended) is amended to read:

"77-9-40. EXPORTING OF CATTLE WITHOUT BRAND OF SHIPPER OR BILL OF SALE--INSPECTION--DEFINITION OF ESTRAYS.--For the purposes of this section, an estray shall be any cattle being driven from this state or of any county of this state for shipment, sale or slaughter not branded with the duly recorded brand of the person, company or corporation driving the animal or causing it to be driven or not accompanied by a duly executed and acknowledged bill of sale or transfer in writing from the owner of the recorded brand on the animal or not accompanied by a duly executed authority in writing, duly acknowledged by the owner of the recorded brand on the animal, authorizing the driving and handling of the animal by the person found driving the same. Upon the inspection of any such herd by any duly authorized inspector, if he finds in or with the herd any estray as is specified in this section, it is his duty and he is hereby empowered to seize and sequestrate the estray and to hold and dispose of it in the manner now provided by law for the disposition of unclaimed cattle by inspectors. The person having charge of and found driving the estray shall, in addition to any criminal prosecution to which the driving may make him liable, forfeit as damages to the owner of the brand on the estray a sum set by the court for each estray

found in his possession, to be recovered by the owner in an action of debt before any magistrate in the county in which the animal is found or the county in which the owner resides. All reports of inspection made by any duly authorized inspector and verified by his oath or a duly certified copy of the reports by the director of the board and under his seal shall be taken as prima facie proof of the matters in any of the courts of this state; provided, that cattle being driven from this state for sale or shipment shall be inspected, if driven, at the state line and if shipped, at the place of shipment."

Section 67

Section 67. Section 77-9-42 NMSA 1978 (being Laws 1969, Chapter 174, Section 4, as amended) is amended to read:

"77-9-42. TRANSPORTATION PERMITS FOR HORSES, MULES AND ASSES--BRAND AND HEALTH CERTIFICATE GOOD FOR LENGTH OF TIME OF OWNERSHIP.--

A. Any person owning horses, mules or asses and desiring to transport them within the state for any purpose other than their sale or trade may, upon request to an inspector of the board, be issued an owner's transportation permit in lieu of the required brand and health inspection certificate for each horse, mule or ass to be transported.

B. The owner's transportation permit issued in lieu of a brand and health inspection certificate is valid as long as the horse, mule or ass described in the certificate remains under the ownership of the person to whom the permit was issued.

C. The owner's transportation permit or the brand and health inspection certificate must accompany the animal for which it was issued at all times while the animal is in transit, and each shall identify the horse, mule or ass by brand, color, markings, sex, age and, where applicable, by registration number, tattoo or other mark as provided by regulations of the board.

D. There shall be a fee in an amount set by the board for each owner's transportation permit which shall be in addition to any inspection fee for the issuance of a brand and health inspection certificate."

Section 68

Section 68. Section 77-9-44 NMSA 1978 (being Laws 1929, Chapter 87, Section 3) is amended to read:

"77-9-44. HIDES AND PELTS--EXHIBITING, TAGGING AND MARKING.--The hides or pelts from all carcasses shall be exhibited to the inspector at the time of the inspection required under Sections 77-9-41 and 77-9-43 NMSA 1978, and the inspector, in addition to furnishing the certificate provided for in Section 77-9-41 NMSA 1978, shall

tag or mark the carcasses and hides or pelts in a manner to be designated by the board as evidence that the hides or pelts have been inspected."

Section 69

Section 69. Section 77-9-48 NMSA 1978 (being Laws 1929, Chapter 87, Section 7) is amended to read:

"77-9-48. RETURN TO OWNER--SALE--DISPOSITION OF PROCEEDS.--If within a period of ten days after an inspection required pursuant to Article 9 of The Livestock Code the ownership of the livestock or carcasses is shown and established, the livestock or carcasses or the proceeds from the sale of the livestock or carcasses shall be delivered to the owner. If, however, within the ten-day period the ownership of the livestock or carcasses is not shown or established, the money derived from the sale of the carcasses shall be paid to the board and applied to defraying the expenses of inspection under this act. The livestock shall be sold and disposed of in the manner now provided by law for the sale and disposition of estray animals, and the money resulting from the sale shall be paid to the board."

Section 70

Section 70. Section 77-9-49 NMSA 1978 (being Laws 1929, Chapter 87, Section 8, as amended) is amended to read:

"77-9-49. PENALTY.--Any person, firm or corporation violating any provision of Sections 77-9-41 through 77-9-50 NMSA 1978 is guilty of a misdemeanor and shall be punished as prescribed by law."

Section 71

Section 71. Section 77-9-57 NMSA 1978 (being Laws 1921, Chapter 26, Section 2) is amended to read:

"77-9-57. MAGISTRATE JURISDICTION.--Magistrates are given jurisdiction over all persons, firms or corporations charged with a violation of The Livestock Code."

Section 72

Section 72. Section 77-9-58 NMSA 1978 (being Laws 1961, Chapter 3, Section 1) is amended to read:

"77-9-58. INTERSTATE CATTLE TRANSPORTATION--CATTLE REST STATIONS.--It is unlawful for any person to unload cattle in interstate transit by truck for feed, rest and water except at cattle rest stations licensed by the board except in

emergency situations, and in emergency situations, cattle in transit must be inspected by an inspector of the board before being reloaded."

Section 73

Section 73. Section 77-9-59 NMSA 1978 (being Laws 1961, Chapter 3, Section 2) is amended to read:

"77-9-59. CATTLE REST STATIONS--LICENSING.--The board shall license all cattle rest stations, which shall meet minimum regulations of the board, and shall collect a license fee set by the board for each station licensed. No applicant shall be licensed until he has posted a bond in a form approved by the attorney general in the amount of one thousand dollars ($1,000) covering the faithful compliance by the licensee with all laws and regulations of the board pertaining to cattle rest stations."

Section 74

Section 74. Section 77-9-60 NMSA 1978 (being Laws 1961, Chapter 3, Section 3) is amended to read:

"77-9-60. REGULATIONS.--The board may prescribe regulations covering the operation of cattle rest stations for cattle in transit by truck."

Section 75

Section 75. Section 77-10-1 NMSA 1978 (being Laws 1937, Chapter 59, Section 1, as amended) is amended to read:

"77-10-1. DEFINITIONS.--As used in Chapter 77, Article 10 NMSA 1978:

A. "sales ring" means any place, establishment, auction market or facility conducted or operated for compensation or profit as a public market consisting of pens or other enclosures, barns, stables, sheds and their appurtenances, including saddle and work stock, and vehicles used in connection therewith or in the operation thereof where livestock not owned by the operator for at least three months next preceding the receipt thereof is received, held or kept for any purpose other than:

(1) immediate shipment or immediate slaughter;

(2) grazing, feeding or breeding; or

(3) for the sale and exchange of breeding stock by a bona fide livestock association; and

B. "operator" means any person in control of the management or operation of a sales ring."

Section 76

Section 76. Section 77-10-4 NMSA 1978 (being Laws 1937, Chapter 59, Section 4, as amended) is amended to read:

"77-10-4. NOTICE TO BOARD OF RECEIPT OF LIVESTOCK--CONTENTS--PAYMENT IN LIEU OF FEES.--Immediately on receipt of any livestock at his sales ring, the operator shall give written notice to the board in such form as the board may prescribe, stating the kind and number and description of the livestock received, and at the same time and in lieu of all fees required by law, the operator shall collect and remit to the board or agent for the board a sum not to exceed the amount prescribed by law for each head of cattle, horses, mules, asses, sheep or goats received. All money paid to the board shall be deposited to the proper board fund."

Section 77

Section 77. Section 77-10-9 NMSA 1978 (being Laws 1937, Chapter 59, Section 8 1/2) is amended to read:

"77-10-9. SHEEP AND GOATS--OWNERS BOUND BY REGULATIONS.--Whenever any owner of sheep or goats avails himself of the provisions of Sections 77-10-1 through 77-10-10 NMSA 1978, he shall be bound by rules and regulations as may be prescribed by the board as to health and ownership."

Section 78

Section 78. Section 77-13-1 NMSA 1978 (being Laws 1907, Chapter 80, Section 1, as amended) is amended to read:

"77-13-1. POSSESSION OF ESTRAY UNLAWFUL.--It shall be unlawful for any person, corporation or company or its employees or agents to take up any estray and retain possession of the estray except as provided in Chapter 77, Article 13 NMSA 1978."

Section 79

Section 79. Section 77-17-5 NMSA 1978 (being Laws 1939, Chapter 115, Section 4) is amended to read:

"77-17-5. DISPOSITION OF LICENSE FEES.--The proceeds from the license fees shall be paid into the New Mexico livestock board general fund and shall be expended by the board for the same purposes and in a like manner as other money in the New Mexico livestock board general fund."

Section 80

Section 80. REPEAL.--Sections 77-2-27, 77-3-3, 77-8-1, 77-8-19, 77-9-34, 77-9-50 and 77-9-53 NMSA 1978 (being Laws 1959, Chapter 291, Section 5, Laws 1909, Chapter 9, Section 6, Laws 1951, Chapter 188, Section 1, Laws 1891, Chapter 34, Section 8, Laws 1929, Chapter 87, Section 9 and Laws 1933, Chapter 43, Section 3 as amended) are repealed. HB 754

CHAPTER 249

RELATING TO MENTAL HEALTH; AMENDING THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 RELATED TO MENTAL ILLNESS AND COMPETENCY.

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

Section 1

Section 1. Section 31-9-1 NMSA 1978 (being Laws 1988, Chapter 107, Section 1 and Laws 1988, Chapter 108, Section 1, as amended) is amended to read:

"31-9-1. DETERMINATION OF COMPETENCY--RAISING THE ISSUE.--Whenever it appears that there is a question as to the defendant's cmpetency to proceed in a criminal case, any further proceeding in the cause shall be suspended until the issue is determined. Unless the case is dismissed upon motion of a party, when the question is raised in a court other than the district court or a metropolitan court, the proceeding shall be suspended and the cause transferred to the district court. If the question of a defendant's competency is raised in the metropolitan court and the court determines that the defendant is incompetent to proceed in a criminal case, the cause, if not dismissed upon motion of a party, shall be transferred to the district court."

Section 2

Section 2. Section 31-9-1.1 NMSA 1978 (being Laws 1988, Chapter 107, Section 2 and Laws 1988, Chapter 108, Section 2) is amended to read:

"31-9-1.1. DETERMINATION OF COMPETENCY--EVALUATION AND DETERMINATION.--The defendant's competency shall be professionally evaluated by a psychologist or psychiatrist or other qualified professional recognized by the district court as an expert and a report shall be submitted as ordered by the court. A hearing on the issue of the competency of an incarcerated defendant charged with a felony shall be held by the district court within a reasonable time, but in no event later than thirty days after notification to the court of completion of the diagnostic evaluation. In the case of an incarcerated defendant not charged with a felony, the court shall hold a hearing and determine his competency within ten days of notification to the court of completion of the diagnostic evaluation."

Section 3

Section 3. Section 31-9-1.2 NMSA 1978 (being Laws 1988, Chapter 107, Section 3 and Laws 1988, Chapter 108, Section 3) is amended to read:

"31-9-1.2. DETERMINATION OF COMPETENCY--COMMITMENT--REPORT.--

A. When, after hearing, a court determines that a defendant is not competent to proceed in a criminal case and the court does not find that the defendant is dangerous, the court may dismiss the criminal case without prejudice in the interests of justice. Upon dismissal, the court may advise the district attorney to consider initiation of proceedings under the Mental Health and Developmental Disabilities Code.

B. When a district court determines that a defendant is incompetent to stand trial, but does not dismiss the criminal case, and the district court at that time makes a specific finding that the defendant is dangerous, the district court may order treatment to attain competency to proceed in a criminal case for a period not to exceed one year. The court shall enter an appropriate transport order which also provides for return of the defendant to the local facilities of the court upon completion of the treatment. The defendant so committed shall be provided with treatment available to involuntarily committed persons, and:

(1) the defendant shall be detained by the department of health in a secure, locked facility; and

(2) the defendant, during the period of commitment, shall not be released from that secure facility except pursuant to an order of the district court which committed him.

C. As used in Sections 31-9-1 through 31-9-1.5 NMSA 1978, "dangerous" means that, if released, the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 or 30-9-13 NMSA 1978.

D. Within thirty days of an incompetent defendant's admission to a facility to undergo treatment to attain competency to proceed in a criminal case, the person supervising the defendant's treatment shall file with the district court, the state and the defense an initial assessment and treatment plan and a report on the defendant's amenability to treatment to render him competent to proceed in a criminal case, an assessment of the facility's or program's capacity to provide appropriate treatment for the defendant and an opinion as to the probability of the defendant's attaining competency within a period of one year from the date of the original finding of incompetency to proceed in a criminal case."

Section 4. Section 31-9-1.3 NMSA 1978 (being Laws 1988, Chapter 107, Section 4 and Laws 1988, Chapter 108, Section 4) is amended to read:

"31-9-1.3. DETERMINATION OF COMPETENCY--NINETY-DAY REVIEW--REPORTS-- CONTINUING TREATMENT.--

A. Within ninety days of the entry of the order committing an incompetent defendant to undergo treatment, the district court, sitting without a jury, shall conduct a hearing, unless waived by the defense, and shall determine:

(1) whether the defendant is competent to stand trial or to plead; and, if not,

(2) whether the defendant is making progress under treatment toward attainment of competency within one year from the date of the original finding of incompetency.

B. At least seven days prior to the review hearing, the treatment supervisor shall submit a written progress report to the court, the state and the defense indicating:

(1) the clinical findings of the treatment supervisor and the facts upon which the findings are based;

(2) the opinion of the treatment supervisor as to whether the defendant has attained competency or as to whether the defendant is making progress under treatment toward attaining competency within one year from the date of the original finding of incompetency; and

(3) if the defendant is receiving medication, information from the prescribing physician indicating the type, the dosage and the effect of the medication on the defendant's appearance, actions and demeanor.

C. If the district court finds the defendant to be competent, the district court shall set the matter for trial, provided that if the defendant is in need of continued care or treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the district court may enter any order it deems appropriate for the continued care or treatment of the defendant by the facility or program pending the conclusion of the criminal proceedings.

D. If the district court finds that the defendant is still not competent to proceed in a criminal case, but
that he is making progress toward attaining competency, the district court may continue or modify its original treatment order entered pursuant to Section 31-9-1.2 NMSA 1978, provided that:

(1) the question of the defendant's competency shall be reviewed again not later than one year from the original determination of incompetency to proceed in a criminal case; and

(2) the treatment supervisor shall submit a written progress report as specified in Subsection B of this section at least seven days prior to such hearing.

E. If the district court finds that the defendant is still not competent and that he is not making progress toward attaining competency such that there is not a substantial probability that he will attain competency within one year from the date of the original finding of incompetency, the district court shall proceed pursuant to Section 3l-9-l.4 NMSA 1978. However, if the defendant is in need of continued care and treatment and the supervisor of the defendant's treatment agrees to continue to provide it, the district court may enter any order it deems appropriate for the continued care or treatment by the facility or program pending the conclusion of the proceedings."

Section 5

Section 5. Section 31-9-1.4 NMSA 1978 (being Laws 1988, Chapter 107, Section 5 and Laws 1988, Chapter 108, Section 5) is amended to read:

"31-9-1.4. DETERMINATION OF COMPETENCY--INCOMPETENT DEFENDANTS.--If at any time the district court determines that there is not a substantial probability that the defendant will become competent to proceed in a criminal case within a reasonable period of time not to exceed one year from the date of the original finding of incompetency, the district court may:

A. set the matter for hearing pursuant to Section 31-9-1.5 NMSA 1978;

B. release the defendant from custody and dismiss with prejudice the charges against him; or

C. dismiss the criminal case without prejudice in the interests of justice. The district court may refer the defendant to the district attorney for possible initiation of proceedings under the Mental Health and Developmental Disabilities Code."

Section 6

Section 6. Section 31-9-1.5 NMSA 1978 (being Laws 1988, Chapter 107, Section 6 and Laws 1988, Chapter 108, Section 6) is amended to read:

"31-9-1.5. DETERMINATION OF COMPETENCY--EVIDENTIARY HEARING.--

A. As provided for in Subsection A of Section 31-9-1.4 NMSA 1978, a hearing to determine the sufficiency of the evidence shall be held. Such hearing shall be conducted by the district court without a jury. The state and the defendant may introduce evidence relevant to the question of the defendant's guilt of the crime charged. The district court may admit hearsay or affidavit evidence on secondary matters such as testimony to establish the chain of possession of physical evidence,

laboratory reports, authentication of transcripts taken by official reporters, district court and business records and public documents.

B. If the evidence does not establish by clear and convincing evidence that the defendant committed a crime, the district court shall dismiss the criminal case with prejudice; however, nothing herein shall prevent the state from initiating proceedings under the provisions of the Mental Health and Developmental Disabilities Code.

C. If the district court finds by clear and convincing evidence that the defendant committed a crime and has not made a finding of dangerousness, pursuant to Subsections B and C of Section 39-1-1.2 NMSA 1978, the district court shall dismiss the charges without prejudice. The state may initiate proceedings pursuant to the provisions of the Mental Health and Developmental Disabilities Code.

D. If the district court finds by clear and convincing evidence that the defendant committed a crime and has previously made a finding that the defendant is dangerous pursuant to Subsections B and C of Section 31-9-1.2 NMSA 1978:

(1) the defendant shall be detained by the department of health in a secure, locked facility;

(2) the defendant shall not be released from that secure facility except pursuant to an order of the district court which committed him or upon expiration of the period of time equal to the maximum sentence to which the defendant would have been subject had the defendant been convicted in a criminal proceeding;

(3) significant changes in the defendant's condition, including but not limited to trial competency and dangerousness, shall be reported in writing to the district court, state and defense; and

(4) at least every two years the district court shall conduct a hearing upon notice to the parties and the department of health charged with detaining the defendant. At the hearing the court shall enter findings on the issues of trial competency and dangerousness:

(a) upon a finding that the defendant is competent to proceed in a criminal case, the court shall continue with the criminal proceeding;

(b) if the defendant continues to be incompetent to proceed in a criminal case, the court shall review the defendant's competency and dangerousness every two years until expiration of the period of commitment equal to the maximum sentence to which the defendant would have been subject had he or she been convicted subject in a criminal proceeding; and

(c) if the defendant is not committed pursuant to Sections 31-9-1 through 31-9-1.5 NMSA 1978, or if the court finds upon its two-year review hearing that the defendant is no longer dangerous, as defined in Subsection C of Section 31-9-1.2 NMSA 1978, the defendant shall be released."

Section 7

Section 7. Section 43-1-1 NMSA 1978 (being Laws 1976, Chapter 43, Section 1, as amended by Laws 1989, Chapter 94, Section 2 and also by Laws 1989, Chapter 128, Section 1) is amended to read:

"43-1-1. MENTAL CONDITION OF CRIMINAL DEFENDANTS--EVALUATION--TREATMENT.--

A. Whenever a district court finds it necessary to obtain an evaluation of the mental condition of a defendant in a criminal case or of a defedant found incompetent to proceed in a criminal case in a proceeding for involuntary hospitalization pursuant to the Mental Health and Developmental Disabilities Code, the court shall order an evaluation from a qualified professional available to the local facilities of the court or from a qualified professional at a local mental health center designated by the secretary of health, and whenever the court finds it desirable to use state personnel or facilities to assist in making the evaluation, the court shall in its order for an evaluation require service upon the secretary of health of the court's order for evaluation. The secretary of health shall arrange for a qualified professional furnished by the state to visit the defendant in local facilities available to the court or shall designate suitable available facilities. If the secretary of health designates a local mental health center or a state facility for the defendant's evaluation within forty-eight hours of service of the evaluation order, the secretary of health shall notify the court of such designation. The court shall then enter an appropriate transport order which also provides for the return of the defendant to the local facilities of the court. The defendant shall be transported by the county to facilities designated by the secretary of health for the purpose of making an evaluation. Misdemeanor defendants shall be evaluated locally.

B. If the secretary of health elects to have the defendant retained at the district court's local facilities, the qualified professional furnished by the state will visit the local facilities not later than two weeks from the time of service of the court's evaluation order upon the secretary of health and:

(1) after the evaluation of the defendant is completed, the qualified professional furnished by the state shall be available for deposition to declare his findings. The usual rules of evidence governing the use and admission of the deposition shall prevail; and

(2) if the secretary of health finds that the qualified professional will be unable to initiate the evaluation within two weeks from the time of service of the court's evaluation order upon the secretary of health, then the secretary of health shall

call upon the county sheriff of the county in which the defendant is incarcerated and have the defendant transported to facilities designated by the secretary of health for the purpose of conducting the evaluation.

C. If the secretary of health elects to have the defendant transported to the facilities designated by the secretary of health for the purpose of evaluation, the evaluation shall be commenced as soon as possible after the admission of the defendant to the facility, but, in no event, shall the evaluation be commenced later than seventy-two hours after the admission. The defendant, at the conclusion of the evaluation, shall be returned by the county sheriff to the local facilities of the court upon not less than three days' notice. After the evaluation is completed, the qualified professional furnished by the state shall be available for deposition to declare his findings. The usual rules of evidence governing the use and admissibility of the deposition shall prevail.

D. Documents reasonably required by the secretary of health to show the medical and forensic history of the defendant shall be furnished by the court when required.

E. After an evaluation and upon reasonable notice, the district court may commit a dangerous defendant pursuant to Section 31-9-1.2 NMSA 1978 or may dismiss the charges without prejudice and refer the defendant to the district attorney for possible initiation of proceedings under the Mental Health and Developmental Disabilities Code. A defendant so committed under the Mental Health and Developmental Disabilities Code shall be treated as any other patient committed involuntarily. When deemed by the secretary of health to be medically appropriate, a dangerous defendant committed pursuant to Section 31-9-1.2 NMSA 1978 may be returned by the county sheriff to the custody of the court upon not less than three days' notice.

F. All acts to be performed by the secretary of health pursuant to this section may be performed by the secretary's designee."

Section 8

Section 8. Section 43-1-15 NMSA 1978 (being Laws 1977, Chapter 279, Section 14, as amended) is amended to read:

"43-1-15. CONSENT TO TREATMENT--ADULT CLIENTS.--

A. No psychosurgery, convulsive therapy, experimental treatment or behavior modification program involving aversive stimuli or substantial deprivations shall be administered to any client without proper consent. If the client is capable of understanding the proposed nature of treatment and its consequences and is capable of informed consent, his consent shall be obtained before the treatment is performed.

B. If the mental health or developmental disabilities professional or physician who is proposing this or any other course of treatment or any other interested person believes that the client is incapable of informed consent, he may petition the court for the appointment of a treatment guardian to make a substitute decision for the client. This petition shall be served on the client and his attorney. A hearing on the petition shall be held within three court days. At the hearing, the client shall be represented by counsel and shall have the right to be present, to present witnesses and to cross-examine opposing witnesses. If after the hearing the court finds that the client is not capable of making his own treatment decisions, the court may order the appointment of a treatment guardian. The treatment guardian shall make a decision on behalf of the client whether to accept treatment, depending on whether the treatment appears to be in the client's best interest and is the least drastic means for accomplishing the treatment objective. In making his decision, the treatment guardian shall consult with the client and consider his expressed opinions, if any, even if those opinions do not constitute valid consent or rejection of treatment. He shall give consideration to any previous decisions made by the client in similar circumstances when the client was able to make treatment decisions. If a client, who is not a resident of a medical facility and for whom a treatment guardian has been appointed, refuses to comply with the decision of the treatment guardian, the treatment guardian may apply to the court for an enforcement order. Such an order may authorize any peace officer to take the client into custody and to transport him to an evaluation facility and may authorize the facility forcibly to administer treatment. The treatment guardian shall consult with the physician or other professional who is proposing treatment, the client's attorney and interested friends or relatives of the client as he deems appropriate in making his decision. If the client, physician or other professional wishes to appeal the decision of the treatment guardian, he may do so, filing an appeal with the court within three calendar days of receiving notice of the treatment guardian's decision. In such a decision, the client shall be represented by counsel. The court may overrule the treatment guardian's decision if it finds that decision to be against the best interest of the client.

C. When the court appoints a treatment guardian, it shall specify the length of time during which he may exercise his powers, up to a maximum period of one year. If at the end of his guardianship period the treatment guardian believes that the client is still incapable of making his own treatment decisions, he shall petition the court for reappointment or for appointment of a new treatment guardian. The guardianship shall be extended or a new guardian shall be
appointed only if the court finds the client is, at the time of the hearing, incapable of understanding and expressing an opinion regarding treatment decisions. The client shall be represented by counsel and shall have the right to be present and present evidence at all such hearings.

D. If during a period of a treatment guardian's power the treatment guardian, the client, the treatment provider, a member of the client's family or the client's attorney believes that the client has regained competence to make his own treatment decisions, he shall petition the court for a termination of the treatment guardianship. If

the court finds the client is capable of making his own treatment decisions, it shall terminate the power of the treatment guardian and restore to the client the power to make his own treatment decisions.

E. A treatment guardian shall only have those powers enumerated in the code, unless the treatment guardian has also been appointed a guardian under the Probate Code pursuant to Section 45-5-303 NMSA 1978. Any person carrying out the duties of a treatment guardian as provided in this section shall not be liable in any civil or criminal action so long as the treatment guardian is not acting in bad faith or with malicious purpose.

F. If a licensed physician believes that the administration of psychotropic medication is necessary to protect the client from serious harm which would occur while the provisions of Subsection B of this section are being satisfied, he may administer the medication on an emergency basis. When medication is administered to a client on an emergency basis, the treating physician shall prepare and place in the client's medical records a report explaining the nature of the emergency and the reason that no treatment less drastic than administration of psychotropic medication without proper consent would have protected the client from serious harm." SB 622

CHAPTER 250

RELATING TO LAW ENFORCEMENT TRAINING; INCREASING THE NUMBER OF MEMBERS ON THE NEW MEXICO LAW ENFORCEMENT ACADEMY BOARD; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 29-7-3 NMSA 1978 (being Laws 1979, Chapter 202, Section 42, as amended) is amended to read:

"29-7-3. NEW MEXICO LAW ENFORCEMENT ACADEMY BOARD.--

A. There is created the "New Mexico law enforcement academy board".

B. The academy shall be controlled and supervised by policy set by the board. The board shall be composed of the attorney general, who shall serve automatically by reason of his office and serve as chairman of the board, and eight members who are qualified electors to be appointed by the governor not later than July 1, 1983 and confirmed by the senate. An appointed board member shall serve and have all of the duties, responsibilities and authority of that office during the period prior to the final action by the senate in confirming or rejecting the appointment.

C. The appointed members of the first board shall be appointed for staggered terms, one ending on July 1, 1980 and one on July 1 of each of the following three years. The governor shall, on or before July 1, 1983, appoint two additional members to the board; one shall be a district attorney and one shall be a certified police chief of a New Mexico Indian tribe or pueblo. The two additional members shall be appointed for staggered terms, one ending on July 1, 1986 and one ending on July 1, 1987. On or before July 1, 1993, the governor shall increase the number of members on the board to eight by appointing two additional members. The seventh member of the board shall be a citizen-at-large member whose term shall end on July 1, 1995. The eighth member of the board shall be a police officer who is a New Mexico certified police officer, holding the rank of sergeant or below at the time of his appointment, and whose term shall end on July 1, 1995 or sooner if he retires or is deactivated from duty for longer than thirty days. Thereafter, all appointments shall be for terms of four years or less made in such manner that the terms of not more than two members expire on July 1 of each year. At all times the board shall have represented on it, as members, one municipal police chief, one sheriff, one state police officer, one district attorney, one certified police chief of a New Mexico Indian tribe or pueblo, one certified New Mexico police officer holding the rank of sergeant or below and two citizen-at-large members. Vacancies shall be filled by the governor for the unexpired term.

D. Members of the board shall receive, for their service as members of the board, per diem and mileage as provided in the Per Diem and Mileage Act." SB 637

CHAPTER 251

RELATING TO THE NEW MEXICO STATE BOARD OF PSYCHOLOGIST EXAMINERS; AMENDING SECTION 61-9-5 NMSA 1978 (BEING LAWS 1989, CHAPTER 41, SECTION 5) TO PROVIDE FOR AN ADDITIONAL MEMBER.

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

Section 1

Section 1. Section 61-9-5 NMSA 1978 (being Laws 1989, Chapter 41, Section 5) is amended to read:

"6l-9-5. STATE BOARD OF EXAMINERS--PSYCHOLOGY FUND.--

A. There is created a "New Mexico state board of psychologist examiners" consisting of eight members appointed by the governor who are residents of New Mexico and who shall serve for three-year staggered terms. The members shall be appointed as follows:

(1) four members shall be professional members who are licensed under the Professional Psychologist Act as psychologists. The governor shall appoint th professional members from a list of names nominated by the New Mexico psychological

association, the state psychologist association and the New Mexico school psychologist association;

(2) one member shall be licensed under the Professional Psychologist Act as a psychologist or psychologist associate; and

(3) three members shall be public members who are laymen and have no significant financial interest, direct or indirect, in the practice of psychology.

B. Each member shall hold office until the expiration of his appointed term or until a successor is duly appointed. When the term of each member ends, the governor shall appoint his successor for a term of three years. Any vacancy occurring in the board membership other than by expiration of term shall be filled by the governor by appointment for the unexpired term of the member. The governor may remove any board member for misconduct, incompetency or neglect of duty.

C. All money received by the board shall be credited to the "psychology fund", and a receipt for the same
shall be kept by the secretary-treasurer of the board. The members of the board may be reimbursed as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance. The secretary-treasurer may receive such salary as the board determines. The sums, together with all other incidental expenses of the board, shall be approved by the board and sent to the auditor for payment." SB 639

CHAPTER 252

RELATING TO LIENS; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 RELATING TO MECHANICS' AND MATERIALMEN'S LIENS.

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

Section 1

Section 1. Section 48-2-2 NMSA 1978 (being Laws 1880, Chapter 16, Section 2, as amended) is amended to read:

"48-2-2. MECHANICS AND MATERIALMEN--LIEN--LABOR, EQUIPMENT AND MATERIALS FURNISHED--DEFINITION OF AGENT OF OWNER.--Every person performing labor upon, providing or hauling equipment, tools or machinery for or furnishing materials to be used in the construction, alteration or repair of any mine, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, road or aqueduct to create hydraulic power or any other structure, who performs labor in any mine or is a registered surveyor or who surveys real property has a lien upon the same for the work or labor done, for the specific contract or agreed upon charge for the surveying or equipment, tools or machinery hauled or provided or materials furnished by each respectively, whether done, provided, hauled or furnished at the instance of the owner

of the building or other improvement or his agent. Every contractor, subcontractor, architect, builder or other person having charge of any mining or of the construction, alteration or repair, either in whole or in part, of any building or other improvement shall be held to be the agent of the owner for the purposes of this section."

Section 2

Section 2. Section 48-2-2.1 NMSA 1978 (being Laws 1990, Chapter 92, Section 2) is amended to read:

"48-2-2.1. PROCEDURE FOR PERFECTING CERTAIN MECHANICS' AND MATERIALMEN'S LIENS.--

A. The provisions of Subsections B through D of this section do not apply to claims of liens made on residential property containing four or fewer dwelling units or to claims of liens made by mechanics or materialmen who contract directly with the original contractor. For purposes of this section, "original contractor" means a contractor that contracts directly with the owner.

B. No lien of a mechanic or a materialman claimed in an amount of more than five thousand dollars ($5,000) may be enforced by action or otherwise unless the lien claimant
has given notice in writing of his right to claim a lien in the event of nonpayment and that notice was given not more than sixty days after initially furnishing work or materials, or both, by either certified mail, return receipt requested, Fax with acknowledgement or personal delivery to:

(1) the owner or reputed owner of the property upon which the improvements are being constructed; or

(2) the original contractor, if any.

C. If the owner or the original contractor claims lack of notice as a defense to the enforcement of a lien described in Subsection B of this section, he must show that upon the request of the mechanic or materialman he furnished to the lien claimant not more than five days after such request was made:

(1) the original contractor's name, address and license number, if there is an original contractor on the project;

(2) the owner's name and address;

(3) a description of the property or a description sufficiently specific for actual identification of the property; and

(4) the name and address of any bonding company or other surety that is providing either a payment or performance bond for the project.

D. The notice required to be given by the claimant under Subsection B of this section shall contain:

(1) a description of the property or a description sufficiently specific for actual identification of the property;

(2) the name, address and phone number, if any, of the claimant; and

(3) the name and address of the person with whom the claimant contracted or to whom the claimant furnished labor or materials, or both.

E. A person required under Subsection B of this section to give notice to enforce his claim of lien may el ect not to give the notice, but may give the required notice at a later time. If he elects to do so, the lien shall apply only to the work performed or materials furnished on or after the date thirty days prior to the date the notice was given. The provisions of Subsections C and D of this section apply to any notice given under this subsection." SB 642

CHAPTER 253

RELATING TO REAL ESTATE LICENSURE; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 PERTAINING TO REAL ESTATE COMMISSION POWERS, LICENSES AND TERMINATION OF AGENCY LIFE.

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

Section 1

Section 1. Section 61-29-4.1 NMSA 1978 (being Laws 1985, Chapter 89, Section 1) is amended to read:

"61-29-4.1. ADDITIONAL POWERS OF COMMISSION--CONTINUING EDUCATION PROGRAMS--MINIMUM REQUIREMENTS.--In addition to the powers and duties granted the commission under the provisions of Section 61-29-4 NMSA 1978, the commission shall adopt regulations providing for continuing educational programs that offer courses in selling, leasing or managing residential, commercial and industrial property as well as courses reviewing basic real estate law and practice. The regulations shall require that every licensee except licensees who are sixty-five years of age or older and who have a minimum of twenty years' continuously licensed experience in the selling, leasing or managing of real property, as a condition of his license renewal, shall successfully complete thirty classroom hours of instruction every three years in courses approved by the commission. The regulations shall prescribe

areas of specialty or expertise and may require that a certain part of the thirty hours of classroom instruction be devoted to courses in the area of a licensee's specialty or expertise."

Section 2

Section 2. Section 61-29-11 NMSA 1978 (being Laws 1959, Chapter 226, Section 10, as amended) is amended to read:

"61-29-11. ISSUANCE, RENEWAL AND SURRENDER OF LICENSES.--

A. The commission shall issue to each qualified applicant a permanent license in such form and size as shall be prescribed by the commission.

B. This license shall show the name and address of the licensee and, in the case of a real estate salesperson's license, shall show the name of the real estate broker by whom he is engaged. The license of each real estate salesperson shall be delivered or mailed to the real estate broker by whom such real estate salesperson is engaged and shall be kept in the custody and control of that broker.

C. Every license shall be subject to annual renewal on the last day of the licensee's month of birth. The commission shall certify renewal of each license annually, in the absence of any reason or condition that might warrant the refusal of the renewal of a license, upon written request for renewal by the licensee, proof of compliance with continuing education requirements and receipt of the annual renewal fee. In the event any licensee has not made application for renewal of license, furnished proof of compliance with continuing education requirements and paid the annual renewal fee for the current year within thirty days of his license renewal date of any given year, the license shall expire. The commission may, in its discretion, require the person whose license has expired to apply for a license as if he had not been previously licensed under Chapter 61, Article 29 NMSA 1978 and further require that he be re-examined. The commission shall require the person whose license has expired to pay when he applies for a license, in addition to any other fee, a late fee of one hundred dollars ($100). If, during a period of one year from the date the license expires, the person or his spouse is either absent from this state on active duty military service or the person is suffering from an illness or injury of such severity that the person is physically or mentally incapable of making application for a license, payment of the late fee and re-examination shall not be required by the commission if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the commission for a license. A copy of that person or his spouse's military orders or a certificate from the applicant's physician shall accompany the application. Any person excused by reason of active duty military service,
illness or injury as provided for in this subsection may make application for a license without imposition of the late fee. All fees collected pursuant to this subsection shall be

disposed of in accordance with the provisions of Section 61-29-8 NMSA 1978. The revocation of a broker's license shall automatically suspend every real estate salesperson's license granted to any person by virtue of his association with the broker whose license has been revoked, pending a change of broker and the issuance of a new license. Such new license shall be issued without charge if granted during the same year in which the license was granted.

D. Each resident licensed broker shall maintain a fixed office within this state, which shall be so located as to conform with local regulations. Every office operated by a licensed broker under Chapter 61, Article 29 NMSA 1978 shall have a licensed broker in charge. The license of the broker and the license of each salesperson associated with or under contract to that broker shall be prominently displayed in the office. The address of the office shall be designated in the broker's license, and no license issued shall authorize the licensee to transact real estate business at any other address, except a licensed branch office. In case of removal from the designated address, the licensee shall make application to the commission before such removal or within ten days thereafter, designating the new location of his office and paying the required fee, whereupon the commission shall issue a license for the new location if the new location complies with the terms of Chapter 61, Article 29 NMSA 1978. Each licensed broker shall maintain a sign on his office of such size and content as the commission shall prescribe. In making application for a license or for a change of address, the licensee shall verify that his office conforms with local regulations.

E. When any real estate salesperson is discharged or terminates his association employment with the real estate broker with whom he is associated, it is the duty of that real estate broker to immediately deliver or mail to the commission that real estate salesperson's license. The commission shall hold the license on inactive status. It is unlawful for any real estate salesperson to perform any of the acts contemplated by Chapter 61, Article 29 NMSA 1978 either directly or indirectly under authority of such license after his association has been terminated and his license as salesperson has been returned to the commission as provided in that article until the appropriate fee has been paid and the license has been reissued by the commission."

Section 3

Section 3. Section 61-29-19 NMSA 1978 (being Laws 1978, Chapter 203, Section 2, as amended) is amended to read:

"61-29-19. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico real estate commission is terminated on July 1, 1999 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 61, Article 29 NMSA 1978 until July 1, 2000. Effective July 1, 2000, Chapter 61, Article 29 NMSA 1978 is repealed."

Section 4

Section 4. Section 61-29-22 NMSA 1978 (being Laws 1980, Chapter 82, Section 3, as amended) is amended to read:

"61-29-22. ADDITIONAL FEES.--

A. On and after the effective date of the Real Estate Recovery Fund Act, the commission shall collect an annual fee not in excess of ten dollars ($10.00) from each real estate licensee prior to the issuance of the next license.

B. On and after the effective date of the Real Estate Recovery Fund Act, the commission shall collect from each successful applicant for an original real estate license, in addition to his original license fee, a fee not in excess of ten dollars ($10.00).

C. The additional fees provided by this section shall be credited to the real estate recovery fund. The amount of the real estate recovery fund shall be maintained at two hundred fifty thousand dollars ($250,000). If the real estate recovery fund falls below this amount, the commission shall have authority to adjust the annual amount of additional fees to be charged licensees or to draw on the real estate commission fund in order to maintain the fund level as required in this section." SB 673

CHAPTER 254

RELATING TO CHILD SUPPORT; AMENDING SECTIONS OF THE SUPPORT ENFORCEMENT ACT RELATING TO NON-TITLE IV-D CASES AND INTERSTATE WITHHOLDING.

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

Section 1

Section 1. Section 40-4A-2 NMSA 1978 (being Laws 1985, Chapter 105, Section 2) is amended to read:

"40-4A-2. DEFINITIONS.--As used in the Support Enforcement Act:

A. "authorized quasi-judicial officer" means a person appointed by the court pursuant to rule 53(a) of the Rules of Civil Procedure for the District Courts;

B. "consumer reporting agency" means any person who, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;

C. "delinquency" means any payment under an order for support which has become due and is unpaid;

D. "department" means the human services department;

E. "income" means any form of periodic payment to an obligor, regardless of source, including but not limited to wages, salary, commission, compensation as an independent contractor, workers' compensation benefits, disability benefits, annuity and retirement benefits or other benefits, or any other payments made by any person, but does not include:

(1) any amounts required by law to be withheld, other than creditor claims, including but not limited to federal, state and local taxes, social security and other retirement and disability contributions;

(2) union dues;

(3) any amounts exempted by federal law; or

(4) public assistance payments;

F. "notice of delinquency" means the notice of delinquency as provided for in Section 40-4A-4 NMSA 1978;

G. "notice to withhold income" means a notice that requires the payor to withhold from the obligor money necessary to meet the obligor's duty under an order for support and, in the event of a delinquency, requires the payor to withhold an additional amount to be applied towards the reduction of the delinquency;

H. "obligor" means the person who owes a duty to make payments under an order for support;

I. "obligee" means any person who is entitled to receive support under an order for support or that person's legal representative;

J. "order for support" means any order which has been issued by any judicial, quasi-judicial or administrative entity of competent jurisdiction of any state and which order provides for:

(1) periodic payment of funds for the support of a child or a spouse;

(2) modification or resumption of payment of support;

(3) payment of delinquency; or

(4) reimbursement of support;

K. "payor" means any person or entity who provides income to an obligor;

L. "person" means an individual, corporation, partnership, governmental agency, public office or other entity;

M. "public office" means the elected official or state or local agency which is responsible by law for enforcement or collection of payment under an order for support, including but not limited to district attorneys, the department and the clerk of the district court."

Section 2

Section 2. Section 40-4A-4.1 NMSA 1978 (being Laws 1990, Chapter 30, Section 1, as amended) is amended to read:

"40-4A-4.1. IMMEDIATE CHILD SUPPORT INCOME WITHHOLDING.--

A. In any judicial proceeding in which child support is ordered, modified or enforced and which proceeding is brought or enforced pursuant to Title IV-D of the Social Security Act (42 U.S.C. □651 et seq.) as provided in Section 27-2-27 NMSA 1978, the income of the support obligor shall be subject to immediate income withholding regardless of the existence of any child support arrearage or delinquency. Effective January 1, 1994 in proceedings in which child support services are not being provided pursuant to Title IV-D and the initial child support order is issued in the state on or after January 1, 1994, the income of the support obligor shall be subject to immediate income withholding regardless of the existence of any child support arrearage or delinquency.

B. As part of the court or administrative order establishing, modifying or enforcing the child support obligation, the court shall issue the order to withhold.

C. The order to withhold shall state:

(1) the style, docket number and court having jurisdiction of the cause;

(2) the name, address and, if available, the social security number of the obligor;

(3) the amount and duration of the child support payments; and, if any of the ordered amount is toward satisfaction of an arrearage or delinquency up to the date of the order, the amount payable to current and past-due support shall be specified, together with the total amount of the delinquency or arrearage, including judgment interest, if any;

(4) the name and date of birth of the child for whom support is ordered and the name of the obligee;

(5) the name and address of the person or agency to whom the payment is to be made, together with the agency's internal case number; and

(6) any other information deemed necessary to effectuate the order.

D. Payments shall be made through the appropriate public office as defined in the Support Enforcement Act, with the exception of payments provided pursuant to Title IV-D of the Social Security Act which shall be made directly to the department.

E. The maximum amount withheld pursuant to this section and any other garnishment shall not exceed fifty percent of the obligor's income.

F. The order of a withholding shall be mailed by the Title IV-D agency or the support obligee, obligee's attorney or court by certified mail to the payor. The payor shall pay over income as provided by and in compliance with the procedures of Section 40-4A-8 NMSA 1978.

G. The court may provide an exception to the immediate income withholding required by this section if it finds good cause for not ordering immediate withholding. The burden shall be on the party claiming good cause to raise the issue and demonstrate the existence of good cause to the court. In the event of a finding of good cause, the court shall make a written finding in the order specifying the reasons or circumstances justifying the good-cause exception and why income withholding would not be in the best interest of the child. If the order is one modifying a support obligation and immediate income withholding is not ordered, the order must include a finding that the obligor has timely paid support in the past. The order shall provide that the obligor shall be subject to withholding if a one-month support delinquency accrues.

H. The court shall make an exception to the immediate income withholding required by this section if the parties to the proceeding enter into a written agreement providing for alternative means of satisfying the child support obligation. Such an agreement shall be incorporated into the order of the court. For the purposes of this subsection, the support obligee shall be considered to be the department in the case of child support obligations that the state is enforcing pursuant to an assignment of support rights to it as a condition of the assignor's receipt of public assistance. The agreement shall contain the signatures of a representative of the department and the custodial parent.

I. Notwithstanding the provisions of Subsection G of this section, immediate income withholding shall take place if the child support obligor so requests. The notice to withhold shall be filed with the clerk of the district court and the requirements of Subsection C of this section, Subsections D, E and F of Section 40-4A-5, Sections 40-4A-6, 40-4A-8, 40-4A-10 and 40-4A-11 NMSA 1978 shall apply.

J. A court shall order a wage withholding effective on the date on which a custodial parent requests such withholding to begin if the court determines, in accordance with such procedures and standards as it may establish, that the request should be approved notwithstanding:

(1) the absence of a support delinquency of at least one month;

(2) a finding of good cause under Subsection G of this section; or

(3) an agreement under Subsection H of this section.

K. The standards and procedures established for purposes of Subsection J of this section shall provide for the protection of the due process rights of the absent parent, appropriate notices and the right to a hearing under the Support Enforcement Act.

L. Wages not subject to withholding under Subsection J of this section shall still be subject to withholding on an earlier date as provided by law.

M. Notwithstanding any other provision of this section, wages not subject to withholding because of a finding of good cause under Subsection G of this section shall not be subject to withholding at the request of a custodial parent unless the court changes its determination of good cause not to initiate immediate wage withholding.

N. In the event a child support obligor accrues a delinquency in an amount equal to at least one month's support obligation and notwithstanding any previous agreement or court finding to the contrary, income withholding shall issue against the support obligor and the procedures set out in Section 40-4A-4 NMSA 1978 shall be followed. Such withholding shall terminate only upon the termination of all obligations imposed by the order of support and payment in full of all enforceable child support delinquencies."

Section 3

Section 3. Section 40-4A-12 NMSA 1978 (being Laws 1985, Chapter 105, Section 12, as amended) is amended to read:

"40-4A-12. INTERSTATE WITHHOLDING BY REGISTRATION OF FOREIGN SUPPORT ORDER.--

A. Upon filing of a certified copy of a foreign order for support containing an income withholding provision, the clerk of the district court shall docket the case and inform the obligee of this action. The foreign order for support filed in accordance with this section shall constitute a legal basis for income withholding in this state. Upon filing the order, together with a notice to withhold income, the order may b served upon the payor and obligor by prepaid certified mail or by any method provided by law for service

of summons. The payor shall promptly notify the obligor of receipt of service. Proof of service shall be filed with the clerk of the district court. The obligor may contest the validity or enforcement of the income withholding by filing a petition to stay income withholding within twenty days after service of the order and notice. If the obligor files a petition to stay, the court shall hear and resolve the matter no later than forty-five days following service of the order and notice to withhold. The procedure and grounds for contesting the validity and enforcement of the income withholding are the same as those available for contesting an income withholding notice and order in this state. The obligor shall give notice of the petition to stay to the support enforcement agency providing services to the obligee, the person or agency designated to receive payments in the income withholding notice, or if there is no designated person or agency, the obligee.

B. Filing of the order for support shall not confer jurisdiction on the courts of this state for any purpose other than income withholding.

C. If the obligor presents evidence that constitutes a full or partial defense, the court shall, on the request of the obligee, continue the case to permit further evidence relative to the defense to be adduced by either party; provided, however, the court shall order immediate execution as to any undisputed amounts as set forth in Subsection A of Section 40-4A-9 NMSA 1978.

D. In addition to other procedural devices available to a party, any party to the proceeding may adduce testimony of witnesses in another state, including the parties and any of the children, by deposition, written
discovery, photographic discovery such as videotaped depositions, telephone or photographic means. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner and terms upon which the testimony shall be taken.

E. A court of this state may request the appropriate court or agency of another state to hold a hearing to adduce evidence, to permit a deposition to be taken before the court or agency or to order a party to produce or give evidence under other procedures of that state and may request that certified copies of the evidence adduced in compliance with the request be forwarded to the court of this state.

F. Upon request of a court or agency of another state, a court of this state may order a person in this state to appear at a hearing or deposition before the court to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the evidence adduced, such as a transcript or videotape, shall be forwarded by the clerk of the district court to the requesting court or agency.

G. A person within this state may voluntarily testify by statement or affidavit in this state for use in a proceeding to obtain income withholding outside this state." SB 693

CHAPTER 255

RELATING TO LAW ENFORCEMENT; PROVIDING PROCEDURES AND STANDARDS FOR CERTIFICATION OF POLICE OFFICERS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE LAW ENFORCEMENT TRAINING ACT.

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

Section 1

Section 1. Section 29-7-1 NMSA 1978 (being Laws 1969, Chapter 264, Section 1, as amended) is amended to read:

"29-7-1. SHORT TITLE.--Chapter 29, Article 7 NMSA 1978 may be cited as the "Law Enforcement Training Act"."

Section 2

Section 2. Section 29-7-3 NMSA 1978 (being Laws 1979, Chapter 202, Section 42, as amended) is amended to read:

"29-7-3. NEW MEXICO LAW ENFORCEMENT ACADEMY BOARD.--

A. There is created the "New Mexico law enforcement academy board".

B. The academy shall be controlled and supervised by policy set by the board. The board shall be composed of the attorney general, who shall serve automatically by reason of his office and serve as chairman of the board, and six members who are qualified electors to be appointed by the governor not later than July 1, 1983 and confirmed by the senate. An appointed board member shall serve and have all of the duties, responsibilities and authority of that office during the period prior to the final action by the senate in confirming or rejecting the appointment.

C. The appointed members of the first board shall be appointed for staggered terms, one ending on July 1, 1980 and one on July 1 of each of the following three years. The governor shall, on or before July 1, 1983, appoint two additional members to the board; one shall be a district attorney and one shall be a certified police chief of a New Mexico Indian tribe or pueblo. The two additional members shall be appointed for staggered terms, one ending on July 1, 1986 and one ending on July 1, 1987. Thereafter, all appointments shall be for terms of four years or less made in such manner that the terms of not more than two members expire on July 1 of each year. At all times the board shall have represented on it, as members, one municipal police chief, one sheriff, one state police officer, one district attorney, one certified police chief of a New Mexico Indian tribe or pueblo and one

citizen-at-large member. Vacancies shall be filled by the governor for the unexpired term.

D. Members of the board shall receive, for their service as members of the board, per diem and mileage as provided in the Per Diem and Mileage Act."

Section 3

Section 3. Section 29-7-4 NMSA 1978 (being Laws 1969, Chapter 264, Section 6, as amended) is amended to read:

"29-7-4. POWERS AND DUTIES OF BOARD.--The board shall:

A. approve or disapprove the appointment of the director of the academy by the secretary of public safety;

B. develop and implement a planned program of basic law enforcement training and in-service law enforcement training, a portion of which may be conducted on a regional basis;

C. prescribe qualifications for instructors and prescribe courses of instruction for basic law enforcement training and in-service law enforcement training;

D. report annually to the governor;

E. in its discretion, accept donations, contributions, grants or gifts from whatever source for the benefit of the academy, which donations, contributions, grants or gifts are appropriated for the use of the academy;

F. adopt, publish and file, in accordance with the provisions of the State Rules Act, all regulations and rules concerning the operation of the academy and the implementation and enforcement of the provisions of the Law Enforcement Training Act;

G. issue, grant, deny, renew, suspend or revoke a peace officer's certification for any cause set forth in the provisions of the Law Enforcement Training Act;

H. administer oaths and take testimony on any matter within the board's jurisdiction; and

I. perform all other acts appropriate to the development and operation of the academy."

Section 4

Section 4. Section 29-7-5 NMSA 1978 (being Laws 1969, Chapter 264, Section 7, as amended) is amended to read:

"29-7-5. POWERS AND DUTIES OF THE DIRECTOR.--The director shall:

A. be the chief executive officer of the academy and employ necessary personnel;

B. issue a certificate of completion to any person who graduates from an approved basic law enforcement training program and who satisfies the qualifications for certification as set forth in Section 29-7-6 NMSA 1978;

C. perform all other acts necessary and appropriate to the carrying out of his duties;

D. act as executive secretary to the board;

E. carry out the policy as set by the board; and

F. annually evaluate the courses of instruction being offered by the academy and make necessary modifications and adjustments to the programs."

Section 5

Section 5. Section 29-7-5.1 NMSA 1978 (being Laws 1979, Chapter 202, Section 45) is amended to read:

"29-7-5.1. REMOVAL OF DIRECTOR.--The director may be removed by the board in accordance with the procedures provided in Section 29-2-11 NMSA 1978 for removal of members of the New Mexico state police holding permanent commissions. In the case of removal proceedings for the director under that section, the words "New Mexico state police board" or "board" shall be construed to mean the New Mexico law enforcement academy board."

Section 6

Section 6. Section 29-7-6 NMSA 1978 (being Laws 1969, Chapter 264, Section 8, as amended) is repealed and a new Section 29-7-6 NMSA 1978 is enacted to read:

"29-7-6. QUALIFICATIONS FOR CERTIFICATION.--

A. An applicant for certification shall provide evidence satisfactory to the board that he:

(1) is a citizen of the United States and has reached the age of majority;

(2) holds a high school diploma or the equivalent;

(3) holds a valid driver's license;

(4) has not been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge or, within the three-year period immediately preceding his application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and has not been released or discharged under dishonorable conditions from any of the armed forces of the United States;

(5) after examination by a licensed physician, is free of any physical condition that might adversely affect his performance as a police officer or prohibit him from successfully completing a prescribed basic law enforcement training required by the Law Enforcement Training Act;

(6) after examination by a certified psychologist, is free of any emotional or mental condition that might adversely affect his performance as a police officer or prohibit him from successfully completing a prescribed basic law enforcement training required by the Law Enforcement Training Act;

(7) is of good moral character;

(8) has met any other requirements for certification prescribed by the board pursuant to regulations adopted by the board; and

(9) has previously been awarded a certificate of completion by the director attesting to the applicant's completion of an approved law enforcement training program.

B. A person employed as a police officer by any law enforcement agency in this state shall forfeit his position unless, no later than twelve months after beginning his employment as a police officer, the person satisfies the qualifications for certification set forth in Subsection A of this section and is awarded a certificate attesting to that fact."

Section 7

Section 7. A new section of the Law Enforcement Training Act, Section 29-7-6.1 NMSA 1978, is enacted to read:

"29-7-6.1. COUNTY SHERIFFS--TRAINING REQUIREMENT.--

A. Every county sheriff, except sheriffs who have previously been awarded a certificate attesting to completion of a basic law enforcement training program, shall

participate in and complete an administrative law enforcement training program no later than twelve months after the date he assumes office as a county sheriff.

B. The director of the training and recruiting division of the department of public safety shall establish the administrative law enforcement training program for county sheriffs, subject to review and approval by the executive committee of the sheriff's affiliate of the New Mexico association of counties.

C. A county sheriff's per diem, mileage and tuition expenses attributed to attendance at the administrative law enforcement training shall be paid for by the governing body of the county served by that sheriff."

Section 8

Section 8. Section 29-7-7 NMSA 1978 (being Laws 1981, Chapter 114, Section 6, as amended) is amended to read:

"29-7-7. DEFINITIONS.--For the purpose of the Law Enforcement Training Act:

A. "academy" means the New Mexico law enforcement academy;

B. "basic law enforcement training" means a course consisting of not less than four hundred hours of instruction in basic law enforcement training as required by the Law Enforcement Training Act;

C. "board" means the New Mexico law enforcement academy board;

D. "conviction" means an adjudication of guilt or a plea of no contest and includes convictions that are suspended or deferred;

E. "director" means the director of the academy;

F. "in-service law enforcement training" means a course of instruction required of all certified peace officers designed to train and equip all police officers in the state with specific law enforcement skills and to ensure
the continuing development of all police officers in the state. The training and instruction shall be kept current and may be conducted on a regional basis at the discretion of the director;

G. "police officer" means any commissioned employee of a law enforcement agency that is part of or administered by the state or any political subdivision of the state and which employee is responsible for the prevention and detection of crime or the enforcement of the penal or traffic or highway laws of this state. The term specifically includes deputy sheriffs. Sheriffs are eligible to attend the academy and are eligible to receive certification as provided in the Law Enforcement Training Act. As used in this subsection, "commissioned" means an employee of a law

enforcement agency who is authorized by a sheriff or chief of police to apprehend, arrest and bring before the court all violators within the state; and

H. "certified regional law enforcement training facility" means a law enforcement training facility within the state certified by the director, with the approval of the academy's board of directors, that offers basic law enforcement training and in-service law enforcement training that is comparable to or exceeds the standards of the programs of the academy."

Section 9

Section 9. Section 29-7-7.1 NMSA 1978 (being Laws 1981, Chapter 114, Section 7) is amended to read:

"29-7-7.1. IN-SERVICE LAW ENFORCEMENT TRAINING--REQUIREMENTS--ELIGIBILITY.--

A. In-service law enforcement training consists of at least forty hours of academic instruction, approved by the board, for each certified police officer during each twenty-four month period of employment or service with a political subdivision. The first training course shall commence no later than twelve months after graduation from an approved basic law enforcement training program.

B. All certified police officers who are eligible for in-service training shall, during each twenty-four month period of employment, complete a minimum of forty hours of in-service law enforcement training in courses approved by the board. All certified police officers shall provide proof of completing in-service law enforcement training requirements to the director no later than March 1 of the year in which the requirements must be met. The director
shall provide annual notice to all certified police officers regarding in-service law enforcement training requirements. Failure to complete in-service law enforcement training requirements may be grounds for suspension of a certified police officer's certification. A police officer's certification may be reinstated by the board when the police officer presents the board with evidence of satisfying in-service law enforcement training requirements."

Section 10

Section 10. A new section of the Law Enforcement Training Act, Section 29-7-13 NMSA 1978, is enacted to read:

"29-7-13. REFUSAL, SUSPENSION OR REVOCATION OF CERTIFICATION.--

A. After consultation with the employing agency, the board may refuse to issue, or may suspend or revoke a police officer's certification when the board determines that a person has:

(1) failed to satisfy the qualifications for certification, set forth in Section 29-7-6 NMSA 1978;

(2) committed acts that constitute dishonesty or fraud;

(3) been convicted of, pled guilty to or entered a plea of no contest to:

(a) any felony charge; or

(b) any violation of federal or state law or a local ordinance relating to aggravated assault, theft, driving while under the influence of intoxicating liquor or drugs, controlled substances or any law or ordinance involving moral turpitude;

(4) knowingly made any false statement in his application for certification.

B. The board shall develop, adopt and promulgate administrative procedures for suspension or revocation of a police officer's certification that include notice and an opportunity for the affected police officer to be heard as well as procedures for review of the board's decision."

Section 11

Section 11. REPEAL.--Section 29-7-8 NMSA 1978 (being Laws 1979, Chapter 202, Section 48, as amended) is repealed.

Section 12

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 678

CHAPTER 256

RELATING TO JUDGES; PROVIDING FOR AN ADDITIONAL JUDGE IN THE SECOND JUDICIAL DISTRICT; AMENDING A CERTAIN SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 34-6-5 NMSA 1978 (being Laws 1968, Chapter 69, Section 8, as amended) is amended to read:

"34-6-5. JUDGES--SECOND JUDICIAL DISTRICT.--There shall be twenty district judges in the second judicial district."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1994. SB 68

CHAPTER 257

RELATING TO LICENSURE; ENACTING THE SUNRISE ACT; PROVIDING CRITERIA FOR REVIEW OF PROPOSED LICENSURE AND REGULATION OF UNREGULATED PROFESSIONS AND OCCUPATIONS; PRESCRIBING DUTIES AND PROCEDURES.

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

Section 1

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

Section 2

Section 2. PURPOSE.--The purpose of the Sunrise Act is to assure that an unregulated profession or occupation that is not under the authority of an existing agency and that seeks to create a new board or commission for the public health, safety or welfare complies with the provisions of the Sunrise Act.

Section 3

Section 3. CRITERIA FOR LICENSURE AND REGULATION.--In determining whether to enact legislation to create a new board or commission to provide for licensure or regulation of a profession or occupation that is currently not subject to state licensure or regulation, the legislature shall consider whether the following criteria are met:

A. unregulated practice of the profession or occupation will clearly harm or endanger the health, safety or welfare of the public, and the potential for harm is easily recognizable and not remote;

B. regulation of the profession or occupation does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners or otherwise create barriers to service that are not consistent with the public welfare or interest;

C. existing protections available to the consumer are insufficient, no alternatives to regulation will adequately protect the public and this licensure or regulation will provide that protection and mitigate the problems;

D. functions and tasks of the occupation or profession are clearly defined and the occupation or profession is clearly distinguishable from others already licensed or regulated;

E. the occupation or profession requires possession of knowledge, skills and abilities that are both teachable and testable and the practitioners operate independently and make decisions of consequence;

F. the public needs and can reasonably be expected to benefit from the assurance from the state of initial and continuing professional competence; and

G. the public cannot be effectively protected by other means in a more cost-effective manner.

Section 4

Section 4. INITIAL REVIEW--APPLICATION FEE.--Any group seeking licensure or regulation of a profession or occupation through creation of a new board or commission shall, upon payment of an application fee not to exceed one thousand dollars ($1,000), request a review and evaluation of such proposed licensure or regulation from the regulation and licensing department and the department shall conduct such a review and evaluation and provide a report to the legislative finance committee so it may conduct a hearing or consider action on the proposed licensure or regulation. In conducting a review and evaluation, the department shall consider the criteria in Section 3 of the Sunrise Act and may require and use any information listed in Section 5 of that act.

Section 5

Section 5. REQUIRED INFORMATION.--If the legislative finance committee recommends creation of a new board or commission to license or regulate a profession or occupation, the following information shall be included with its recommendation:

A. the number of individuals or businesses that would be subject to licensure or regulation;

B. the names of all appropriate professional or occupational associations and a copy of each association's code of ethics or conduct;

C. a list of states that regulate the profession or occupation together with the descriptions and dates of enactment of each state's licensing or regulatory scheme;

D. a documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation;

E. a list and description of complaints that have been lodged against practitioners of the profession or
occupation in this state during the preceding three years;

F. a list and description of existing laws that affect the profession or occupation and which may protect the public;

G. a copy of any federal law mandating or necessitating licensure or regulation;

H. the reasons that other types of less restrictive regulation would not effectively protect the public;

I. the fiscal impact of the proposed licensure or regulation, including the indirect cost to consumer, and the proposed method of financing the licensure or regulation; and

J. the extent to which the proposed licensure or regulation will affect the number and distribution of members of the profession or occupation in the state.

Section 6

Section 6. RULEMAKING AUTHORITY.--The regulation and licensing department may adopt and promulgate rules to implement the provisions of the Sunrise Act and assess costs among boards covered by the Uniform Licensing Act. SB 170

CHAPTER 258

RELATING TO PUBLIC RECORDS; ENACTING THE INSPECTION OF PUBLIC RECORDS ACT; AMENDING AND REPEALING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. A new section of Chapter 14, Article 2 NMSA 1978 is enacted to read:

"SHORT TITLE.--Chapter 14, Article 2 NMSA 1978 may be cited as the "Inspection of Public Records Act"."

Section 2

Section 2. A new section of the Inspection of Public Records Act is enacted to read:

"PURPOSE OF ACT--DECLARATION OF PUBLIC POLICY.--Recognizing that a representative government is dependent upon an informed electorate, the intent of the legislature in enacting the Inspection of Public Records Act is to ensure, and it is declared to be the public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees. It is the further intent of the legislature, and it is declared to be the public policy of this state, that to provide persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees."

Section 3

Section 3. A new section of the Inspection of Public Records Act is enacted to read:

"DEFINITIONS.--As used in the Inspection of Public Records Act:

A. "custodian" means any person responsible for the maintenance, care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control;

B. "inspect" means to review all public records that are not excluded in Section 14-2-1 NMSA 1978;

C. "person" means any individual, corporation, partnership, firm, association or entity;

D. "public body" means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education; and

E. "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained."

Section 4

Section 4. A new section of the Inspection of Public Records Act is enacted to read:

"DESIGNATION OF CUSTODIAN--DUTIES.--Each public body shall designate at least one custodian of public records who shall:

A. receive and respond to requests to inspect public records;

B. provide proper and reasonable opportunities to inspect public records; and

C. provide reasonable facilities to make or furnish copies of the public records during usual business hours."

Section 5

Section 5. A new section of the Inspection of Public Records Act is enacted to read:

"PROCEDURE FOR REQUESTING RECORDS.--

A. Any person wishing to inspect public records may submit an oral or written request to the custodian. However, the procedures set forth in this section shall be in response to a written request. The failure to respond to an oral request shall not subject the custodian to any penalty.

B. Nothing in the Inspection of Public Records Act shall be construed to require a public body to create a public record.

C. A written request shall provide the name, address and telephone number of the person seeking access to the records and shall identify the records sought with reasonable particularity. No person requesting records shall be required to state the reason for inspecting the records.

D. A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.

E. In the event that a written request is not made to the custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester. The notification to the requester shall state the reason for the absence of the records from that person's custody or control, the records' location and the name and address of the custodian."

Section 6

Section 6. A new section of the Inspection of Public Records Act is enacted to read:

"PROCEDURE FOR INSPECTION.--

A. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. If necessary to preserve the integrity of computer data or the confidentiality of exempt information contained in a database, a partial printout of data containing public records or information may be furnished in lieu of an entire database.

B. A custodian:

(1) may charge reasonable fees for copying the public records, unless a different fee is otherwise prescribed by law;

(2) shall not charge fees in excess of one dollar ($1.00) per page for documents eleven inches by
seventeen inches in size or smaller;

(3) may require advance payment of the fees before making copies of public records;

(4) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and

(5) shall provide a receipt, upon request."

Section 7

Section 7. A new section of the Inspection of Public Records Act is enacted to read:

"PROCEDURE FOR EXCESSIVELY BURDENSOME OR BROAD REQUESTS.--If a custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. The custodian shall provide written notification to the requester within fifteen days of receipt of the request that additional time will be needed to respond to the written request. The requester may deem the request denied and may pursue the remedies available pursuant to the Inspection of Public Records Act if the custodian does not permit the records to be inspected in a reasonable period of time."

Section 8

Section 8. A new section of the Inspection of Public Records Act is enacted to read:

"PROCEDURE FOR DENIED REQUESTS.--

A. Unless a written request has been determined to be excessively burdensome or broad, a written request for inspection of public records that has not been permitted within fifteen days of receipt by the office of the custodian may be deemed denied. The person requesting the public records may pursue the remedies provided in the Inspection of Public Records Act.

B. If a written request has been denied, the custodian shall provide the requester with a written explanation of the denial. The written denial shall:

(1) describe the records sought;

(2) set forth the names and titles or positions of each person responsible for the denial; and

(3) be delivered or mailed to the person requesting the records within fifteen days after the request for inspection was received.

C. A custodian who does not deliver or mail a written explanation of denial within fifteen days after receipt of a written request for inspection is subject to an action to enforce the provisions of the Inspection of Public Records Act and the requester may be awarded damages. Damages shall:

(1) be awarded if the failure to provide a timely explanation of denial is determined to be unreasonable;

(2) not exceed one hundred dollars ($100) per day;

(3) accrue from the day the public body is in noncompliance until a written denial is issued; and

(4) be payable from the funds of the public body."

Section 9

Section 9. A new section of the Inspection of Public Records Act is enacted to read:

"ENFORCEMENT.--

A. An action to enforce the Inspection of Public Records Act may be brought by:

(1) the attorney general or the district attorney in the county of jurisdiction; or

(2) a person whose written request has been denied.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Inspection of Public Records Act.

C. The exhaustion of administrative remedies shall not be required prior to bringing any action to enforce the procedures of the Inspection of Public Records Act.

D. The court shall award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of the Inspection of Public Records Act."

Section 10

Section 10. REPEAL.--Sections 14-2-2 and 14-2-3 NMSA 1978 (being Laws 1947, Chapter 130, Sections 2 and 3, as amended) are repealed.SB 284

CHAPTER 259

RELATING TO CAPITAL EXPENDITURES; AMENDING LAWS 1992, CHAPTER 16, SECTION 1 TO CHANGE THE PURPOSE OF A STATE ROAD FUND APPROPRIATION.

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

Section 1

Section 1. Laws 1992, Chapter 16, Section 1 is amended to read:

"Section 1. APPROPRIATIONS--STATE ROAD FUND.--

A. The following amounts are appropriated from the state road fund to the state highway and transportation department for expenditure in the eightieth through eighty-second fiscal years for the following purposes:

(1) five hundred forty-six thousand dollars ($546,000) to re-roof and renovate the heating, ventilation and air conditioning system at the state highway and transportation department's district office complex in Deming in Luna county;

(2) seventy-five thousand dollars ($75,000) for architectural and engineering services to study the computer power distribution system at the state highway and transportation department's general office in Santa Fe county;

(3) four hundred seventy-nine thousand dollars ($479,000) to acquire land to build a maintenance patrol yard and to install required facilities and services in Santa Fe county;

(4) sixty-one thousand dollars ($61,000) to place a prefabricated building at the district 3 office headquarters on Frontage road in Albuquerque in Bernalillo county.

B. Any unexpended or unencumbered balances remaining at the end of the eighty-second fiscal year shall revert to the state road fund." SB 354

CHAPTER 260

RELATING TO PUBLIC RECORDS; PROVIDING FOR ANOTHER EXCEPTION TO THE RIGHT TO INSPECT PUBLIC RECORDS; AMENDING CERTAIN SECTIONS OF THE ARREST RECORD INFORMATION ACT.

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

Section 1

Section 1. Section 14-2-1 NMSA 1978 (being Laws 1947, Chapter 130, Section 1, as amended) is amended to read:

"14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--Every person has a right to inspect any public records of this state except:

A. records pertaining to physical or mental examinations and medical treatment of persons confined to any institution;

B. letters of reference concerning employment, licensing or permits;

C. letters or memorandums which are matters of opinion in personnel files or students' cumulative files;

D. law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with any criminal investigation or prosecution by any law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed above;

E. as provided by the Confidential Materials Act; and

F. as otherwise provided by law."

Section 2

Section 2. Section 29-10-1 NMSA 1978 (being Laws 1975, Chapter 260, Section 1) is amended to read:

"29-10-1. SHORT TITLE.--Chapter 29, Article 10 NMSA 1978 may be cited as the "Arrest Record Information Act"."

Section 3

Section 3. Section 29-10-3 NMSA 1978 (being Laws 1975, Chapter 260, Section 3, as amended) is amended to read:

"29-10-3. DEFINITION.--As used in the Arrest Record Information Act, "arrest record information" means notations of the arrest or detention or indictment or filing of information or other formal criminal charge against an individual made by a law enforcement agency."

Section 4

Section 4. Section 29-10-4 NMSA 1978 (being Laws 1975, Chapter 260, Section 4) is amended to read:

"29-10-4. CONFIDENTIALITY OF ARREST RECORDS.--Arrest record information that reveals confidential sources, methods, information or individuals accused but not charged with a crime and that is maintained by the state or any of its political subdivisions pertaining to any person charged with the commission of any crime is confidential and dissemination or revealing the contents of the record, except as provided in the Arrest Record Information Act or any other law, is unlawful."

Section 5

Section 5. Section 29-10-7 NMSA 1978 (being Laws 1977, Chapter 339, Section 4) is amended to read:

"29-10-7. APPLICATION.--

A. Information contained in the following documents shall be available for public inspection:

(1) posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

(2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public, if the records are organized on a chronological basis;

(3) court records of public judicial proceedings;

(4) published court or administrative opinions or public judicial, administrative or legislative proceedings;

(5) records of traffic offenses and accident reports;

(6) announcements of executive clemency; and

(7) statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

B. Nothing prevents a law enforcement agency from disclosing to the public arrest record information related to the offense for which an adult individual is currently within the criminal justice system. A law enforcement agency is not prohibited from confirming prior arrest record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted or whether an information or other formal charge was filed on a specified date, if the arrest record information disclosed is based on data enumerated by Subsection A of this section."SB 376

CHAPTER 261

RELATING TO COURTS; ESTABLISHING PROCEDURES FOR COLLECTION OF FINES OR FEES BY THE MAGISTRATE COURTS AND THE BERNALILLO COUNTY METROPOLITAN COURT; PROVIDING FOR ADMINISTRATIVE FEES; CREATING FUNDS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for any employee of the department or any former employee of the department to reveal to any individual other than another employee of the department any

information contained in the return of any taxpayer made pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about any taxpayer acquired as a result of his employment by the department, except:

A. to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only and that the receiving state has enacted a confidentiality statute similar to this section;

B. to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of such information;

C. to the multistate tax commission or its authorized representative; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission only to states which have met the requirements of Subsection A of this section;

D. to a district court or an appellate court or a federal court:

(1) in response to an order thereof in an action relating to taxes to which the state is a party and in which the information sought is about a taxpayer who is party to the action and is material to the inquiry, in which case
only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in any action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put his own liability for taxes at issue, in which case only that information regarding the taxpayer who is party to the action may be produced, but this shall not prevent the disclosure of department policy or interpretation of law arising from circumstances of a taxpayer who is not a party;

E. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this subsection shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection D of this section;

F. information obtained through the administration of any law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that release of such information is not otherwise prohibited by law;

G. in such manner, for statistical purposes, that the information revealed is not identified as applicable to any individual taxpayer;

H. with reference to any information concerning the tax on tobacco imposed by Sections 7-12-1 through 7-12-17 NMSA 1978 to a committee of the legislature for a valid legislative purpose;

I. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of any unpaid assessment of tax for which his transferor, assignor, seller or lessee is liable;

J. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-64 NMSA 1978, the amount and basis of any unpaid assessment of tax for which the purchaser's seller is liable;

K. to a municipality upon its request for any period specified by that municipality within the twelve
months preceding the request for such information by that municipality:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also release, within the twelve months following the request for such information by the municipality, the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on any list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality.

The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if such information is revealed to individuals other than other employees of the municipality in question or the department;

L. to the commissioner of public lands for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts; the commissioner of public lands and employees of the commissioner are subject to the same provisions regarding confidentiality of information as employees of the department;

M. the department shall furnish, upon request by the child support enforcement division of the human services department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance. The child support enforcement division personnel shall use such information only for the purpose of enforcing the support liability of such

absent parents and shall not use the information or disclose it for any other purpose; the child support enforcement division and its employees are subject to the provisions of this section with respect to any information acquired from the department;

N. with respect to the tax on gasoline imposed by the Gasoline Tax Act, the department shall make available for public inspection at monthly intervals a report covering the amount and gallonage of gasoline and ethanol blended fuels imported, exported, sold and used, including tax exempt sales to the federal government reported or upon which the gasoline tax was paid, together with a tabulation of taxes received from each distributor in the state of New Mexico;

O. the identity of distributors and gallonage reported on returns required under the Gasoline Tax Act or Special Fuels Supplier Tax Act to any distributor or supplier, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act or the Special Fuels Supplier Tax Act;

P. the department shall release upon request only the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers to the New Mexico department of agriculture, the employees of which are thereby subject to the penalty contained in Section 7-1-76 NMSA 1978 if such information is revealed to individuals other than employees of either the New Mexico department of agriculture or the department;

Q. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer;

R. upon request of the municipality or the county, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties. Any information provided in this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalties contained in Section 7-1-76 NMSA 1978;

S. to a county that has in effect any local option gross receipts tax imposed by the county upon its request for any period specified by that county within the twelve months preceding the request for such information by that county:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a county-wide basis or only for the

areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also release within the twelve months following the request for such information by the county the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a local option gross receipts tax imposed by a county on a county-wide basis, information indicating whether persons shown on any list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a county-wide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of any incorporated municipalities, information indicating whether persons shown on any list of businesses located in the area of that county outside of any incorporated municipalities within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for the area of that county outside of any incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or any local option gross receipts tax imposed by the county only on persons engaging in business in that area of the county outside of any incorporated municipalities.

The officers and employees of counties receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if such information is revealed to individuals other than other officers or employees of the county in question or the department;

T. to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a reciprocal agreement entered into with the Indian nation, tribe or pueblo for the exchange of such information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute similar to this section;

U. information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) information for or relating to any period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-9 NMSA 1978 may be released only to a committee of the legislature for a valid legislative purpose;

(2) contracts and other agreements between the taxpayer and other parties and the proprietary information contained in such contracts and agreements shall not be released without the consent of all parties to the contract or agreement; and

(3) audit workpapers and the proprietary information contained in such workpapers shall not be released except to a person having a legal interest in the property that is subject to the audit, to a purchaser of products severed from a property subject to the audit or to the authorized representative of either, but this paragraph does not prohibit the release of any proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of this section;

V. information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

W. to the state corporation commission, information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties;

X. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by race tracks;

Y. upon request of a corporation authorized to be formed under the Educational Assistance Act, the department shall furnish the last known address and the date of that address of every person certified to the department as being an absent obligor of an educational debt that is due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use such information only for the purpose of enforcing the educational debt obligation of such absent obligors and shall not disclose that information or use it for any other purpose;

Z. any decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

AA. information required by any provision of the Tax Administration Act to be made available to the public by the department;

BB. upon request by the Bernalillo county metropolitan court, the department shall furnish the last known address and the date of that address for every person certified to the department by the court as being a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear; and

CC. upon request by a magistrate court, the department shall furnish the last known address and the date of that address for every person certified to the department by the court as being a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear."

Section 2

Section 2. Section 7-2C-2 NMSA 1978 (being Laws 1985, Chapter 106, Section 2, as amended) is amended to read:

"7-2C-2. PURPOSE.--

A. The purpose of the Tax Refund Intercept Program Act is to comply with federal law:

(1) by enhancing the enforcement of child support obligations;

(2) to aid collection of outstanding debts owed for overpayment of public assistance and overissuance of food stamps and overpayment of unemployment compensation benefits and nonpayment of contributions or payments in lieu of contributions or other amounts due under the Unemployment Compensation Law;

(3) to promote repayment of educational loans;

(4) to aid collection of fines, fees and costs owed to the magistrate courts; and

(5) to aid collection of fines, fees and costs owed to the Bernalillo county metropolitan court.

B. Efforts to accomplish the purpose of the Tax Refund Intercept Program Act may be enhanced by establishing a system to collect debts, in particular, outstanding child support obligations, educational loans, amounts due under the Unemployment Compensation Law, fines, fees and costs owed to the magistrate courts and fines, fees and costs owed to the Bernalillo county metropolitan court, by setting off the amount of such debts against the state income tax refunds due the debtors."

Section 3

Section 3. Section 7-2C-3 NMSA 1978 (being Laws 1985, Chapter 106, Section 3, as amended by Laws 1991, Chapter 141, Section 1 and also by Laws 1991, Chapter 184, Section 2) is amended to read:

"7-2C-3. DEFINITIONS.--As used in the Tax Refund Intercept Program Act:

A. "claimant agency" means the taxation and revenue department or any of its divisions, the human services department, the employment security division of the labor department, any corporation authorized to be formed under the Educational Assistance Act, a magistrate court or the Bernalillo county metropolitan court;

B. "debt" means a legally enforceable obligation of an employer subject to the Unemployment Compensation Law or an individual to pay a liquidated amount of money:

(1) that is equal to or more than one hundred dollars ($100);

(2) that is due and owing a claimant agency, which a claimant agency is obligated by law to collect or which, in the case of an educational loan, a claimant agency has lawfully contracted to collect;

(3) that has accrued through contract, tort, subrogation or operation of law; and

(4) that, in the case of an amount due under the Unemployment Compensation Law, has been secured by a warrant of levy and lien or, in all other cases, has been reduced to judgment;

C. "debtor" means any employer subject to the Unemployment Compensation Law or any individual owing a debt;

D. "department" or "division" means, unless the context indicates otherwise, the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "educational loan" means any loan for educational purposes owned by a public post-secondary educational institution or owned or guaranteed by any corporation authorized to be formed under the Educational Assistance Act;

F. "public post-secondary educational institution" means a publicly owned or operated institution of higher education or other publicly owned or operated post-secondary educational facility located within New Mexico;

G. "spouse" means an individual who is or was a spouse of the debtor and who has joined with the debtor in filing a joint return of income tax pursuant to the provisions of the Income Tax Act, which joint return has given rise to a refund that may be subject to the provisions of the Tax Refund Intercept Program Act; and

H. "refund" means a refund, including any amount of tax rebates or credits, under the Income Tax Act that the department has determined to be due to an individual."

Section 4

Section 4. Section 7-2C-11 NMSA 1978 (being Laws 1985, Chapter 106, Section 11, as amended) is amended to read:

"7-2C-11. PRIORITY OF CLAIMS.--

A. Claims of the department take precedence over the claim of any competing claimant agency, whether the department asserts a claim or sets off an asserted debt under the provisions of the Tax Refund Intercept Program Act or under the provisions of any other law which authorizes the department to apply amounts of tax owed against any refund due an individual pursuant to the Income Tax Act.

B. After claims of the department, claims shall take priority in the following order before claims of any competing claimant agency:

(1) claims of the human services department resulting from child support enforcement liabilities;

(2) claims resulting from educational loans made under the Educational Assistance Act;

(3) claims of the human services department resulting from AFDC liabilities;

(4) claims of the human services department resulting from food stamp liabilities;

(5) claims of the employment security division of the labor department arising under the Unemployment Compensation Law;

(6) claims of a magistrate court for fines, fees or costs owed to that court; and

(7) claims of the Bernalillo county metropolitan court for fines, fees or costs owed to that court."

Section 5

Section 5. Section 34-8A-12 NMSA 1978 (being Laws 1987, Chapter 110, Section 1) is repealed and a new Section 34-8A-12 NMSA 1978 is enacted to read:

"34-8A-12. METROPOLITAN COURT WARRANT ENFORCEMENT FUND--FEE--ADMINISTRATION--USE OF MONEY IN FUND.--

A. There is created in the state treasury the "metropolitan court warrant enforcement fund" to be administered by the Bernalillo county metropolitan court.

B. Upon issuance of a bench warrant, the Bernalillo county metropolitan court shall assess an administrative fee of one hundred dollars ($100) against the individual whose arrest is commanded by the bench warrant. Money collected pursuant to the fee assessment authorized by this subsection shall be deposited in the metropolitan court warrant enforcement fund.

C. All balances in the metropolitan court warrant enforcement fund are appropriated to the Bernalillo county metropolitan court for the primary purpose of employing personnel and purchasing equipment and services to aid in the collection of fines, fees or costs owed to the Bernalillo county metropolitan court. After satisfaction of the primary purpose, any money remaining in the fund may, to the extent deemed necessary by the court, be used for the secondary purpose of partially reimbursing law enforcement agencies for the expense of serving bench warrants issued by the court, pursuant to an intergovernmental agreement entered into between the law enforcement agency and the court.

D. Payments from the metropolitan court warrant enforcement fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers issued and signed by the Bernalillo county metropolitan court administrator.

E. Any balance remaining in the metropolitan court warrant enforcement fund at the end of a fiscal year shall not revert to the state general fund."

Section 6

Section 6. A new Section 34-8A-13 NMSA 1978 is enacted to read:

"34-8A-13. COLLECTION OF FINES, FEES OR COSTS.--A judgment and sentence issued by the Bernalillo county metropolitan court that includes an assessment of fines, fees or costs shall constitute a money judgment that may be enforced in the same manner as a civil judgment in the district court. The money judgment may be assigned by the court to a public or private agency or business for collection purposes, pursuant to the terms and conditions of a written agreement entered into by the court and the agency or business."

Section 7

Section 7. A new Section 35-6-5 NMSA 1978 is enacted to read:

"35-6-5. MAGISTRATE COURT WARRANT ENFORCEMENT FUND--FEE--ADMINISTRATION-- USE OF MONEY IN FUND.--

A. There is created in the state treasury the "magistrate court warrant enforcement fund" to be administered by the administrative office of the courts.

B. Upon issuance of a bench warrant, a magistrate court shall assess a fee of one hundred dollars ($100)
against the individual whose arrest is commanded by the bench warrant. Money collected pursuant to the fee assessment authorized by this subsection shall be deposited in the magistrate court warrant enforcement fund.

C. All balances in the magistrate court warrant enforcement fund are appropriated to the administrative office of the courts for the primary purpose of employing personnel and purchasing equipment and services to aid in the collection of fines, fees or costs owed to the magistrate courts. After satisfaction of the primary purpose, any money remaining in the fund may, to the extent deemed necessary by the director of the administrative office of the courts, be used for the secondary purpose of partially reimbursing law enforcement agencies for the expense of serving bench warrants issued by the magistrate courts, pursuant to an intergovernmental agreement entered into between the law enforcement agency and the administrative office of the courts.

D. Payments from the magistrate court warrant enforcement fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers issued and signed by the director of the administrative office of the courts.

E. Any balance remaining in the magistrate court warrant enforcement fund at the end of a fiscal year shall not revert to the state general fund."

Section 8

Section 8. A new Section 35-6-6 NMSA 1978 is enacted to read:

"35-6-6. COLLECTION OF FINES, FEES OR COSTS.--A judgment and sentence issued by a magistrate court that includes an assessment of fines, fees or costs shall constitute a money judgment that may be enforced in the same manner as a civil judgment in the district court. The money judgment may be assigned by the court to a public or private agency or business for collection purposes, pursuant to the terms and conditions of a written agreement entered into by the court and the agency or business."

Section 9

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. SB 393

CHAPTER 262

RELATING TO OPEN MEETINGS; AMENDING THE OPEN MEETINGS ACT TO CLARIFY AND EXPAND CERTAIN PROCEDURAL REQUIREMENTS.

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

Section 1

Section 1. Section 10-15-1 NMSA 1978 (being Laws 1974, Chapter 91, Section 1, as amended) is amended to read:

"10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS.--

A. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency, any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act. No public meeting once convened that is otherwise required to be open pursuant to the Open Meetings Act shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.

C. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a
meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

D. Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

E. A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies the date, time and place for continuation of the meeting, and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

F. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. Except in the case of an emergency, the agenda shall be available to the public at least twenty-four hours prior to the meeting.
Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, an "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body.

G. The board, commission or other policymaking body shall keep written minutes of all its meetings. The
minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. All minutes are open t public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the policymaking body.

H. The provisions of Subsections A, B and G of this section do not apply to:

(1) meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidence is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;

(2) limited personnel matters; provided that for purposes of the Open Meetings Act, "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this subsection is not to be construed as to exempt final actions on personnel from being taken at open public meetings; nor does it preclude an aggrieved public employee from demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;

(3) deliberations by a public body in connection with an administrative adjudicatory proceeding.
For purposes of this paragraph, an "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;

(4) the discussion of personally identifiable information about any individual student, unless the student, his parent or guardian requests otherwise;

(5) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;

(6) that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars ($2,500) that can be made only from one source and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code are discussed during the contract negotiation process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;

(7) meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant;

(8) meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body; and

(9) those portions of meetings of committees or boards of public hospitals that receive less than fifty percent of their operating budget from direct public funds and appropriations where strategic and long-range business plans are discussed.

I. If any meeting is closed pursuant to the exclusions contained in Subsection H of this section, the closure:

(1) if made in an open meeting, shall be approved by a majority vote of a quorum of the policymaking body; the authority for the closure and the subject to be discussed shall be stated with reasonable specificity in the motion calling for the vote on a closed meeting; the vote shall be taken in an open meeting; and the vote of each individual member shall be recorded in the minutes. Only those subjects announced or voted upon prior to closure by the policymaking body may be discussed in a closed meeting; and

(2) if called for when the policymaking body is not in an open meeting, shall not be held until public notice, appropriate under the circumstances, stating the specific provision of the law authorizing the closed meeting and stating with reasonable specificity the subject to be discussed, is given to the members and to the general public.

J. Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state that the matters discussed in the closed meeting were limited only to those specified in the motion for closure or in the notice of the separate closed meeting. This statement shall be approved by the public body under Subsection G of this section as part of the minutes."

Section 2

Section 2. Section 10-15-3 NMSA 1978 (being Laws 1974, Chapter 91, Section 3, as amended) is amended to read:

"10-15-3. INVALID ACTIONS--STANDING.--

A. No resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978. Every resolution, rule, regulation, ordinance or action of any board, commission, committee or other policymaking body shall be presumed to have been taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.

B. All provisions of the Open Meetings Act shall be enforced by the attorney general or by the district attorney in the county of jurisdiction. However, nothing in that act shall prevent an individual from independently applying for enforcement through the district courts.

C. The district courts of this state shall have jurisdiction, upon the application of any person to enforce the purpose of the Open Meetings Act, by injunction, mandamus or other appropriate order. The prevailing party in that legal action shall be awarded court costs.

D. No section of the Open Meetings Act shall be construed to preclude other remedies or rights not relating to the question of open meetings."SB 403

CHAPTER 263

RELATING TO CRIMINAL RECORDS SCREENING; AMENDING A SECTION OF THE NEW MEXICO CHILDREN'S AND JUVENILE FACILITY CRIMINAL RECORDS SCREENING ACT.

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

Section 1

Section 1. Section 32-9-4 NMSA 1978 (being Laws 1985, Chapter 140, Section 4) is amended to read:

"32-9-4. PROCEDURES.--By December 31, 1993, procedures shall be established by regulation to provide for employment history and background checks for all present and prospective personnel identified in Section 32-9-3 NMSA 1978:

A. by the secretary of children, youth and families for child care facilities and juvenile detention and correction facilities; and

B. by the secretary of health for health and treatment facilities."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. SB 457

CHAPTER 264

RELATING TO ZONING; AMENDING CERTAIN SECTIONS OF THE SPECIAL ZONING DISTRICT ACT.

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

Section 1

Section 1. Section 3-21-18 NMSA 1978 (being Laws 1965, Chapter 206, Section 4, as amended) is amended to read:

"3-21-18. SPECIAL ZONING DISTRICT.--A special zoning district is created in an area consisting of no more than twenty thousand contiguous acres that is outside the boundary limits of an incorporated municipality when:

A. there are at least one hundred fifty single family dwellings within the area;

B. at least fifty-one percent of the registered electors residing in the area sign a petition requesting a special zoning district;

C. the signed petition, along with a plat of the area included within the district, is filed in the office of the county clerk of the county or counties in which the area is situate; and

D. no general zoning ordinance applying to all areas in the county outside of incorporated municipalities has been adopted by the county or counties in which the area is situate; provided that any special zoning district in existence upon the effective date of this 1979 act may continue to exist without cost to any county, and any special zoning district created pursuant to this section may continue to exist after adoption of a general zoning ordinance applying to all areas in the county outside of incorporated municipalities by the county or counties in which the district is situate without cost to any county; but no new special zoning districts shall be created in any county after the adoption of such general zoning ordinance by such county."

Section 2

Section 2. Section 3-21-21 NMSA 1978 (being Laws 1965, Chapter 206, Section 7) is amended to read:

"3-21-21. POWERS OF THE COMMISSION.--

A. The commission shall have power within the district as part of the building and zoning ordinances, regulations and restrictions adopted by it in the manner otherwise provided by law, to regulate and restrict:

(1) the height, number of stories and size of buildings and other structures;

(2) the percentage of a lot that may be occupied;

(3) the size of yards, courts and other open spaces;

(4) the density of populations;

(5) the location and use of buildings and structures; and

(6) the use of lands for trade, industry, residence or other purposes.

B. The commission shall adopt a comprehensive zoning plan or ordinance for the district that includes a master land use plan."

Section 3

Section 3. Section 3-21-22 NMSA 1978 (being Laws 1965, Chapter 206, Section 8) is amended to read:

"3-21-22. PROCEDURES FOR REGULATIONS OR RESTRICTIONS.--The procedure for the commission in establishing, amending or repealing the ordinances, regulations or restrictions provided in the Special Zoning District Act shall be the same as for the governing body of counties in Sections 3-21-5 through 3-21-8 NMSA 1978." SB 506

CHAPTER 265

RELATING TO PUBLIC UTILITIES; CLARIFYING THAT LITIGATION EXPENSES ARE NOT PRESUMED PRUDENT; AMENDING A SECTION OF THE PUBLIC UTILITY ACT.

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

Section 1

Section 1. Section 62-13-3 NMSA 1978 (being Laws 1941, Chapter 84, Section 82, as amended) is amended to read:

"62-13-3. COSTS.--

A. Except as otherwise provided by law, in all proceedings before the commission and in the courts, each party to the controversy shall bear his own costs and no costs shall be taxed against either party.

B. In any commission rate proceeding in which the utility seeks rates to recover adjusted test-year litigation expenses there shall be no presumption that the litigation expenses are prudent. Nothing in this section shall be construed to create or imply a presumption of prudence for any utility expenditures not addressed in this section.

C. As used in this section, "litigation expenses" means all attorneys' fees, consulting fees and other costs of litigation, including in-house expenditures." SB 538

CHAPTER 266

RELATING TO INSURANCE; PROVIDING FOR REGULATION OF HEALTH MAINTENANCE ORGANIZATIONS; AMENDING, REPEALING, ENACTING AND RECOMPILING CERTAIN SECTIONS OF CHAPTER 59A, ARTICLE 46 NMSA 1978.

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

Section 1

Section 1. Section 59A-46-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 848) is amended to read:

"59A-46-1. SHORT TITLE.--Chapter 59A, Article 46 NMSA 1978 may be cited as the "Health Maintenance Organization Law"."

Section 2

Section 2. A new Section 59A-46-2 NMSA 1978 is enacted to read:

"59A-46-2. DEFINITIONS.--As used in the Health Maintenance Organization Law:

A. "basic health care services":

(1) means medically necessary services consisting of preventive care, emergency care, inpatient and outpatient hospital and physician care, diagnostic laboratory and diagnostic and therapeutic radiological services; but

(2) does not include mental health services or services for alcohol or drug abuse, dental or vision services or long-term rehabilitation treatment;

B. "capitated basis" means fixed per member per month payment or percentage of premium payment wherein the provider assumes the full risk for the cost of contracted services without regard to the type, value or frequency of services provided and includes the cost associated with operating staff model facilities;

C. "carrier" means a health maintenance organization, an insurer, a nonprofit health care plan or other entity responsible for the payment of benefits or provision of services under a group contract;

D. "copayment" means an amount an enrollee must pay in order to receive a specific service that is not fully prepaid;

E. "deductible" means the amount an enrollee is responsible to pay out-of-pocket before the health maintenance organization begins to pay the costs associated with treatment;

F. "enrollee" means an individual who is covered by a health maintenance organization;

G. "evidence of coverage" means a policy, contract or certificate showing the essential features and services of the health maintenance organization coverage that is given to the subscriber by the health maintenance organization or by the group contract holder;

H. "extension of benefits" means the continuation of coverage under a particular benefit provided under a contract or group contract following termination with respect to an enrollee who is totally disabled on the date of termination;

I. "grievance" means a written complaint submitted in accordance with the health maintenance organization's formal grievance procedure by or on behalf of the enrollee regarding any aspect of the health maintenance organization relative to the enrollee;

J. "group contract" means a contract for health care services that by its terms limits eligibility to members of a specified group and may include coverage for dependents;

K. "group contract holder" means the person to which a group contract has been issued;

L. "health care services" means any services included in the furnishing to any individual of medical, mental, dental or optometric care or hospitalization or nursing home care or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human physical or mental illness or injury;

M. "health maintenance organization" means any person who undertakes to provide or arrange for the delivery of basic health care services to enrollees on a prepaid basis, except for enrollee responsibility for copayments or deductibles;

N. "health maintenance organization agent" means a person who solicits, negotiates, effects, procures, delivers, renews or continues a policy or contract for health maintenance organization membership, or who takes or transmits a membership fee or premium for such a policy or contract, other than for himself, or a person who advertises or otherwise holds himself out to the public as such;

O. "individual contract" means a contract for health care services issued to and covering an individual and it may include dependents of the subscriber;

P. "insolvent" or "insolvency" means that the organization has been declared insolvent and placed under an order of liquidation by a court of competent jurisdiction;

Q. "managed hospital payment basis" means agreements in which the financial risk is related primarily to the degree of utilization rather than to the cost of services;

R. "net worth" means the excess of total admitted assets over total liabilities, but the liabilities shall not include fully subordinated debt;

S. "participating provider" means a provider as defined in Subsection U of this section who, under an express contract with the health maintenance organization or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving payment, other than copayment or deductible, directly or indirectly from the health maintenance organization;

T. "person" means an individual or any other legal entity;

U. "provider" means any physician, hospital or other person licensed or otherwise authorized to furnish health care services;

V. "replacement coverage" means the benefits provided by a succeeding carrier;

W. "subscriber" means an individual whose employment or other status, except family dependency, is the basis for eligibility for enrollment in the health maintenance organization, or in the case of an individual contract, the person in whose name the contract is issued; and

X. "uncovered expenditures" means the costs to the health maintenance organization for health care services that are the obligation of the health maintenance organization, for which an enrollee may also be liable in the event of the health maintenance organization's insolvency and for which no alternative arrangements have been made that are acceptable to the superintendent."

Section 3

Section 3. A new Section 59A-46-3 NMSA 1978 is enacted to read:

"59A-46-3. ESTABLISHMENT OF HEALTH MAINTENANCE ORGANIZATIONS.--

A. Notwithstanding any law of this state to the contrary, any person may apply to the superintendent for a certificate of authority to establish and operate a health maintenance organization in compliance with Chapter 59A, Article 46 NMSA 1978. No person shall establish or operate a health maintenance organization in this state without obtaining a certificate of authority under Chapter 59A, Article 46 NMSA 1978. A foreign corporation may qualify under Chapter 59A, Article 46 NMSA 1978, subject to its registration to do business in this state as a foreign corporation pursuant to Chapter 53, Article 17 NMSA 1978 and compliance with all provisions of Chapter 59A, Article 46 NMSA 1978 and other applicable state laws.

B. Any health maintenance organization that has not previously received a certificate of authority to operate as a health maintenance organization as of January 1, 1994 shall submit an application for a certificate of authority under Subsection C of this section no later than March 1, 1993. Each such applicant may continue to operate until

the superintendent acts upon the application. In the event that an application is denied under Section 59A-46-4 NMSA 1978, the applicant shall thereafter be treated as a health maintenance organization whose certificate of authority has been revoked.

C. Each application for a certificate of authority shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the superintendent and shall set forth or be accompanied by the following:

(1) a copy of the organizational documents of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement or other applicable documents and all amendments thereto;

(2) a copy of the bylaws, rules and regulations or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) a list of the names, addresses and official positions and biographical information on forms acceptable to the superintendent of the persons who are to be responsible for the conduct of the affairs and day to day operations of the applicant, including all members of the board of directors, board of trustees, executive committee or other governing board or committee and the principal officers in the case of a corporation or the partners or members in the case of a partnership or association;

(4) a copy of any contract form made or to be made between any class of providers and the health maintenance organization and a copy of any contract made or to be made between third party administrators, marketing consultants or persons listed in Paragraph (3) of this subsection and the health maintenance organization;

(5) a copy of the form of evidence of coverage to be issued to the enrollees;

(6) a copy of the form of group contract, if any, to be issued to employers, unions, trustees or other organizations;

(7) financial statements showing the applicant's assets, liabilities and sources of financial support, including both a copy of the applicant's most recent, regular certified financial statement and an unaudited current financial statement;

(8) a financial feasibility plan that includes detailed enrollment projections, the methodology for determining premium rates to be charged during the first twelve months of operations certified by an actuary or other person determined by the superintendent to be qualified, a three-year projection of balance sheets, a three-year projection of cash flow statements showing any capital expenditures, purchase and sale of investments and deposits with the state and income and expense statements anticipated from the start of operations for three years or until the organization has had net income for at least one year, if longer, a description of the proposed method of

marketing and a statement of the sources of working capital as well as any other sources of funding;

(9) a power of attorney duly executed by the applicant, if not domiciled in this state, appointing the superintendent, his successors in office and duly authorized deputies as the true and lawful attorney of such applicant in and for this state upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state may be served;

(10) a statement or map reasonably describing the geographic area or areas to be served;

(11) a description of the internal grievance procedures to be utilized for the investigation and resolution of enrollee complaints and grievances;

(12) a description of the proposed quality assurance program, including the formal organizational structure, methods for developing criteria, procedures for comprehensive evaluation of the quality of care rendered to enrollees and processes to initiate corrective action and reevaluation when deficiencies in provider or organizational performance are identified;

(13) a description of the procedures to be implemented to meet the protection against insolvency requirements in Section 59A-46-13 NMSA 1978;

(14) a list of the names, addresses and license numbers of all providers with which the health maintenance organization has agreements; and

(15) such other information as the superintendent may require to make the determinations required in Section 59A-46-4 NMSA 1978.

D. A health maintenance organization shall, unless otherwise provided for in Chapter 59A, Article 46 NMSA 1978, file a notice describing any substantial modification of the operation set out in the information required by Subsection C of this section. Such notice shall be filed with the superintendent prior to the modification. If the superintendent does not disapprove within thirty days of filing, such modification shall be deemed approved."

Section 4

Section 4. A new Section 59A-46-4 NMSA 1978 is enacted to read:

"59A-46-4. ISSUANCE OF CERTIFICATE OF AUTHORITY.--

A. Upon receipt of an application for issuance of a certificate of authority, the superintendent may transmit copies of such application and accompanying documents to the secretary of health.

B. If requested by the superintendent, the secretary of health shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished, has complied with Section 59A-46-7 NMSA 1978.

C. If requested by the superintendent, the secretary of health shall certify to the superintendent, within forty-five days of receipt of the application for issuance of a certificate of authority, that the proposed health maintenance organization meets the requirements of Section 59A-46-7 NMSA 1978 or notify the superintendent that the health maintenance organization does not meet such requirements and specify in what respects it is deficient.

D. The superintendent shall within forty-five days of receipt of certification or notice of deficiencies from the secretary of health pursuant to Subsection C of this section, or within sixty days of receipt of the application indicated in Subsection A of this section if no request has been made of the secretary of health, issue a certificate of authority to any person filing a completed application upon receiving the prescribed fees and upon the superintendent being satisfied that:

(1) the persons responsible for the conduct of the affairs of the applicant are competent, trustworthy and possess good reputations;

(2) any deficiencies identified by the secretary of health pursuant to Subsection C of this section have been corrected and the secretary of health has certified to the superintendent that the health maintenance organization's proposed plan of operation meets the requirements of Section 59A-46-7 NMSA 1978;

(3) the health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments or deductibles, or both; and

(4) the health maintenance organization is in compliance with Sections 59A-46-13 and 59A-46-15 NMSA 1978.

E. A certificate of authority shall be denied only after the superintendent complies with the requirements of Section 59A-46-20 NMSA 1978."

Section 5

Section 5. A new Section 59A-46-5 NMSA 1978 is enacted to read:

"59A-46-5. POWERS OF HEALTH MAINTENANCE ORGANIZATIONS.--

A. The powers of a health maintenance organization include, but are not limited to, the following:

(1) the purchase, lease, construction, renovation, operation or maintenance of hospitals, medical facilities, or both, and their ancillary equipment, and such property as may reasonably be required for its principal office or for such purposes as may be necessary in the transaction of the business of the organization;

(2) transactions between or among affiliated entities, including loans and the transfer of responsibility under all contracts, including without limitation provider and subscriber contracts between or among affiliates or between the health maintenance organization and its parent;

(3) the furnishing of health care services through providers, provider associations or agents for providers that are under contract with or employed by the health maintenance organization;

(4) the contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment and administration;

(5) the contracting with an authorized insurer in this state for the provision of insurance, indemnity or reimbursement against the cost of health care services provided by the health maintenance organization;

(6) the offering of other health care services, in addition to basic health care services; and

(7) the joint marketing of products with an insurer authorized to do business in this state as long as the company that is offering each product is clearly identified.

B. A health maintenance organization shall file notice, with adequate supporting information, with the superintendent prior to the exercise of any power granted in Paragraph (1), (2) or (4) of Subsection A of this section that may affect the financial soundness of the health maintenance organization. The superintendent shall disapprove such exercise of power only if in his opinion it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. If the superintendent does not disapprove within thirty days of the filing, it shall be deemed approved, but the superintendent may in his sole discretion postpone the action for an additional thirty days as necessary for proper consideration of the effects of the proposed action.

C. The superintendent may adopt rules and regulations exempting from the filing requirement of Subsection B of this section those activities having a de minimis effect."

Section 6

Section 6. A new Section 59A-46-6 NMSA 1978 is enacted to read:

"59A-46-6. FIDUCIARY RESPONSIBILITIES--FIDELITY BOND.--

A. Any director, officer, employee or partner of a health maintenance organization who receives, collects, disburses or invests funds in connection with the activities of the organization shall be responsible for such funds in a fiduciary relationship to the organization.

B. A health maintenance organization shall maintain in force a fidelity bond or fidelity insurance on the employees and officers, directors and partners described in Subsection A of this section in an amount not less than two hundred fifty thousand dollars ($250,000) for each health maintenance organization or a maximum of five million dollars ($5,000,000) in aggregate maintained on behalf of health maintenance organizations owned by a common parent corporation, or such sum as may be prescribed by the superintendent."

Section 7

Section 7. A new Section 59A-46-7 NMSA 1978 is enacted to read: "59A-46-7. QUALITY ASSURANCE PROGRAM.--

A. A health maintenance organization shall establish procedures to assure that the health care services provided to enrollees shall be rendered under reasonable standards of quality of care consistent with prevailing professionally recognized standards of medical practice. Such procedures shall include mechanisms to assure availability, accessibility and continuity of care.

B. A health maintenance organization shall have an ongoing internal quality assurance program to monitor and evaluate its health care services, including primary and specialist physician services, and ancillary and preventive health care services, across all institutional and non-institutional settings. The program shall include, at a minimum, the following:

(1) a written statement of goals and objectives that emphasizes improved health status in evaluating the quality of care rendered to enrollees;

(2) a written quality assurance plan that describes the following:

(a) the health maintenance organization's scope and purpose in quality assurance;

(b) the organizational structure responsible for quality assurance activities;

(c) contractual arrangements, where appropriate, for delegation of quality assurance activities;

(d) confidentiality policies and procedures;

(e) a system of ongoing evaluation activities;

(f) a system of focused evaluation activities;

(g) a system for credentialing providers and performing peer review activities; and

(h) duties and responsibilities of the designated physician responsible for the quality assurance activities;

(3) a written statement describing the system of ongoing quality assurance activities, including:

(a) problem assessment, identification, selection and study;

(b) corrective action, monitoring, evaluation and reassessment; and

(c) interpretation and analysis of patterns of care rendered to individual patients by individual providers;

(4) a written statement describing the system of focused quality assurance activities based on representative samples of the enrolled population that identifies method of topic selection, study, data collection, analysis, interpretation and report format; and

(5) written plans for taking appropriate corrective action whenever, as determined by the quality assurance program, inappropriate or substandard services have been provided or services that should have been furnished have not been provided.

C. A health maintenance organization shall record proceedings of formal quality assurance program activities and maintain documentation in a confidential manner. Quality assurance program minutes shall be available for examination by the superintendent and by the secretary of health if requested by the superintendent but shall not be disclosed to third parties except as permitted by the provisions of Chapter 59A, Article 46 NMSA 1978.

D. A health maintenance organization shall ensure the use and maintenance of an adequate patient record system that will facilitate documentation and retrieval of clinical information for the purpose of the health maintenance organization evaluating continuity and coordination of patient care and assessing the quality of health and medical care provided to enrollees.

E. Except as otherwise restricted or prohibited by state or federal law, enrollee clinical records shall be available to the superintendent or an authorized designee for examination and review to ascertain compliance with this section or as deemed necessary by the superintendent.

F. A health maintenance organization shall establish a mechanism for periodic reporting of quality assurance program activities to the governing body, providers and appropriate organization staff."

Section 8

Section 8. A new Section 59A-46-8 NMSA 1978 is enacted to read:

"59A-46-8. REQUIREMENTS FOR GROUP CONTRACT, INDIVIDUAL CONTRACT AND EVIDENCE OF COVERAGE.--

A. Every group and individual contract holder is entitled to a group or individual contract. The contract shall not contain provisions or statements that are unjust, unfair, inequitable, misleading, deceptive or that encourage misrepresentation as described in Section 59A-16-4 NMSA 1978. The contract shall contain a clear statement of the following:

(1) name and address of the health maintenance organization;

(2) eligibility requirements;

(3) benefits and services within the service area;

(4) emergency care benefits and services;

(5) out-of-area benefits and services, if any;

(6) copayments, deductibles or other out-of-pocket expenses;

(7) limitations and exclusions;

(8) enrollee termination;

(9) enrollee reinstatement, if any;

(10) claims procedures;

(11) enrollee grievance procedures;

(12) continuation of coverage;

(13) conversion;

(14) extension of benefits, if any;

(15) coordination of benefits, if applicable;

(16) subrogation, if any;

(17) description of the service area;

(18) entire contract provision;

(19) term of coverage;

(20) cancellation of group or individual contract holder;

(21) renewal;

(22) reinstatement of group or individual contract holder, if any;

(23) grace period; and

(24) conformity with state law.

B. An evidence of coverage may be filed as part of the group contract to describe the provisions required in Paragraphs (1) through (17) and (20) of Subsection A of this section.

C. In addition to those provisions required in Paragraphs (1) through (24) of Subsection A of this section, an individual contract shall provide for a ten-day period to examine and return the contract and have the premium refunded. If services were received during the ten-day period, and the person returns the contract to receive a refund of the premium paid, he or she must pay for such services.

D. Every subscriber shall receive an evidence of coverage from the group contract holder or the health maintenance organization. The evidence of coverage shall not contain provisions or statements that are unfair, unjust, inequitable, misleading, deceptive or that encourage misrepresentation as described in Section 59A-16-4 NMSA 1978. The evidence of coverage shall contain a clear statement of the provisions required in Paragraphs (1) through (17) and (20) of Subsection A of this section.

E. The superintendent may adopt regulations establishing readability standards for individual contract, group contract and evidence of coverage forms.

F. No group or individual contract, evidence of coverage or amendment thereto shall be delivered or issued for delivery in this state, unless its form has been

filed with and approved by the superintendent, subject to Subsections G and H of this section.

G. If an evidence of coverage issued pursuant to and incorporated in a contract issued in this state is intended for delivery in another state and the evidence of coverage has been approved for use in the state in which it is to be delivered, the evidence of coverage need not be submitted to the superintendent for approval.

H. Every form of group or individual contract, evidence of coverage or amendment thereto required to be filed pursuant to the provisions of Subsection F of this section shall be filed with the superintendent not less than thirty days prior to delivery or issue for delivery in this state. At any time during the initial thirty day period, the superintendent may extend the period for review for an additional thirty days. Notice of an extension shall be in writing. At the end of the review period, the form is deemed approved if the superintendent has taken no action. The filer must notify the superintendent in writing prior to using a form that is deemed approved.

I. At any time, after thirty days notice and for cause shown, the superintendent may withdraw approval of any form of group or individual contract, evidence of coverage or amendment thereto, effective at the end of the thirty-day notice period.

J. When a filing is disapproved or approval of a form of group or individual contract, evidence of coverage or amendment thereto is withdrawn, the superintendent shall give the health maintenance organization written notice of the reasons for disapproval and in the notice shall inform the health maintenance organization that within thirty days of receipt of the notice the health maintenance organization may request a hearing. A hearing shall be conducted within thirty days after the superintendent has received the request for hearing.

K. The superintendent may require the submission of whatever relevant information he deems necessary in determining whether to approve or disapprove a filing made pursuant to this section."

Section 9

Section 9. A new Section 59A-46-9 NMSA 1978 is enacted to read:

"59A-46-9. ANNUAL REPORT.--

A. Every health maintenance organization shall annually, on or before the first day of March, file a report, verified by at least two principal officers, with the superintendent covering the preceding calendar year.

B. The report shall be on forms prescribed by the superintendent and shall include:

(1) a financial statement of the organization prepared pursuant to forms prescribed by the superintendent, including its balance sheet and receipts and disbursements for the preceding year;

(2) any material changes in the information submitted pursuant to Subsection C of Section 59A-46-3 NMSA 1978;

(3) the number of persons enrolled during the year and the number of enrollees as of the end of the year; and

(4) such other reasonable information materially relating to the performance of the health maintenance organization as is necessary to enable the superintendent to carry out his duties under the Insurance Code.

C. In addition, the health maintenance organization shall file by the dates indicated:

(1) audited financial statements as of the end of the preceding calendar year on or before June 1, or within one hundred twenty days following the end of its fiscal year, whichever is later;

(2) a list of the providers who have executed a contract that complies with Subsection D of Section 59A-46-13 NMSA 1978 on or before March 1; and

(3) a description of the grievance procedures and the total number of grievances handled through such procedures, a compilation of the causes underlying those grievances and a summary of the final disposition of those grievances, on or before March 1.

D. The superintendent may require such additional reports as are deemed necessary and appropriate to enable the superintendent to carry out his duties under the Health Maintenance Organization Law."

Section 10

Section 10. A new Section 59A-46-10 NMSA 1978 is enacted to read:

"59A-46-10. INFORMATION TO ENROLLEES OR SUBSCRIBERS.--

A. A health maintenance organization shall provide to its subscribers or to its group contract holders for distribution to subscribers a list of providers upon enrollment and re-enrollment.

B. Every health maintenance organization shall notify its subscribers within thirty days of any material change in the operation of the organization that will affect the service to subscribers directly.

C. An enrollee shall be notified in writing by the health maintenance organization of the termination of any designated primary care provider who provided health care services to that enrollee. The health maintenance organization shall provide assistance to the enrollee in transferring to another participating primary care provider.

D. The health maintenance organization shall provide to subscribers information on how services may be obtained, where additional information on access to services may be obtained and a number where the enrollee may contact the health maintenance organization at no cost to the enrollee."

Section 11

Section 11. A new Section 59A-46-11 NMSA 1978 is enacted to read:

"59A-46-11. GRIEVANCE PROCEDURES.--

A. Every health maintenance organization shall establish and maintain a grievance procedure that has been approved by the superintendent to provide procedures for the resolution of grievances initiated by enrollees. The health maintenance organization shall maintain records regarding grievances received since the date of its last examination of such grievances.

B. The superintendent or his designee may examine such grievance procedures and records."

Section 12. A new Section 59A-46-12 NMSA 1978 is enacted to read:

"59A-46-12. INVESTMENTS.--With the exception of investments made in accordance with Paragraph (1) of Subsection A of Section 59A-46-5 NMSA 1978, the funds of a health maintenance organization shall be invested only in accordance with Chapter 59A, Article 9 NMSA 1978 and such regulations as the superintendent may promulgate consistent with that article and the provisions of the Health Maintenance Organization Law."

Section 13

Section 13. A new Section 59A-46-13 NMSA 1978 is enacted to read:

"59A-46-13. PROTECTION AGAINST INSOLVENCY.--

A. Health maintenance organizations shall be subject to the following net worth requirements:

(1) before any certificate of authority is issued to a health maintenance organization, it shall have an initial net worth of one million five hundred thousand dollars ($1,500,000) and shall thereafter maintain the minimum net worth required under Paragraph (2) of this subsection;

(2) except as provided in Paragraphs (3) and (4) of this subsection, every health maintenance organization shall maintain a minimum net worth equal to the greater of:

(a) one million dollars ($1,000,000);

(b) two percent of annual premium revenues as reported on the most recent annual financial statement filed with the superintendent on the first one hundred fifty million dollars ($150,000,000) of premium revenues and one percent of annual premium on the premium in excess of one hundred fifty million dollars ($150,000,000);

(c) an amount equal to the sum of three months uncovered health care expenditures as reported on the most recent financial statement filed with the superintendent; or

(d) an amount equal to the sum of: 1) eight percent of annual health care expenditures for enrollees under prepaid contracts except those paid on a capitated basis or managed hospital payment basis as reported on the most recent financial statement filed with the superintendent; and 2) four percent of annual hospital expenditures for enrollees under prepaid contracts paid on a capitated basis and a managed hospital payment basis as reported on the most recent financial statement filed with the superintendent;

(3) a health maintenance organization licensed before the effective date of Chapter 59A, Article 46 NMSA 1978 shall maintain a minimum net worth of:

(a) twenty-five percent of the amount required by Paragraph (2) of this subsection by December 31, 1994;

(b) fifty percent of the amount required by Paragraph (2) of this subsection by December 31, 1995;

(c) seventy-five percent of the amount required by Paragraph (2) of this subsection by December 31, 1996; and

(d) one hundred percent of the amount required by Paragraph (2) of this subsection by December 31, 1997; and

(4) in determining net worth for the purposes of Paragraph (3) of this subsection:

(a) no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the superintendent and any interest obligation relating to the repayment of any subordinated debt must be similarly subordinated;

(b) the interest expenses relating to the repayment of any fully subordinated debt shall be considered covered expenses;

(c) any debt incurred by a surplus note meeting the requirements of Section 59A-34-23 NMSA 1978, and otherwise acceptable to the superintendent, shall not be considered a liability and shall be recorded as equity; and

(d) preferred stock shall not be considered debt.

B. Health maintenance organizations shall be subject to the following deposit requirements:

(1) unless otherwise provided below, each health maintenance organization shall deposit with the superintendent or, at the discretion of the superintendent, with any organization or trustee acceptable to him through which a custodial or controlled account is utilized, cash, securities or any combination of these or other measures that are acceptable to him that at all times shall have a value of not less than three hundred thousand dollars ($300,000);

(2) a health maintenance organization that is in operation on the effective date of this section shall make a deposit equal to one hundred fifty thousand dollars ($150,000) and, in the second year, the amount of the additional deposit for a health maintenance organization that is in operation on the effective date of this section shall be equal to one hundred fifty thousand dollars ($150,000), for a total of three hundred thousand dollars ($300,000);

(3) the deposit shall be an admitted asset of the health maintenance organization in the determination of net worth;

(4) all income from deposits shall be an asset of the organization, but a health maintenance organization that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities or any combination of these or other assets of equal amount and value;

(5) any securities deposited pursuant to the provisions of this subsection shall be approved by the superintendent before being deposited or substituted;

(6) the deposit shall be used to protect the interests of the health maintenance organization's enrollees and to assure continuation of health care services

to enrollees of a health maintenance organization that is in rehabilitation or conservation;

(7) the superintendent may use a deposit made pursuant to the provisions of this subsection for administrative costs directly attributable to a receivership or liquidation, and if the health maintenance organization is placed in receivership or liquidation, the deposit shall be an asset subject to the provisions of the applicable liquidation law; and

(8) the superintendent may reduce or eliminate the deposit requirement if the health maintenance organization deposits with the state treasurer, insurance superintendent or other official body of the state or jurisdiction of domicile for the protection of all subscribers and enrollees, wherever located, of such health maintenance organization, cash, acceptable securities or surety, and delivers to the superintendent a certificate to such effect, duly authenticated by the appropriate state official holding the deposit.

C. Every health maintenance organization shall include when determining liabilities an amount estimated in the aggregate to provide for:

(1) any unearned premium;

(2) the payment of all claims for health care expenditures that have been incurred, whether reported or unreported, which are unpaid and for which the health maintenance organization is or may be liable;

(3) the expense of adjustment or settlement of the claims described in Paragraph (2) of this subsection; and

(4) contract liabilities for continuation of coverage or conversion rights not covered by future premiums or hold harmless agreements.

D. Liabilities described in Subsection C of this section shall be computed in accordance with regulations adopted by the superintendent upon reasonable consideration of the ascertained experience and character of the health maintenance organization.

E. Every contract between a health maintenance organization and a participating provider of health care services shall be in writing and shall set forth that in the event the health maintenance organization fails to pay for health care services as set forth in the contract, the subscriber or enrollee shall not be liable to the provider for any sums owed by the health maintenance organization. In the event that the participating provider contract has not been reduced to writing or the contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the subscriber or enrollee sums owed by the health maintenance organization. No participating provider or agent, trustee or assignee thereof, may

maintain any action at law against a subscriber or enrollee to collect sums owed by the health maintenance organization.

F. The superintendent shall require that each health maintenance organization have a plan for handling insolvency that allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. In considering the plan, the superintendent may require:

(1) insurance to cover the expenses to be paid for continued benefits after an insolvency;

(2) provisions in provider contracts that obligate the provider to provide services for the duration of the period after the health maintenance organization's insolvency for which premium payment has been made and until the enrollees' discharge from inpatient facilities;

(3) insolvency reserves;

(4) acceptable letters of credit; or

(5) any other arrangements to assure that benefits are continued as specified above.

G. An agreement to provide health care services between a provider and a health maintenance organization shall require that if the provider terminates the agreement, the provider shall give the organization at least sixty days' advance notice of termination."

Section 14

Section 14. A new Section 59A-46-14 NMSA 1978 is enacted to read:

"59A-46-14. UNCOVERED EXPENDITURES INSOLVENCY DEPOSIT.--

A. If at any time uncovered expenditures exceed ten percent of total health care expenditures, a health maintenance organization shall place an uncovered expenditures insolvency deposit with the superintendent, with any organization or trustee acceptable to the superintendent through which a custodial or controlled account is maintained, cash or securities that are acceptable to the superintendent. Such deposit shall at all times have a fair market value in an amount of one hundred twenty percent of the health maintenance organization's outstanding liability for uncovered expenditures for enrollees in this state, including incurred but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month. If a health maintenance organization is not otherwise required

to file a quarterly report, it shall file a report within forty-five days of the end of the calendar quarter with information sufficient to demonstrate compliance with this subsection.

B. The deposit required under Subsection A of this section is in addition to the deposit required under Section 59A-46-13 NMSA 1978 and is an admitted asset of the health maintenance organization in the determination of net worth. All income from such deposits or trust accounts shall be assets of the health maintenance organization and may be withdrawn from such deposit or account quarterly with the approval of the superintendent.

C. A health maintenance organization that has made a deposit may withdraw that deposit or any part of the deposit if a substitute deposit of cash or securities of equal amount and value is made, the fair market value of the deposit exceeds the amount of the required deposit, or the required deposit under Subsection A of this section is reduced or eliminated. Deposits, substitutions or withdrawals may be made only with the prior written approval of the superintendent.

D. The deposit required under Subsection A of this section is in trust and may be used only as provided under this section. The superintendent may use the deposit of an insolvent health maintenance organization for administrative costs associated with administering the deposit and payment of claims of enrollees of this state for uncovered expenditures in this state. Claims for uncovered expenditures shall be paid on a pro rata basis based on assets available to pay such ultimate liability for incurred expenditures. Partial distribution may be made pending final distribution. Any amount of the deposit remaining shall be paid into the liquidation or receivership of the health maintenance organization.

E. The superintendent may by regulation prescribe the time, manner and form for filing claims under Subsection D of this section.

F. The superintendent may by regulation or order require health maintenance organizations to file annual, quarterly or more frequent reports as he deems necessary to demonstrate compliance with this section. The superintendent may require that the reports include liability for uncovered expenditures as well as an audit opinion."

Section 15

Section 15. A new Section 59A-46-15 NMSA 1978 is enacted to read:

"59A-46-15. ENROLLMENT PERIOD-- REPLACEMENT COVERAGE IN THE EVENT OF INSOLVENCY.--

A. In the event of an insolvency of a health maintenance organization, upon order of the superintendent, all other carriers that participated in the enrollment

process with the insolvent health maintenance organization at a group's last regular enrollment period shall offer such group's enrollees of the insolvent health maintenance organization a thirty-day enrollment period commencing upon the date of insolvency. Each carrier shall offer such enrollees of the insolvent health maintenance organization the same coverages and rates that it had offered to the enrollees of the group at its last regular enrollment period.

B. If no other carrier had been offered to some groups enrolled in the insolvent health maintenance organization, or if the superintendent determines that the other health benefit plans lack sufficient health care delivery resources to assure that health care services will be available and accessible to all of the group enrollees of the insolvent health maintenance organization, then the superintendent shall allocate equitably the insolvent health maintenance organization's group contracts for such groups among all health maintenance organizations that operate within a portion of the insolvent health maintenance organization's service area, taking into consideration the health care delivery resources and total membership of each health maintenance organization. Each health maintenance organization to which a group or groups are so allocated shall offer such group or groups the health maintenance organization's existing coverage that is most similar to each group's coverage with the insolvent health maintenance organization at rates determined in accordance with the successor health maintenance organization's existing rating methodology.

C. The superintendent shall also allocate equitably the insolvent health maintenance organization's nongroup enrollees that are unable to obtain other coverage among all health maintenance organizations that operate within a portion of the insolent health maintenance organization's service area, taking into consideration the health care delivery resources of each such health maintenance organization. Each health maintenance organization to which nongroup enrollees are allocated shall offer such nongroup enrollees the health maintenance organization's existing coverage for individual or conversion coverage as determined by his type of coverage in the insolvent health maintenance organization at rates determined in accordance with the successor health maintenance organization's existing rating methodology. Successor health maintenance organizations that do not offer direct nongroup enrollment may aggregate all of the allocated nongroup enrollees into one group for rating and coverage purposes.

D. Any carrier providing replacement coverage with respect to group hospital, medical or surgical expense or service benefits within a period of sixty days from the date of discontinuance of a prior health maintenance organization contract or policy providing such hospital, medical or surgical expense or service benefits shall cover immediately all enrollees who were covered validly under the previous health maintenance organization contract or policy at the date of discontinuance and who would otherwise be eligible for coverage under the succeeding carrier's contract, regardless of any provisions of the contract relating to active employment or hospital confinement or pregnancy. For purposes of this section "discontinuance" means the termination of the contract between the group contract holder and a health maintenance organization due to the insolvency of the health maintenance organization, and does not

refer to the termination of any agreement between any individual enrollee and the health maintenance organization.

E. Except to the extent benefits for the condition would have been reduced or excluded under the prior carrier's contract or policy, no provision in a succeeding carrier's contract of replacement coverage that would operate to reduce or exclude benefits on the basis that the condition giving rise to benefits existed before the effective date of the succeeding carrier's contract shall be applied with respect to those enrollees validly covered under the prior carrier's contract or policy on the date of discontinuance."

Section 16

Section 16. A new Section 59A-46-16 NMSA 1978 is enacted to read:

"59A-46-16. FILING REQUIREMENTS FOR RATING INFORMATION.--

A. No premium rate may be used until either a schedule of premium rates or methodology for determining premium rates has been filed with and approved by the superintendent. At the time the health maintenance organization files the rate with the superintendent it shall also file a schedule of benefits to which the rate applies.

B. Either a specific schedule of premium rates, or a methodology for determining premium rates, shall be established in accordance with actuarial principles for various categories of enrollees; provided that the premium applicable to an enrollee shall not be individually determined based on the status of the enrollee's health. A certification by a qualified actuary or other qualified person acceptable to the superintendent as to the appropriateness of the rates or of the use of the methodology, based on reasonable assumptions, shall accompany the filing along with adequate supporting information.

C. The superintendent may disapprove any such rates, or methodology for determining rates, found by him to be excessive, inadequate or unfairly discriminatory, considering the benefits to be provided. If the superintendent disapproves such filing, he shall notify the health maintenance organization, specifying the reasons for his disapproval. A hearing shall be conducted within thirty days after a request in writing by the person filing. The schedule or methodology shall be deemed approved if the superintendent does not disapprove the filing within thirty days, but the superintendent in his sole discretion may postpone taking action for an additional thirty days as necessary for proper consideration of the filing."

Section 17

Section 17. A new Section 59A-46-17 NMSA 1978 is enacted to read:

"59A-46-17. REGULATION OF HEALTH MAINTENANCE ORGANIZATION AGENTS.--

A. Requirements and procedures for licensing of health maintenance organization agents shall be governed by the provisions of Chapter 59A, Articles 11 and 12 NMSA 1978 and any regulations adopted by the superintendent pertaining thereto.

B. None of the following shall be required to hold a health maintenance organization agent license:

(1) any regular salaried officer or employee of a health maintenance organization who devotes substantially all of his time to activities other than the taking or transmitting of applications or membership fees or premiums for health maintenance organization membership, or who receives no commission or other compensation directly dependent upon the business obtained and who does not solicit or accept from the public applications for health maintenance organization membership;

(2) employers or their officers or employees or the trustees of any employee benefit plan to the extent that such employers, officers, employees or trustees are engaged in the administration or operation of any program of employee benefits involving the use of health maintenance organization memberships, if those employers, officers, employees or trustees are not compensated directly or indirectly by the health maintenance organization issuing such health maintenance organization memberships;

(3) banks or their officers and employees to the extent that such banks, officers and employees collect and remit charges by charging same against accounts of depositors on the orders of such depositors; or

(4) any person or the employee of any person who has contracted to provide administrative, management or health care services to a health maintenance organization and who is compensated for those services by the payment of an amount calculated as a percentage of the revenues, net income or profit of the health maintenance organization, if that method of compensation is the sole basis for subjecting that person or the employee of the person to the provisions of the Health Maintenance Organization Law.

C. The superintendent may by rule exempt certain classes of persons from the requirement of obtaining a license if:

(1) the functions they perform do not require special competence, trustworthiness or the regulatory surveillance made possible by licensing; or

(2) other existing safeguards make regulation unnecessary."

Section 18

Section 18. A new Section 59A-46-18 NMSA 1978 is enacted to read:

"59A-46-18. POWERS OF INSURERS.--

A. An authorized insurer may either directly or through a subsidiary or affiliate organize and operate a health maintenance organization under the provisions of the Health Maintenance Organization Law. Notwithstanding any other law that may be inconsistent with the cited law, any two or more such insurance companies, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization. The business of insurance is deemed to include the providing of health care by a health maintenance organization owned or operated by an insurer or a subsidiary thereof.

B. An authorized insurer may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through health maintenance organizations and to provide coverage in the event of the failure of the health maintenance organization to meet its obligations. Among other things, under such contracts the insurer may make benefit payments to health maintenance organizations for health care services rendered by providers."

Section 19

Section 19. A new Section 59A-46-19 NMSA 1978 is enacted to read:

"59A-46-19. EXAMINATIONS.--

A. The superintendent may make an examination of the affairs of any health maintenance organization and providers with whom such organization has contracts, agreements or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

B. The superintendent may make or request the secretary of health to make an examination concerning the quality assurance program of the health maintenance organization and of any providers with whom such organization has contracts, agreements or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state.

C. Every health maintenance organization and provider shall submit its books and records for such examinations and in every way facilitate the completion of the examination. Medical records of individuals and contract providers shall not be subject to such examination. For the purpose of examinations, the superintendent and the secretary
of health may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of such providers concerning their business.

D. The expenses of examinations under this section shall be assessed against the health maintenance organization being examined and remitted to the superintendent.

E. In lieu of such examination, the superintendent may accept the report of an examination made by the superintendent or secretary of health of another state.

F. Examination procedures shall be governed by the applicable provisions of Chapter 59A, Article 4 NMSA 1978."

Section 20

Section 20. A new Section 59A-46-20 NMSA 1978 is enacted to read:

"59A-46-20. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY.--

A. Any certificate of authority issued under the provisions of the Health Maintenance Organization Law may be suspended or revoked, and any application for a certificate of authority may be denied if the superintendent finds that:

(1) the health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under Section 59A-46-3 NMSA 1978, unless amendments to such submissions have been filed with and approved by the superintendent;

(2) the health maintenance organization issues an evidence of coverage or uses a schedule of charges for health care services that does not comply with the requirements of Sections 59A-46-8 and 59A-46-16 NMSA 1978;

(3) the health maintenance organization does not provide or arrange for basic health care services;

(4) the secretary of health has certified to the superintendent that:

(a) the health maintenance organization does not meet the requirements of Paragraph (2) of Subsection A of Section 59A-46-4 NMSA 1978; or

(b) the health maintenance organization is unable to fulfill its obligations to furnish health care services;

(5) the health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(6) the health maintenance organization has failed to correct, within the time prescribed by Subsection C of this section, any deficiency occurring due to the health maintenance organization's prescribed minimum net worth being impaired;

(7) the health maintenance organization has failed to implement the grievance procedures required by Section 59A-46-11 NMSA 1978 in a reasonable manner to resolve valid complaints;

(8) the health maintenance organization, or any person on its behalf, has engaged in any practice that under Chapter 59A, Article 16 NMSA 1978 is defined or prohibited as, or determined to be, an unfair method of competition, or an unfair or deceptive act or practice, or fraudulent;

(9) the continued operation of the health maintenance organization would be hazardous to its enrollees; or

(10) the health maintenance organization has otherwise failed substantially to comply with the provisions of the Health Maintenance Organization Law.

B. In addition to or in lieu of suspension or revocation of a certificate of authority pursuant to this section, the applicant or health maintenance organization may be subjected to an administrative penalty of up to five thousand dollars ($5,000) for each cause for suspension or revocation, but if the violation is willful or intentional, the administrative penalty may be up to ten thousand dollars ($10,000).

C. Whenever the superintendent finds that the net worth maintained by any health maintenance organization subject to the provisions of the Health Maintenance Organization Law is less than the minimum net worth required to be maintained pursuant to the provisions of Section 59A-46-13 NMSA 1978, he shall give written notice to the health maintenance organization of the amount of the deficiency and require the health maintenance organization to:

(1) file with the superintendent a plan for correction of the deficiency acceptable to the superintendent; and

(2) correct the deficiency within a reasonable time, not to exceed sixty days, unless an extension of time, not to exceed sixty additional days, is granted by the superintendent.

D. A deficiency found to exist by the superintendent pursuant to the provisions of Subsection C of this section shall be deemed an impairment, and failure to correct the impairment in the prescribed time shall be grounds for suspension or revocation of the certificate of authority of the health maintenance organization or for placing it in conservation, rehabilitation or liquidation.

E. Unless allowed by the superintendent no health maintenance organization or person acting on its behalf may, directly or indirectly, renew, issue or deliver any certificate, agreement or contract of coverage in this state, for which a premium is charged or collected, when the health maintenance organization writing such coverage is impaired, and the fact of such impairment is known to the health maintenance organization or to such person. However, the existence of an impairment shall not prevent the issuance or renewal of a certificate, agreement or contract when the enrollee exercises an option granted under the plan to obtain a new, renewed or converted coverage.

F. A certificate of authority shall not be suspended or revoked or an application for a certificate of authority denied or an administrative penalty imposed unless:

(1) the suspension, revocation, denial or imposition is by written order and is sent to the health maintenance organization or applicant by certified or registered mail; and

(2) the written order states the grounds, charges or conduct on which the suspension, revocation, denial or imposition is based.

G. The health maintenance organization or applicant may in writing request a hearing within thirty days
from the date of mailing of an order suspending or revoking a certificate of authority, denying an application or imposing an administrative penalty. If no written request is made, such order shall be final upon the expiration of the thirty days.

H. If the health maintenance organization or applicant requests a hearing pursuant to the provisions of Subsection G of this section, the superintendent shall issue a written notice of hearing and send it to the health maintenance organization or applicant by certified or registered mail stating:

(1) a specific time for the hearing, which may not be less than twenty nor more than thirty days after mailing of the notice of hearing; and

(2) a specific place for the hearing, which may be either in Santa Fe county or in the county where the health maintenance organization's or applicant's principal place of business is located.

I. After a hearing held pursuant to the provisions of Subsection H of this section or upon failure of the health maintenance organization to appear at the hearing, the superintendent shall take whatever action he deems necessary based on written findings and shall mail his decision to the health maintenance organization or applicant.

J. The provisions of Chapter 59A, Article 4 NMSA 1978 shall apply to proceedings under this section to the extent they are not in conflict with Subsection H of this section.

K. When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

L. When the certificate of authority of a health maintenance organization is revoked, that organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation whatsoever. The superintendent may, by written order, permit such further operation of the organization as he may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage."

Section 21

Section 21. A new Section 59A-46-21 NMSA 1978 is enacted to read:

"59A-46-21. REHABILITATION, LIQUIDATION OR CONSERVATION OF HEALTH MAINTENANCE ORGANIZATIONS.--

A. Any rehabilitation, liquidation or conservation of a health maintenance organization shall be deemed to be the rehabilitation, liquidation or conservation of an insurer and shall be conducted under the supervision of the superintendent pursuant to the law governing the rehabilitation, liquidation or conservation of insurers. The superintendent may apply for an order directing him to rehabilitate, liquidate or conserve a health maintenance organization upon any one or more grounds set out in Chapter 59A, Article 41 NMSA 1978 or when in his opinion the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this state. Enrollees shall have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

B. For purpose of determining the priority of distribution of general assets, claims of enrollees and enrollees' beneficiaries shall have the same priority as established by Subsection C of Section 59A-41-44 NMSA 1978 for policyholders and beneficiaries of insureds of insurance companies. If an enrollee is liable to any provider for services provided pursuant to and covered by the health care plan, that liability shall have the status of an enrollee claim for distribution of general assets.

C. Any provider who is obligated by statute or agreement to hold enrollees harmless from liability for services provided pursuant to and covered by a health care

plan shall have a priority of distribution of the general assets immediately following that of enrollees and enrollees' beneficiaries as described in Subsection B of this section and immediately preceding the priority of distribution described in Subsection D of Section 59A-41-44 NMSA 1978."

Section 22

Section 22. A new Section 59A-46-22 NMSA 1978 is enacted to read: "59A-46-22. SUMMARY ORDERS AND SUPERVISION.--

A. Whenever the superintendent determines that the financial condition of any health maintenance organization is such that its continued operation might be hazardous to its enrollees, creditors or the general public, or that it has violated any provision of the Health Maintenance Organization Law, he may, after notice and hearing, order the health maintenance organization to take such action as may be reasonably necessary to rectify such condition or violation, including but not limited to one or more of the following:

(1) reduce the total amount of present and potential liability for benefits by reinsurance or other method acceptable to the superintendent;

(2) reduce the volume of new business being accepted;

(3) reduce expenses by specified methods;

(4) suspend or limit the writing of new business for a period of time;

(5) increase the health maintenance organization's capital and surplus by contribution; or

(6) take such other steps as the superintendent may deem appropriate under the circumstances, including suspension or revocation of the certificate or authority or assessment of administrative penalties as provided in Section 59A-46-20 NMSA 1978.

B. For purposes of this section, the violation by a health maintenance organization of any law of this state to which such health maintenance organization is subject shall be deemed a violation of the provisions of the Health Maintenance Organization Law.

C. The superintendent is authorized to make rules and regulations setting uniform standards and criteria for early warning that the continued operation of any health maintenance organization might be hazardous to its enrollees, creditors or the general public and setting standards for evaluating the financial condition of any health maintenance organization, which standards shall be consistent with the purposes expressed in Subsection A of this section.

D. The remedies and measures available to the superintendent under this section shall be in addition to, and not in lieu of, the remedies and measures available to the superintendent under the provisions of Chapter 59A, Article 41 NMSA 1978."

Section 23

Section 23. A new Section 59A-46-23 NMSA 1978 is enacted to read:

"59A-46-23. REGULATIONS.--The superintendent may, after notice and hearing, adopt and promulgate reasonable rules and regulations as are necessary or proper to carry out the provisions of the Health Maintenance Organization Law."

Section 24

Section 24. A new Section 59A-46-24 NMSA 1978 is enacted to read:

"59A-46-24. FEES.--Every health maintenance organization subject to the provisions of the Health Maintenance Organization Law shall pay to the superintendent all applicable fees specified in Section 59A-6-1 NMSA 1978."

Section 25

Section 25. A new Section 59A-46-25 NMSA 1978 is enacted to read:

"59A-46-25. PENALTIES AND ENFORCEMENT.--

A. The superintendent may, in lieu of suspension or revocation of a certificate of authority pursuant to the provisions of Section 59A-46-20 NMSA 1978, levy an administrative penalty in an amount up to five thousand dollars ($5,000), except that if the violation is willful or intentional, the administrative penalty may be up to ten thousand dollars ($10,000). The superintendent may augment this penalty by an amount equal to the sum that he calculates to be the damages suffered by enrollees or other members of the public.

B. If the superintendent shall for any reason have cause to believe that any violation of the provisions of the Health Maintenance Organization Law has occurred or is threatened, the superintendent may give notice to the health maintenance organization and to the representatives, or other persons who appear to be involved in such suspected violation, to arrange a conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to such suspected violation and, in the event it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing such violation.

C. A conference arranged under the provisions of Subsection B of this section shall not be governed by any formal procedural requirements, and may be

conducted in such manner as the superintendent may deem appropriate under the circumstances.

D. The superintendent may issue an order directing a health maintenance organization or a representative of a health maintenance organization to cease and desist from engaging in any act or practice in violtion of the provisions of the Health Maintenance Organization Law. Within thirty days after service of the cease and desist order, the respondent may request a hearing on the question of whether acts or practices in violation of that law have occurred. Such hearings shall be governed by the provisions of Chapter 59A, Article 4 NMSA 1978.

E. In the case of any violation of the provisions of the Health Maintenance Organization Law, if the superintendent elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order issued pursuant to Subsection D of this section, the superintendent may institute a proceeding to obtain injunctive or other appropriate relief in the Santa Fe county district court.

F. Notwithstanding any other provisions of the Health Maintenance Organization Law, if a health maintenance organization fails to comply with the net worth requirement of that law, the superintendent is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrollees."

Section 26

Section 26. A new Section 59A-46-26 NMSA 1978 is enacted to read:

"59A-46-26. FILINGS AND REPORTS AS PUBLIC DOCUMENTS.--All applications, filings and reports required under the Health Maintenance Organization Law shall be treated as public documents, except those that are trade secrets or privileged or confidential quality assurance, commercial or financial information, other than any annual financial statement that may be required under Section 59A-46-9 NMSA 1978."

Section 27

Section 27. A new Section 59A-46-27 NMSA 1978 is enacted to read:

"59A-46-27. CONFIDENTIALITY OF MEDICAL INFORMATION AND LIMITATION OF LIABILITY.--

A. Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except:

(1) to the extent that it may be necessary to carry out the purposes of the Health Maintenance Organization Law;

(2) upon the express consent of the enrollee or applicant;

(3) pursuant to statute or court order for the production of evidence or the discovery thereof; or

(4) in the event of claim or litigation between such person and the health maintenance organization in which such data or information is pertinent.

B. A health maintenance organization shall be entitled to claim any statutory privileges against disclosure of information described in Subsection A of this section that the provider who furnished the information to the health maintenance organization is entitled to claim.

C. A person who, in good faith and without malice, takes any action or makes any decision or recommendation as a member, agent or employee of a health care review committee or who furnishes any records, information or assistance to such a committee shall not be subject to liability for civil damages or any legal action in consequence of such action, nor shall the health maintenance organization that established such committee or the officers, directors, employees or agents of such health maintenance organization be liable for the activities of any such person. The provisions of this subsection do not relieve any person of liability arising from treatment of a patient.

D. The information considered by a health care review committee and the records of their actions and proceedings shall be confidential and not subject to subpoena or order to produce except in proceedings before the appropriate state licensing or certifying agency, or in an appeal, if permitted, from the committee's findings or recommendations. No member of a health care review committee, or officer, director or other member of a health maintenance organization or its staff engaged in assisting such committee, or any person assisting or furnishing information to such committee may be subpoenaed to testify in any judicial or quasi-judicial proceeding if such subpoena is based solely on such activities.

E. Information considered by a health care review committee and the records of its actions and proceedings that are used pursuant to Subsection D of this section by a state licensing or certifying agency or in an appeal shall be kept confidential and shall be subject to the same provision concerning discovery and use in legal actions as are the original information and records in the possession and control of a health care review committee.

F. To fulfill its obligations under Section 59A-46-7 NMSA 1978, the health maintenance organization shall have access to treatment records and other information pertaining to the diagnosis, treatment or health status of any enrollee."

Section 28

Section 28. A new Section 59A-46-28 NMSA 1978 is enacted to read:

"59A-46-28. AUTHORITY TO CONTRACT.--The secretary of health, in carrying out his obligations as requested by the superintendent under the provisions of the Health Maintenance Organization Law, may contract with qualified persons to make recommendations concerning the determinations required to be made by him, which recommendations may be accepted in full or in part or rejected entirely."

Section 29

Section 29. A new Section 59A-46-30 NMSA 1978 is enacted to read:

"59A-46-30. STATUTORY CONSTRUCTION AND RELATIONSHIP TO OTHER LAWS.--

A. The provisions of the Insurance Code other than Chapter 59A, Article 46 NMSA 1978 shall not apply to health maintenance organizations except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health maintenance organizations, their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives, and, for the purposes of such applicability, a health maintenance organization may therein be referred to as an "insurer":

(1) Chapter 59A, Article 1 NMSA 1978;

(2) Chapter 59A, Article 2 NMSA 1978;

(3) Chapter 59A, Article 3 NMSA 1978;

(4) Chapter 59A, Article 4 NMSA 1978;

(5) Subsection C of Section 59A-5-22 NMSA 1978;

(6) Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;

(7) Chapter 59A, Article 8 NMSA 1978;

(8) Chapter 59A, Article 10 NMSA 1978;

(9) Section 59A-12-22 NMSA 1978;

(10) Chapter 59A, Article 16 NMSA 1978;

(11) Chapter 59A, Article 18 NMSA 1978;

(12) Chapter 59A, Article 19 NMSA 1978;

(13) Chapter 59A, Article 23B NMSA 1978;

(14) Sections 59A-34-9 through 59A-34-13, 59A-34-23, 59A-34-36 and 59A-34-37 NMSA 1978; and

(15) Chapter 59A, Article 37 NMSA 1978.

B. Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, shall not be construed as violating any provision of law relating to solicitation or advertising by health professionals, but health professionals shall be individually subject to the laws, rules, regulations and ethical provisions governing their individual professions.

C. Any health maintenance organization authorized under the provisions of the Health Maintenance Organization Law shall not be deemed to be practicing medicine and shall be exempt from the provisions of laws relating to the practice of medicine."

Section 30

Section 30. A new Section 59A-46-31 NMSA 1978 is enacted to read:

"59A-46-31. COORDINATION OF BENEFITS.--

A. Health maintenance organizations are permitted, but not required, to adopt coordination of benefits provisions to avoid overinsurance and to provide for the orderly payment of claims when a person is covered by two or more group health insurance or health care plans.

B. If health maintenance organizations adopt coordination of benefits, the provisions shall be consistent with the coordination of benefits provisions that are in general use in the state for coordinating coverage between two or more group health insurance or health care plans.

C. To the extent necessary for health maintenance organizations to meet their obligations as secondary carriers under the regulations established by the superintendent, health maintenance organizations shall make payments for services that are:

(1) received from non-participating providers;

(2) provided outside their service areas; or

(3) not covered under the terms of their group contracts or evidence of coverage."

Section 31

Section 31. TEMPORARY PROVISION--RECOMPILATION.--Section 59A-46-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 853) is recompiled as Section 59A-46-33 NMSA 1978. Section 59A-46-13 NMSA 1978 (being Laws 1984, Chapter 127, Section 860) is recompiled as Section 59A-46-34 NMSA 1978. Section 59A-46-27 NMSA 1978 (being Laws 1984, Chapter 127, Section 874) is recompiled as Section 59A-46-38 NMSA 1978. Section 59A-46-28 NMSA 1978 (being Laws 1984, Chapter 127, Section 875) is recompiled as Section 59A-46-39 NMSA 1978. Section 59A-46-29 NMSA 1978 (being Laws 1984, Chapter 127, Section 876) is recompiled as Section 59A-46-40 NMSA 1978. Section 59A-46-30 NMSA 1978 (being Laws 1984, Chapter 127, Section 876.1) is recompiled as Section 59A-46-32 NMSA 1978. Section 59A-46-32 NMSA 1978 (being Laws 1987, Chapter 335, Section 1, as amended) is recompiled as Section 59A-46-35 NMSA 1978. Section 59A-46-32.1 NMSA 1978 (being Laws 1989, Chapter 96, Section 2) is recompiled as Section 59A-46-36 NMSA 1978. Section 59A-46-33 NMSA 1978 (being Laws 1988, Chapter 89, Section 2) is recompiled as Section 59A-46-37 NMSA 1978. Section 59A-46-34 NMSA 1978 (being Laws 1989, Chapter 183, Section 6) is recompiled as Section 59A-46-29 NMSA 1978. Section 59A-46-35 NMSA 1978 (being Laws 1990, Chapter 5, Section 1) is recompiled as Section 59A-46-41 NMSA 1978. Section 59A-46-36 NMSA 1978 (being Laws 1992, Chapter 56, Section 1) is recompiled as Section 59A-46-42 NMSA 1978.

Section 43

Section 43. REPEAL.--

A. Sections 59A-46-2 through 59A-46-5, 59A-46-7 through 59A-46-12, 59A-46-14 through 59A-46-26 and 59A-46-31 NMSA 1978 (being Laws 1984, Chapter 127, Sections 849 through 852, 854 through 859 and 861 through 869, Laws 1988, Chapter 77, Section 2 and Laws 1984, Chapter 127, Sections 870 through 873 and 877, as amended) are repealed.

B. The provisions of Subsection A of this section do not repeal any of the sections of the NMSA 1978 enacted in Sections 2 through 30 of this act.

Section 44

Section 44. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 45

Section 45. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1994. SB 569

CHAPTER 267

RELATING TO INVESTMEN OF THE SEVERANCE TAX PERMANENT FUND; CHANGING PROVISIONS FOR DEPOSIT OF THE SEVERANCE TAX PERMANENT FUND IN NEW MEXICO FINANCIAL INSTITUTIONS; REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. A new section of the Severance Tax Bonding Act is enacted to read:

"PURPOSE.--It is the purpose of this act to encourage economic development in New Mexico by linking deposit of the severance tax permanent fund in New Mexico financial institutions to an increase in loans to New Mexico businesses and investment in New Mexico government entities and to encourage financial institutions to make the type of loans that meet business needs not addressed by conventional loans and loans guaranteed by federal, state or local agencies."

Section 2

Section 2. A new section of the Severance Tax Bonding Act is enacted to read:

"DEPOSITS IN NEW MEXICO FINANCIAL INSTITUTIONS--LIMITATIONS.--

A. No more than twenty percent of the book value of the severance tax permanent fund may be invested in deposits in New Mexico financial institutions under terms and conditions set by the council in accordance with the provisions of this section.

B. To be eligible for deposits under this section, a financial institution's loans and investments must equal in the aggregate at least one hundred thousand dollars ($100,000). If eligible, a financial institution may qualify for deposits as follows:

(1) a financial institution may qualify for deposits in an amount equal to new loans and investments made by that financial institution after July 1, 1993;

(2) the financial institution shall provide the state investment officer with the necessary documentation and information for each new loan or investment and the state investment officer shall verify that each such loan or investment meets the

requirements of this section and the regulations, guidelines and investment policies adopted pursuant to this section; and

(3) in any calendar year, the state investment officer may increase the deposits in any financial institution only to the extent new loans and investments made by the financial institution have increased over the same period of the prior year.

C. Notwithstanding any other collateral, interest rate or other provisions of law to the contrary governing deposit of public money in Chapter 6, Article 10 NMSA 1978, deposits of the severance tax permanent fund made pursuant to this section shall be governed by the regulations, guidelines and investment policies established by the council and shall not be made until such regulations, guidelines and policies are adopted. Those policies shall provide:

(1) the terms and conditions for pledging of collateral security and the amount and kind of collateral security to be pledged; provided:

(a) no collateral shall be required for deposits of financial institutions rated "A" by the council pursuant to its risk assessment analysis, unless the council in its sole discretion deems it necessary to protect the severance tax permanent fund;

(b) financial institutions not rated "A" by the council shall secure each severance tax permanent fund deposit with security having an aggregate value equal to seventy-five percent of the amount of money deposited by that institution or any greater percentage determined by the council in its sole discretion to be necessary to protect the severance tax permanent fund;

(c) secured deposits shall be secured by: 1) securities of the United States or its agencies or instrumentalities, the state or its agencies or instrumentalities or political subdivisions of the state; 2) securities guaranteed by agencies or instrumentalities of the United States; or 3) New Mexico residential mortgages;

(d) to be rated "A" by the council, a bank must at a minimum have: 1) primary capital at least equal to six percent of assets; 2) net income after taxes at least equal to sixty-one hundredths of one percent of the average assets of the bank for the current quarter and for each of the three previous quarters; and 3) an aggregate amount of nonperforming loans, defined as loans that are at least ninety days past due, that does not exceed thirty-four and nine-tenths percent of primary capital; provided the council in its sole discretion may increase any of the requirements of this paragraph to protect the severance tax permanent fund; and

(e) to be rated "A" by the council, a savings and loan association must have a regulatory net worth equal to at least three percent of total assets and net income after taxes equal to at least thirty hundredths of one percent of

average assets for the current quarter and for each of the previous three quarters; provided the council may increase these requirements or add additional criteria for nonperforming loans as a percentage of primary capital or net worth that are similar to the criteria for banks, as necessary to conform to changing applicable federal regulatory requirements or to protect the severance tax permanent fund;

(2) the rate at which severance tax permanent fund deposits shall bear interest, payable monthly, which shall be at a fixed market rate determined by the council, but in no event shall the rate of interest paid be less than the yield available on comparable maturities of obligations of the United States government, its agencies or instrumentalities or obligations guaranteed by the United States government, its agencies or instrumentalities, whichever is higher;

(3) the terms of maturity, renewal or withdrawal; provided that in no event shall the maturity exceed eight years and the council may withdraw any deposit before maturity without penalty if more than seventy-five percent collateral is required by the rules and regulations adopted by the council; and

(4) such other terms, including the financial condition of the financial institution, as the council deems prudent to protect the severance tax permanent fund and to implement efficiently and effectively the deposit program.

D. In making deposits in New Mexico financial institutions pursuant to this section, the state investment officer shall not deposit from the severance tax permanent fund an amount that exceeds two hundred percent of the total equity capital in the case of banks or two hundred percent of the net worth in the case of savings and loan associations or ten percent of the total of that bank's or the savings and loan association's deposits, whichever is less. These limits shall be based on the most recently published statement of financial condition required by federal or state financial authorities as certified by an authorized officer of the financial institution unless the council has more current reliable information from the financial institution. In the event a financial institution exceeds the limitations set forth in this subsection, the state investment officer may withdraw without penalty the deposits that exceed that limitation. The maximum funds on deposit or the deposit limit in this subsection shall not apply to the state fiscal agent bank as to the funds held by the fiscal agent bank or demand deposits held by a state checking depository bank approved by the state board of finance in accordance with the provisions of Section 6-10-35 NMSA 1978.

E. As used in this section:

(1) "financial institution" means a New Mexico bank or savings and loan association that is qualified as an insured public depository;

(2) "investment" means a New Mexico municipal bond or a New Mexico industrial revenue bond; and

(3) "loan" means a loan of any term that is secured or unsecured and is made for business purposes. "Loan" does not include a loan that is a renewal or restructuring of a loan existing on or before July 1, 1993, a loan of more than three million dollars ($3,000,000) to one borrower, a student loan, a consumer loan or a loan to purchase or provide permanent financing on a personal residence, but does include a loan that is made to "persons of low or moderate income" as that term is defined in the Mortgage Finance Authority Act, is secured by real estate and is held and serviced by the original lending financial institution in New Mexico. For purposes of this paragraph, "business" includes but is not limited to manufacturing; construction; transportation; communications; publishing; wholesale or retail business; restaurants; entertainment; architectural, engineering and other professional services; medical and health services; food processing; farming or ranching; mining and natural resource exploration and development; and research and technology development."

Section 3

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

"DEPOSITS IN NEW MEXICO CREDIT UNIONS.--The severance tax permanent fund may be invested in deposits in New Mexico credit unions, provided each deposit is insured by an agency of the United States and the credit union offers interest on such deposits at least equal to that offered to its members for similar deposits. Such deposits may be invested for a term of maturity of eight years or less at an interest rate to be set by the council. Such deposits shall be made and administered by the council and state investment officer in accordance with the law governing deposits of public money, including, but not limited to, Sections 6-10-10, 6-10-16, 6-10-24.1 and 6-10-29 NMSA 1978. As used in this section, "deposit" includes share, share certificate and share draft."

Section 4

Section 4. SAVING CLAUSE.--Notwithstanding the provisions of this act to the contrary, on July 1, 1993, the state investment council may hold to maturity or renew any certificates of deposit in financial institutions, provided such renewals shall mature on or before January 1, 1994, and the provisions of Section 7-27-5.2 NMSA 1978 governing deposits in New Mexico financial institutions shall apply to such certificates prior to maturity and to that renewal. The provisions of this act shall not apply to those certificates of deposit.

Section 5

Section 5. REPEAL.--Section 7-27-5.2 NMSA 1978 (being Laws 1983, Chapter 306, Section 9, as amended) is repealed.

Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 634

CHAPTER 268

RELATING TO HUMAN RIGHTS; PROVIDING FOR A DEFINITION OF MEDICAL CONDITION; CHANGING THE AMOUNT OF TIME TO CONDUCT A HEARING; EXTENDING THE LIFE OF THE HUMAN RIGHTS COMMISSION.

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

Section 1

Section 1. Section 28-1-2 NMSA 1978 (being Laws 1969, Chapter 196, Section 2, as amended by Laws 1987, Chapter 76, Section 1 and also by Laws 1987, Chapter 342, Section 16) is amended to read:

"28-1-2. DEFINITIONS.--As used in the Human Rights Act:

A. "person" means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers or the state and all of its political subdivisions;

B. "employer" means any person employing four or more persons and any person acting for an employer;

C. "commission" means the human rights commission;

D. "director" means the director of the human rights division of the labor department;

E. "employee" means any person in the employ of an employer or an applicant for employment;

F. "labor organization" means any organization which exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment;

G. "employment agency" means any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit or refer employees;

H. "public accommodation" means any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not

include a bona fide private club or other place or establishment which is by its nature and use distincly private;

I. "housing accommodation" means any building or portion of a building which is constructed or to be constructed, which is used or intended for use as the residence or sleeping place of any individual;

J. "real property" means lands, leaseholds or commercial or industrial buildings, whether constructed or to be constructed, offered for sale or rent, and any land rented or leased for the use, parking or storage of house trailers;

K. "secretary" means the secretary of labor;

L. "unlawful discriminatory practices" means those unlawful practices and acts specified in Section 28-1-7 NMSA 1978;

M. "physical or mental handicap" means a physical or mental impairment that substantially limits one or more of an individual's major life activities. An individual is also considered to be physically or mentally handicapped if he has a record of a physical or mental handicap or is regarded as having a physical or mental handicap;

N. "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working; and

O. "applicant for employment" means a person applying for a position as an employee."

Section 2

Section 2. Section 28-1-10 NMSA 1978 (being Laws 1969, Chapter 196, Section 9, as amended) is amended to read:

"28-1-10. GRIEVANCE PROCEDURE.--

A. Any person claiming to be aggrieved by an unlawful discriminatory practice and any member of the commission who has reason to believe that discrimination has occurred may file with the human rights division a written complaint which shall state the name and address of the person alleged to have engaged in the discriminatory practice, all information relating to the discriminatory practice and any other information that may be required by the commission. All complaints shall be filed with the division within one hundred eighty days after the alleged act was committed.

B. The director shall advise the respondent that a complaint has been filed against him and shall furnish him with a copy of the complaint. The director shall promptly investigate the alleged act. If the director determines that the complaint lacks

probable cause, he shall dismiss the complaint and notify the complainant and respondent of the dismissal. The complaint shall be dismissed subject to appeal as in the case of other orders of the commission.

C. If the director determines that probable cause exists for the complaint, he shall attempt to achieve a satisfactory adjustment of the complaint through persuasion and conciliation. The director and staff shall neither disclose what has transpired during the attempted conciliation nor divulge information obtained during any hearing before the commission or a commissioner prior to final action relating to the complaint. Any officer or employee of the labor department who makes public in any manner whatever any information in violation of this subsection is guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year.

D. Any person who has filed a complaint with the human rights division may request and shall receive an order of nondetermination from the director one hundred eighty days after the division's receipt of the complaint. The order of nondetermination may be appealed pursuant to the provisions of Section 28-1-13 NMSA 1978.

E. In the case of a complaint filed by or on behalf of a person who has an urgent medical condition and has notified the director in writing of the test results, the director shall make the determination whether probable cause exists for the complaint and shall attempt any conciliation efforts within ninety days of the filing of the written complaint or notification, whichever occurs last.

F. If conciliation fails or if, in the opinion of the director, informal conference cannot result in conciliation, the commission shall issue a written complaint in its own name against the respondent, except that in the case of a complaint filed by or on behalf of a person who has an urgent medical condition, who has notified the director in writing of the test results and who so elects, the director shall issue an order of nondetermination which may be appealed pursuant to the provisions of Section 28-1-13 NMSA 1978. The complaint shall set forth the alleged discriminatory practice, the secretary's regulation or the section of the Human Rights Act alleged to have been violated and the relief requested. The complaint shall require the respondent to answer the allegations of the complaint at a hearing before the commission and shall specify the date, time and place of the hearing. The hearing date shall not be more than thirty or less than fifteen days after service of the complaint. The complaint shall be served on the respondent personally or by registered mail, return receipt requested. The hearing shall be held in the county where the respondent is doing business or the alleged discriminatory practice occurred.

G. Upon the commission's petition, the district court of the county where the respondent is doing business or the alleged discriminatory practice occurred may grant injunctive relief pending hearing by the commission or pending judicial review of an order of the commission so as to preserve the status quo or to ensure that the

commission's order as issued will be effective. The commission shall not be required to post a bond.

H. For purposes of this section, "urgent medical condition" means any medical condition as defined by an appropriate medical authority through documentation or by direct witness of a clearly visible disablement and which poses a serious threat to the life of the person with the medical condition."

Section 3

Section 3. Section 28-1-15 NMSA 1978 (being Laws 1987, Chapter 333, Section 1) is amended to read:

"28-1-15. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The human rights commission is terminated on July 1, 1999 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 28, Article 1 NMSA 1978 until July 1, 2000. Effective July 1, 2000, Chapter 28, Article 1 NMSA 1978 is repealed." SB 672

CHAPTER 269

RELATING TO REAL ESTATE APPRAISERS; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE REAL ESTATE APPRAISERS ACT.

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

Section 1

Section 1. Section 61-30-3 NMSA 1978 (being Laws 1990, Chapter 75, Section 3, as amended) is amended to read:

"61-30-3. DEFINITIONS.--As used in the Real Estate Appraisers Act:

A. "appraisal" or "real estate appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in or aspects of identified real estate or real property, for or in expectation of compensation, and shall include the following:

(1) a valuation, analysis, opinion or conclusion prepared by a real estate appraiser that estimates the value of identified real estate or real property; and

(2) an analysis or study of real estate or real property other than estimating value;

B. "appraisal assignment" means an engagement for which an appraiser is employed or retained to act or would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased appraisal or real estate appraisal;

C. "appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987 and to which reference is made in the federal real estate appraisal reform amendments;

D. "appraisal report" means any communication, written or oral, of an appraisal or real estate appraisal regardless of title or designation and all other reports communicating an appraisal;

E. "board" means the real estate appraisers board;

F. "certified appraisal" or "certified appraisal report" means an appraisal or appraisal report given or signed and certified as such by a state certified real estate appraiser and shall include an indication of which type of certification is held and shall be deemed to represent to the public that it meets the appraisal standards defined in the Real Estate Appraisers Act;

G. "federal real estate appraisal reform amendments" means the federal Financial Institutions Examination Council Act of 1978, 12 U.S.C. 3301, et seq., as amended by Title XI, Real Estate Appraisal Reform Amendments, 12 U.S.C. 3331 through 3351;

H. "general certificate" or "general certification" means a certificate or certification for appraisals of all types of real estate issued pursuant to the provisions of the Real Estate Appraisers Act and the federal real estate appraisal reform amendments;

I. "real estate" or "real property" means leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests that by custom, usage or law pass with a conveyance of land, though not described in a contract of sale or instrument of conveyance, and includes parcels with or without upper and lower boundaries and spaces that may be filled with air;

J. "real estate appraiser" means any person who engages in real estate appraisal activity in expectation of compensation;

K. "residential certificate" or "residential certification" means a certificate or certification, limited to appraisals of residential real estate or residential real property without regard to the complexity of the transaction, issued pursuant to the provisions of the Real Estate Appraisers Act and as provided under the terms of the federal real estate appraisal reform amendments;

L. "residential real estate" or "residential real property" means real estate designed and suited or intended for use and occupancy by one to four families, including use and occupancy of manufactured housing;

M. "specialized services" means those services that do not fall within the definition of an appraisal assignment and may include specialized financing or market analyses and feasibility studies that may incorporate estimates of value or analyses, opinions or conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling and real estate tax counseling, provided that the person rendering such services would not be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased appraisal or real estate appraisal, regardless of the intention of the client and that person;

N. "state certified appraisal" means any appraisal that is identified as a state certified appraisal report or is in any way described as being prepared by a state certified real estate appraiser;

O. "state certified real estate appraiser" means a person who holds a current, valid general certificate or a current, valid residential certificate issued pursuant to the provisions of the Real Estate Appraisers Act;

P. "state licensed real estate appraiser" means a person who holds a current, valid license issued pursuant to the provisions of the Real Estate Appraisers Act; and

Q. "state registered real estate appraiser" means a person who holds a current, valid registration issued pursuant to the provisions of the Real Estate Appraisers Act."

Section 2

Section 2. Section 61-30-4 NMSA 1978 (being Laws 1990, Chapter 75, Section 4) is amended to read:

"61-30-4. ADMINISTRATION--ENFORCEMENT.--The board shall administer and enforce the Real Estate Appraisers Act."

Section 3

Section 3. Section 61-30-5 NMSA 1978 (being Laws 1990, Chapter 75, Section 5, as amended) is amended to read:

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

A. There is created "real estate appraisers board" consisting of nine members.

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

C. The initial real estate appraiser members shall be appointed by the governor for three-year terms. At the expiration of these initial terms, the governor shall appoint or reappoint one or more of the real estate appraiser members for terms of five years. Real estate appraiser members may be appointed for no more than two five-year terms.

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

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

F. Vacancies on the board for real estate appraiser members due to that member's failure to obtain certification or any other vacancy on the board for any other member shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy."

Section 4

Section 4. Section 61-30-7 NMSA 1978 (being Laws 1990, Chapter 75, Section 7, as amended) is amended to read:

"61-30-7. BOARD--POWERS--DUTIES.--The board shall:

A. adopt such regulations as are necessary to implement the provisions of the Real Estate Appraisers Act;

B. establish educational programs and research projects related to the appraisal of real estate;

C. establish the administrative procedures for processing applications and issuing registrations, licenses and certificates to persons who qualify to be registered,

licensed and certified real estate appraisers and for conducting disciplinary proceedings pursuant to the provisions of the Real Estate Appraisers Act;

D. receive, review and approve applications for state registered real estate appraisers, state licensed real estate appraisers and each category of state certified real estate appraisers, and for state licensed or certified real estate appraisers, prepare or supervise the preparation of examination questions and answers and supervise grading of examinations and enter into contracts with one or more educational testing services or organizations for such examinations;

E. define the extent and type of educational experience, appraisal experience and equivalent experience that will meet the requirements for registration, licensing and certification under the Real Estate Appraisers Act after considering generally recognized appraisal practices;

F. provide for continuing education programs for the renewal of registrations, licenses and certification that will meet the requirements provided in the Real Estate Appraisers Act;

G. adopt standards to define the education programs that will meet the requirements of the Real Estate Appraisers Act and will encourage conducting programs at various locations throughout the state;

H. adopt standards for the development and communication of real estate appraisals provided in the Real Estate Appraisers Act and adopt regulations explaining and interpreting the standards after considering generally recognized appraisal practices;

I. adopt a code of professional responsibility for state registered, licensed and certified real estate appraisers;

J. comply with annual reporting requirements and other requirements set forth in the federal real estate appraisal reform amendments;

K. maintain a registry of the names and addresses of the individuals who hold current registrations, licenses and certificates issued under the Real Estate Appraisers Act;

L. establish procedures for disciplinary action against any applicant or holder of a registration, license or certificate for violations of the Real Estate Appraisers Act and any rules and regulations promulgated under that act; and

M. perform such other functions and duties as may be necessary to carry out the provisions of the Real Estate Appraisers Act."

Section 5

Section 5. Section 61-30-8 NMSA 1978 (being Laws 1990, Chapter 75, Section 8, as amended) is amended to read:

"61-30-8. BOARD--ORGANIZATION--MEETINGS.--

A. The board shall organize by electing a chairman, vice chairman and secretary from among its members. A majority of the board shall constitute a quorum and may exercise all powers and duties established by the provisions of the Real Estate Appraisers Act.

B. The board shall keep a record of its proceedings, a register of persons registered, licensed or certified as state registered, licensed or certified real estate appraisers, showing the name and places of business of each, and retain all records and applications submitted to the board pursuant to the Real Estate Appraisers Act.

C. The board shall meet not less frequently than once each calendar quarter at such place as may be designated by the board, and special meetings may be held on five days' written notice to each of the members by the chairman. At least annually, the board shall meet in each of the congressional districts."

Section 6

Section 6. Section 61-30-9 NMSA 1978 (being Laws 1990, Chapter 75, Section 9) is amended to read:

"61-30-9. REIMBURSEMENT AND EXPENSES.--The board may appoint such committees of the board and employ such persons to assist the board as may be necessary. Each member of the board or any committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance. Compensation for employees and any necessary supplies and equipment shall be paid from the appraiser fund."

Section 7

Section 7. Section 61-30-10 NMSA 1978 (being Laws 1990, Chapter 75, Section 10, as amended) is amended to read:

"61-30-10. REGISTRATION, LICENSE OR CERTIFICATION REQUIRED--EXCEPTIONS.--

A. It is unlawful for any person in this state to engage or attempt to engage in the business of developing or communicating real estate appraisals or appraisal reports without first registering or obtaining a license or certificate from the board under the provisions of the Real Estate Appraisers Act.

B. No person, unless certified by the board as a state certified real estate appraiser under a general certification or residential certification, shall:

(1) assume or use any title, designation or abbreviation likely to create the impression of a state certified real estate appraiser;

(2) use the term "state certified" to describe or refer to any appraisal or evaluation of real estate prepared by him;

(3) assume or use any title, designation or abbreviation likely to create the impression of certification as a state certified real estate appraiser firm, partnership, corporation or group; or

(4) assume or use any title, designation or abbreviation likely to create the impression of certification under a general certificate or describe or refer to any appraisal or evaluation of nonresidential real estate by the term "state certified" if the preparer's certification is limited to residential real estate.

C. A state registered real estate appraiser who does not hold a license or certificate is authorized to prepare appraisals of all types of real estate or real property, provided such appraisals are not described or referred to as being prepared by a "state certified real estate appraiser" holding a residential or general certificate or by a "state licensed real estate appraiser" and provided, further, such person does not assume or use any title, designation or abbreviation likely to create the impression of certification as a state certified real estate appraiser or licensure as a state licensed real estate appraiser.

D. A holder of a license or residential certificate is authorized to prepare appraisals of nonresidential real estate, provided such appraisals are not described or referred to as "state certified by a general certified appraiser" and provided, further, the holder of the certificate does not assume or use any title, designation or abbreviation likely to create the impression of general certification.

E. To perform in federally related transactions, as referenced in the federal Financial Institutions Reform, Recovery and Enforcement Act, an appraiser must, at a minimum, meet the requirements for licensing as currently defined.

F. The requirement of registration, licensing or certification shall not apply to a real estate broker or salesperson who, in the ordinary course of business, gives an opinion of the price or value of real estate for the purpose of securing a listing, marketing of real property, affecting a sale, lease or exchange, conducting market analyses or rendering specialized services; provided, however, this opinion of the price or value shall not be referred to or construed as an appraisal or appraisal report and no compensation, fee or other consideration is expected or charged for such opinion, other than the real estate brokerage commission or fee for services rendered in connection with the identified real estate or real property.

G. The requirement of registration, licensing or certification shall not apply to appraisers of the property tax division of the taxation and revenue department, to a county assessor or to the county assessor's employees, who as part of their duties are required to engage in real estate appraisal activity as a county assessor or on behalf of the county assessor and no additional compensation fee or other consideration is expected or charged for such appraisal activity, other than such compensation as is provided by law.

H. The prohibition of Subsection A of this section does not apply to persons whose real estate appraisal activities are limited to the appraisal of interests in minerals, including oil, natural gas, liquid hydrocarbons or carbon dioxide, and property held or used in connection with mineral property, if that person is authorized in his state of residence to practice, and is actually engaged in the practice of, the profession of engineering or geology.

I. The process of analyzing, without altering, an appraisal report that is part of a request for mortgage credit is considered a specialized service under Subsection M of Section 61-30-3 NMSA 1978 of the Real Estate Appraisers Act and is exempt from the requirements of registration, licensing or certification."

Section 8

Section 8. Section 61-30-10.1 NMSA 1978 (being Laws 1992, Chapter 54, Section 8) is amended to read:

"61-30-10.1. QUALIFICATION FOR REGISTRATION.--

A. Registration shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for a registration shall be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and have reached the age of majority.

C. Each applicant for registration as a state registered real estate appraiser shall have:

(1) successfully completed sixty classroom hours of instruction in appraisal of real estate approved by the board; or

(2) such equivalent education in an activity closely related to or associated with real estate appraisal as the board determines by regulation.

D. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency."

Section 9

Section 9. Section 61-30-11 NMSA 1978 (being Laws 1990, Chapter 75, Section 11, as amended) is amended to read:

"61-30-11. QUALIFICATIONS FOR LICENSE.--

A. Licenses shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for a license shall be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and have reached the age of majority.

C. Each applicant for a license as a state licensed real estate appraiser shall have:

(1) a minimum of two thousand hours of experience in real property appraisal;

(2) successfully completed sixty classroom hours of instruction in appraisal of real estate and fifteen classroom hours related to the standards of professional practice approved by the board or such equivalent education in the activity closely related to or associated with real estate appraisal as determined by regulation; or

(3) such equivalent education in an activity closely related to or associated with real estate appraisal as determined by regulation.

D. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency.

E. Holders of licenses issued before the effective date of this section shall have until October 1, 1993 to comply with the current requirements of this section. Should the requirements not be met by October 1, 1993, the license shall be surrendered to the board and a registration shall be issued therefor. Individuals who do not meet the qualifications for licensure are not qualified for appraisal assignments involving federally related transactions."

Section 10

Section 10. Section 61-30-12 NMSA 1978 (being Laws 1990, Chapter 75, Section 12, as amended) is amended to read:

"61-30-12. QUALIFICATIONS FOR CERTIFICATE.--

A. Certificates shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for a certificate shall be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and have reached the age of majority.

C. Each applicant for a general certificate as a state certified real estate appraiser shall have performed actively as a real estate appraiser and have:

(1) two years of experience in real property appraisal, with a minimum of two thousand hours of experience in real property appraisal of which at least fifty percent of the hours are in nonresidential appraisal work;

(2) successfully completed one hundred fifty classroom hours of instruction in appraisal of real estate and fifteen classroom hours related to the standards of professional practice approved by the board or such equivalent education in an activity closely related to or associated with real estate appraisal as determined by regulation, which may include the seventy-five classroom hour requirement for the state licensed real estate appraiser or the one hundred five classroom hour requirement for the state certified real estate appraiser with a residential certificate; and

(3) such additional experience and education requirements as may be established for the general certification classification issued by the appraiser qualification board of the appraisal foundation and adopted by regulation pursuant to the Real Estate Appraisers Act.

D. Each applicant for a residential certificate as a state certified real estate appraiser shall have performed actively as a real estate appraiser and shall have:

(1) two years of experience in real property appraisal, with a minimum of two thousand hours of experience in real property appraisal;

(2) successfully completed ninety classroom hours of instruction in appraisal of real estate and fifteen classroom hours related to the standards of professional practice approved by the board or such equivalent education in an activity closely related to or associated with real estate appraisal as determined by regulation, which may include the seventy-five classroom hour requirement for the state licensed real estate appraiser; and

(3) such additional experience and education requirements as may be established for the residential certification classification issued by the appraiser qualification board of the appraisal foundation and adopted by regulation pursuant to the Real Estate Appraisers Act.

E. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency.

F. Holders of residential certificates issued before the effective date of this section shall have until July 1, 1993 to obtain an additional thirty hours of approved education. Should the required additional education not be obtained by July 1, 1993, the residential certificate shall be surrendered to the board and a license shall be issued therefor."

Section 11

Section 11. Section 61-30-13 NMSA 1978 (being Laws 1990, Chapter 75, Section 13, as amended) is amended to read:

"61-30-13. APPLICATION FOR REGISTRATION, LICENSE OR CERTIFICATE--EXAMINATION.--

A. All applications for registrations, licenses or certificates shall be made to the board in writing, specify whether registration or a license or a certificate is being applied for by the applicant and, if a certificate, the classification of the certificate being applied for by the applicant and shall contain such data and information as may be required by the board.

B. Each applicant for a license or a certificate shall demonstrate by successfully passing a written examination, prepared by or under the supervision of the board, that the applicant possesses, consistent with licensure or the certification sought, the following:

(1) an appropriate knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing and economic concepts applicable to real estate;

(2) a basic understanding of real estate law;

(3) an adequate knowledge of theory and techniques of real estate appraisal;

(4) an understanding of the principles of land economics, real estate appraisal processes and problems likely to be encountered in the gathering, interpreting and processing of data in carrying out appraisal disciplines;

(5) an understanding of the standards for the development and communication of real estate appraisals as provided in the Real Estate Appraisers Act;

(6) knowledge of theories of depreciation, cost estimating, methods of capitalization and the mathematics of real estate appraisal that are appropriate for the classification of certificate applied for by the applicant;

(7) knowledge of other principles and procedures as may be appropriate for the respective classification; and

(8) an understanding of the types of misconduct for which disciplinary proceedings may be initiated against a state registered, licensed or certified real estate appraiser, as set forth in the Real Estate Appraisers Act.

C. The examination shall be given at least four times each calendar year at such times and places within the state as the board prescribes. The board shall make a reasonable effort to conduct examinations in each congressional district. Notice of passing or failing the examination shall be given by the board to each applicant not later than thirty days following the date of the examination.

D. An applicant for a license or a certificate who fails to successfully complete the written examination may apply for a reexamination for a license or certificate upon compliance with such conditions as set forth in the rules and regulations adopted by the board pursuant to the provisions of the Real Estate Appraisers Act."

Section 12

Section 12. Section 61-30-14 NMSA 1978 (being Laws 1990, Chapter 75, Section 14, as amended) is amended to read:

"61-30-14. ISSUANCE AND RENEWAL OF REGISTRATION, LICENSES AND CERTIFICATES.--

A. The board shall issue to each qualified applicant evidence of registration, a license or a certificate in a form and size prescribed by the board.

B. Every registration, license and certificate shall be subject to annual renewal on the last day of the registration, license or certificate holder's month of birth. Each registration, license or certificate holder shall submit proof of compliance with continuing education requirements and the annual renewal fee. At the election of eligible holders of a license or certificate who perform or seek to perform appraisals in federally related transactions under the federal real estate appraisal reform amendments, each application for renewal shall include payment of an annual registry fee set by the federal financial institutions examination council. The registry fee shall be transmitted by the board to the federal financial institutions examination council.

C. The board shall certify renewal of each registration, license or certificate annually, in the absence of any reason or condition that might warrant the refusal of the renewal of a registration, license or certificate.

D. In the event any registration, license or certificate holder fails to properly apply for renewal of the registration, license or certificate within the thirty days immediately following his registration, license or certificate renewal date of any given year, the registration, license or certificate shall expire thirty days following the renewal date.

E. The board may renew an expired registration upon application, payment of the current annual renewal fee, submission of proof of compliance with continuing education requirements and payment of a reinstatement fee in the amount of one hundred dollars ($100), in addition to any other fee permitted under the Real Estate Appraisers Act.

F. The board may renew an expired license or certificate upon application, payment of the current annual renewal fee, submission of proof of compliance with continuing education requirements and payment of a reinstatement fee in the amount of one hundred dollars ($100), in addition to any other fee permitted under the Real Estate Appraisers Act; provided that the board may, in the board's discretion, treat the former certificate holder as a new applicant and further may require reexamination as a condition to reissuance of a certificate.

G. If during a period of one year from the date a registration, license or certificate expires, the registration, license or certificate holder is either absent from this state on active duty military service or is suffering from an illness or injury of such severity that the person is physically or mentally incapable of renewal of the registration, license or certificate, payment of the reinstatement fee and, in the case of a license or certificate holder, reexamination shall not be required by the board if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the board for renewal. A copy of the person's military orders or a certificate of the applicant's physician shall accompany the application.

H. The board may adopt additional requirements by regulation for the issuance or renewal of registrations, licenses or certificates to maintain or upgrade appraiser qualifications at a level no less than the appraiser qualifications board recommendations or appraisal subcommittee requirements."

Section 13

Section 13. Section 61-30-15 NMSA 1978 (being Laws 1990, Chapter 75, Section 15, as amended) is amended to read:

"61-30-15. REFUSAL, SUSPENSION OR REVOCATION OF REGISTRATION, LICENSE OR CERTIFICATE.--

A. The board, consistent with Section 61-30-6 NMSA 1978, shall refuse to issue or renew a registration, license or certificate or shall suspend or revoke a

registration, license or certificate at any time when the applicant, registered appraiser or license or certificate holder, in performing or attempting to perform any of the actions set forth in the Real Estate Appraisers Act, is determined by the board to have:

(1) procured or attempted to procure a registration or license or certificate by knowingly making a false statement or submitting false information or through any form of fraud or misrepresentation;

(2) refused to provide complete information in response to a question in an application for registration or a license or a certificate or failed to meet the minimum qualifications established by the Real Estate Appraisers Act;

(3) paid money, other than as provided for in the Real Estate Appraisers Act, to any member or employee of the board to procure registration or a license or a certificate;

(4) been convicted of a crime that is substantially related to the qualifications, functions and duties of a person developing real estate appraisals and communicating real estate appraisals to others;

(5) committed an act involving dishonesty, fraud or misrepresentation or by omission engaged in a dishonest or fraudulent act or misrepresentation with the intent to substantially benefit the registration, license or certificate holder or another person or with the intent to substantially injure another person;

(6) willfully disregarded or violated any of the provisions of the Real Estate Appraisers Act or the regulations of the board adopted pursuant to that act;

(7) accepted an appraisal assignment when the employment itself is contingent upon the appraiser reporting a predetermined analysis or opinion or where the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion or valuation reached or upon the consequences resulting from the appraisal assignment; provided that a contingent fee agreement is permitted for the rendering of special services not constituting an appraisal assignment and the acceptance of a contingent fee is clearly and prominently stated on the written appraisal report;

(8) suffered the entry of a final civil judgment on the grounds of fraud, misrepresentation or deceit in the making of an appraisal, provided that the state registered, licensed or certified real estate appraiser shall be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the civil judgment; or

(9) committed any other conduct that is related to dealings as a state registered, licensed or certified real estate appraiser and that constitutes or

demonstrates bad faith, untrustworthiness, impropriety, fraud, dishonesty or any unlawful act.

B. The board, consistent with Section 61-30-6 NMSA 1978, shall refuse to issue or renew a registration, license or certificate and shall suspend or revoke a registration, license or certificate at any time when the board determines that the applicant or state registered, licensed or certified real estate appraiser, in the performance of real estate appraisal work, has:

(1) repeatedly failed to observe one or more of the standards for the development or communication of real estate appraisals set forth in the regulations adopted pursuant to the Real Estate Appraisers Act;

(2) repeatedly failed or refused, without good cause, to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal;

(3) repeatedly been negligent or incompetent in developing an appraisal, in preparing an appraisal report or in communicating an appraisal; or

(4) violated the confidential nature of records to which the state registered, licensed or certified real estate appraiser gained access through employment or engagement as such an appraiser.

C. The action of the board relating to the issuance, suspension or revocation of any registration, license or certificate shall be governed by the provisions of the Uniform Licensing Act. The board shall participate in any hearings required or conducted by the board pursuant to the provisions of the Uniform Licensing Act.

D. The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted under the Real Estate Appraisers Act.

E. Nothing in the Real Estate Appraisers Act shall be construed to preclude any other remedies otherwise available under common law or statutes of this state."

Section 14

Section 14. Section 61-30-16 NMSA 1978 (being Laws 1990, Chapter 75, Section 16, as amended) is amended to read:

"61-30-16. STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE--CERTIFICATE OF GOOD STANDING.--

A. Each real estate appraiser registered, licensed or certified under the Real Estate Appraisers Act shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal foundation and as adopted by regulation under the Real Estate Appraisers Act.

B. The board, upon payment of a fee in an amount specified in its regulations, may issue a certificate of good standing to any state registered, licensed or certified real estate appraiser who is in good standing under the Real Estate Appraisers Act."

Section 15

Section 15. Section 61-30-17 NMSA 1978 (being Laws 1990, Chapter 75, Section 17, as amended) is amended to read:

"61-30-17. FEES.--The board shall charge and collect the following fees not to exceed:

A. an application fee for a registration shall not exceed one hundred dollars ($100);

B. an application fee for a license or residential certification in the amount of two hundred dollars ($200);

C. an application fee for general certification in the amount of two hundred fifty dollars ($250);

D. an examination fee for general and residential certification and license in the amount of one hundred dollars ($100);

E. an annual registration renewal fee not to exceed fifty dollars ($50.00);

F. an annual certificate renewal fee for residential certification and license renewal in the amount of one hundred dollars ($100);

G. an annual certificate renewal fee for general certification in the amount of one hundred fifty dollars ($150);

H. the registry fee as required by the federal real estate appraisal reform amendments;

I. for registration for temporary practice, the amount of one hundred dollars ($100);

J. for each duplicate registration, license or certificate issued because a registration, license or certificate is lost or destroyed and an affidavit as to its loss or destruction is made and filed, a fee in the amount of twenty-five dollars ($25.00); and

K. any and all fees to cover reasonable and necessary administrative expenses."

Section 16

Section 16. Section 61-30-18 NMSA 1978 (being Laws 1990, Chapter 75, Section 18) is amended to read:

"61-30-18. APPRAISER FUND CREATED--DISPOSITION--METHOD OF PAYMENT.--

A. There is created in the state treasury the "appraiser fund" to be administered by the board. All fees received by the board pursuant to the Real Estate Appraisers Act shall be deposited with the state treasurer to the credit of the appraiser fund. Income earned on investment of the fund shall be credited to the fund.

B. Money in the appraiser fund shall be used by the board to meet necessary expenses incurred in the enforcement of the provisions of the Real Estate Appraisers Act, in carrying out the duties imposed by the Real Estate Appraisers Act and for the promotion of education and standards for real estate appraisers in this state. Payments
out of the appraiser fund shall be on vouchers issued and signed by the person designated by the board upon warrants drawn by the department of finance and administration. All unexpended or unencumbered balances remaining at the end of each fiscal year shall remain in the appraiser fund for use in accordance with the provisions of the Real Estate Appraisers Act."

Section 17

Section 17. Section 61-30-19 NMSA 1978 (being Laws 1990, Chapter 75, Section 19, as amended) is amended to read:

"61-30-19. CONTINUING EDUCATION.--

A. The board shall adopt regulations providing for continuing education programs that offer courses in real property appraisal, practices and techniques, including basic real estate law and practice. The regulations shall require that every state registered, licensed or certified real estate appraiser, as a condition to renewal, shall successfully complete thirty classroom hours of instruction every three years in courses approved by the board.

B. The regulations shall prescribe areas of specialty or expertise relating to registration, licenses and the type of certificate held and may require that a certain part of the thirty classroom hours of instruction be devoted to courses in the area of the state registered, licensed or certified real estate appraiser's specialty or expertise. The regulations shall also permit state registered, licensed or certified real estate appraisers to meet the continuing education requirements by participation other than as a student in educational processes and programs in real property appraisal theory, practices and techniques by instructing or preparing educational materials."

Section 18

Section 18. Section 61-30-20 NMSA 1978 (being Laws 1990, Chapter 75, Section 20, as amended) is amended to read:

"61-30-20. NONRESIDENT APPLICANTS--RECIPROCITY.--

A. The board shall issue a registration, license or certificate to a nonresident, provided that state's requirements for registration, licensing or certification are the same or similar to the requirements set forth in the Real Estate Appraisers Act. In the event that the other state's requirements are not similar or cannot be verified, a qualifying nonresident applicant may become a registered, licensed or certified real estate appraiser in this state by conforming to all conditions of the Real Estate Appraisers Act. Examinations taken in other states are acceptable in New Mexico, provided the exam was at the appropriate level and approved by the appraisal foundation. If it is beneficial to New Mexico registered, licensed or certified appraisers, the board may negotiate agreements with other states allowing reciprocity. The registration, license or certificate shall be issued upon payment of the application fee; verification that the applicant has complied with his resident state's current education requirements; and the filing with the board of a license history and verification of good standing issued by the licensing board of the other state.

B. The applicant shall file an irrevocable consent that suits and actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise from his actions as a state registered, licensed or certified real estate appraiser or in which the plaintiff may reside, by the service ofany processes or pleadings authorized by the laws of this state on the board, the consent stipulating and agreeing that such service of processes or pleadings on the board shall be taken and held in all courts to be as valid and binding as if personal service has been made upon the applicant in New Mexico. In case any process or pleading mentioned in the case is served upon the board, it shall be by duplicate copies, one of which shall be filed in the office of the board and the other immediately forwarded by registered mail to the nonresident state registered, licensed or certified real estate appraiser to whom the processes or pleadings are directed."

Section 19

Section 19. Section 61-30-21 NMSA 1978 (being Laws 1990, Chapter 75, Section 21, as amended) is amended to read:

"61-30-21. TEMPORARY PRACTICE.--

A. The board shall recognize, on a temporary basis, the registration, certification or license of a real estate appraiser issued by another state if:

(1) the real estate appraiser's business is of a temporary nature and certified by the real estate appraiser not to exceed six months; and

(2) the real estate appraiser registers the temporary practice with the board.

B. The applicant or any person registering with the board for temporary practice shall file an irrevocable
consent that suits and actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise from his actions as a state registered, licensed or certified real estate appraiser or in which the plaintiff may reside, by the service of any processes or pleadings authorized by the laws of this state on the board, the consent stipulating and agreeing that such service of processes or pleadings on the board shall be taken and held in all courts to be as valid and binding as if personal service had been made upon the applicant in New Mexico. In case any process or pleading mentioned in the case is served upon the board, it shall be by duplicate copies, one of which shall be filed in the office of the board and the other immediately forwarded by registered mail to the nonresident state registered, licensed or certified real estate appraiser to whom the processes or pleadings are directed."

Section 20

Section 20. Section 61-30-22 NMSA 1978 (being Laws 1990, Chapter 75, Section 22) is amended to read:

"61-30-22. PENALTY--INJUNCTIVE RELIEF.--

A. Any person who violates any provision of the Real Estate Appraisers Act is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment for not more than six months or both.

B. In the event any person has engaged in or proposes to engage in any act or practice violating a provision of the Real Estate Appraisers Act, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or will occur shall, upon application of the board, maintain an action in the name of the state to prosecute the violation or to enjoin the proposed act or practice."

Section 21

Section 21. A new section of the Real Estate Appraisers Act, Section 61-30-24 NMSA 1978, is enacted to read:

"61-30-24. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The real estate appraisers board is repealed effective July 1, 1999. The Real Estate Appraisers Act shall continue in effect until July 1, 2000. The Real Estate Appraisers Act is repealed effective July 1, 2000."

Section 22

Section 22. REPEAL.--Sections 61-30-6 and 61-30-23 NMSA 1978 (being Laws 1990, Chapter 75, Sections 6 and 23, as amended) are repealed.SB 776

CHAPTER 270

RELATING TO THE MIDDLE RIO GRANDE CONSERVANCY DISTRICT; ESTABLISHING A UNITARY CLASSIFICATION SYSTEM FOR ALL BENEFITED REAL PROPERTY IN THE DISTRICT; PROVIDING FOR BENEFIT ASSESSMENTS AND WATER SERVICE CHARGES; ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. A new Section 73-18-6.1 NMSA 1978 is enacted to read:

"73-18-6.1. RECLASSIFICATION OF PROPERTY IN CERTAIN DISTRICTS.--

A. Notwithstanding the provisions of Section 73-18-6 NMSA 1978 and in lieu thereof, the board of directors of any conservancy district created prior to 1930 embracing land situate in four or more counties and consisting of more than one hundred thousand acres, by resolution and with prior approval of the secretary of interior, in the manner it deems necessary for the welfare of the district and the benefit of the affected property owners of the district, shall establish by January 1, 1995 a unitary classification system for all benefited real property in the district for the purpose of annual ad valorem assessments and in addition shall set a water service charge for all irrigable lands in the district. The resolution of reclassification shall not become final and effective until it has been approved by the secretary of interior. Nothing in this subsection shall be construed to limit the authority of the board to prescribe assessments and charges on an ad valorem basis, on an acreage basis or on any other reasonable basis or any combination thereof.

B. As used in this section:

(1) "unitary classification system" means a single system for both irrigable and nonirrigable property in the district; and

(2) "water service charge" means an additional charge levied only against lands which are served by the district's water delivery system."

Section 2

Section 2. A new Section 73-18-7.1 NMSA 1978 is enacted to read:

"73-18-7.1. ASSESSMENT--MODIFICATION--CERTAIN DISTRICTS.--Notwithstanding the provisions of Section 73-18-7 NMSA 1978 and in lieu thereof, the board of directors of any conservancy district created prior to 1930 embracing land situate in four or more counties and having more than one hundred thousand acres shall determine and establish by resolution the annual assessments to be made from year to year against real property within the district pursuant to the reclassification of property adopted pursuant to Section 73-18-6.1 NMSA 1978. Such assessment may be modified in like manner from time to time, but not more frequently than once in every five years."

Section 3

Section 3. A new Section 73-18-8.1 NMSA 1978 is enacted to read:

"73-18-8.1. ASSESSMENTS--APPEALS--CERTAIN DISTRICTS.--

A. Notwithstanding the provisions of Section 73-18-8 NMSA 1978 and in lieu thereof, the board of directors of any conservancy district created prior to 1930 embracing land situate in four or more counties and having more than one hundred thousand acres shall convene on a date to be fixed by order of the board, but not later than July 1 of each year, for the purpose of estimating and determining the amount of funds required to meet the obligation and needs of the district for the ensuing year together with such additional amounts as may be necessary to meet any deficiency in the payment of expenses or obligations previously incurred by the district and remaining due and unpaid and an amount to cover the estimated delinquencies in payments of assessments for the ensuing year.

B. In levying ad valorem assessments on benefited property, the board of the district shall set non-residential assessments at least twenty-five percent higher than residential and agricultural assessments and any ad valorem assessments shall be levied against all benefited real property, including improvements.

C. In setting water service charges, the board of the district shall assess such charges on a per acre basis on all irrigable acres as they appear on the records of

the district for tracts or rate payers for which water availability under contract occurs and shall set a minimum one-acre charge of at least twenty-eight dollars ($28.00) per acre, but not more than twenty-eight dollars ($28.00) per acre during the first year, and may use the parity index or other cost-of-living index or measure to determine annual adjustments to the water service charges to reflect the increased costs of providing irrigation water. Any landowner seeking irrigation water for land not previously irrigated may request such irrigation water and upon a determination that the water is available and upon execution of a water use contract with the district prior to March 1 of the year in which the water is sought, the landowner upon payment of the water service charge shall receive the irrigation water.

D. The board of directors shall then by resolution set the appropriate ad valorem assessments and water service charges it determines necessary and appropriate to meet such obligations and needs of the district.

E. In levying appropriate ad valorem assessments and water service charges, the board shall consider:

(1) the degree to which the proposed revenue structure reflects the cost of providing service;

(2) the administrative feasibility of the proposed revenue structure;

(3) whether the proposed revenue structure promotes open space, green space or other environmentally beneficial activities; and

(4) any other local economic or social impacts resulting from the proposed revenue structure.

F. The board shall sit as a board of equalization, subject to such reasonable rules as it may adopt, for the purpose of affording all owners of real property in the district subject to receiving a water service charge and an opportunity to appear and show why any given tract or parcel should be assessed differently. The board's decision with respect to such protest shall be entered upon the official minutes of the board and a copy of such decision shall be sent to the protesting property owner by registered mail.

G. Any owner of real property aggrieved by the decision of the board sitting as a board of equalization may appeal to the district court of the second judicial district in the manner prescribed by Subsection D of Section 73-18-8 NMSA 1978. The filing of such appeal shall be made within thirty days after receipt of the decision of the board sitting as a board of equalization. The filing of such appeal shall not stay the proceedings relating to the collection of the assessment but in the event the appellant has paid the assessment before rendition of the final judgment in the appeal suit and where such judgment is in favor of the appellant, the appellant shall have refunded to

him the sum of money as determined by the court, together with legal interest thereon and costs paid to the court.

H. Not later than September 1 each year, the secretary of the district shall deliver to the county assessor of each county embracing any part of the district a certified copy of the board's annual ad valorem assessment rate.

I. All ad valorem assessments and water service charges of the district constitute prior liens upon the real property on which they are levied as of the date of the action of the board fixing such assessments and charges and such liens shall be enforced in the same manner as assessments of property taxes for state and county purposes are collected and liens thereof are enforced."

Section 4

Section 4. A new Section 73-18-9.1 NMSA 1978 is enacted to read:

"73-18-9.1. COUNTY TREASURERS--DISTRICT TREASURERS--CERTAIN DISTRICTS--COLLECTION AND DISPOSITION OF ASSESSMENTS.--

A. Notwithstanding the provisions of Section 73-18-9 NMSA 1978 and in lieu thereof, the county treasurer of any county wholly or partly within a conservancy district created prior to 1930, situate in four or more counties and consisting of more than one hundred thousand acres, shall collect and receipt for all ad valorem assessments levied by the conservancy district.

B. The county treasurer of any county specified in Subsection A of this section shall collect the ad valorem assessments in the same manner and at the same time as is required for the collection of taxes upon real property for county purposes.

C. The county treasurer shall remit such collections as provided in this section to the conservancy district treasurer no later than the twentieth of each month in the manner prescribed by Subsection B of Section 73-18-9 NMSA 1978.

D. The treasurer of the conservancy district shall collect and receipt for all water service charges levied in
accordance with the resolution and orders of the board of directors of the district."

Section 5

Section 5. SAVING CLAUSE--CONTINUITY OF ACTIONS.--On the effective date of this act, all due but unpaid assessments and levies charged on an ad valorem basis or an acreage basis by a conservancy district created prior to 1930 embracing land situate in four or more counties under the provisions of Article 8, Chapter 73 NMSA 1978 shall remain due until paid or until a final determination is made that the taxes are not due. Any protests, claims for refund, court proceedings or other actions ongoing with

respect to such assessments and levies shall be finally determined with respect to the applicable provisions of Article 8, Chapter 73 NMSA 1978 in effect for such a conservancy district prior to the effective date of this act.

Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1995.SB 856

CHAPTER 271

CREATING A CONSTITUTIONAL REVISION COMMISSION; PROVIDING POWERS AND DUTIES; DECLARING AN EMERGENCY.

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

Section 1

Section 1. CONSTITUTIONAL REVISION COMMISSION--CREATION--COMPOSITION--TERMS.-- The "constitutional revision commission" is created. The commission shall be composed of fifteen voting members who shall be appointed by the governor, five from each congressional district. Not more than eight of these members shall belong to the same political party. In addition, two members of the house of representatives, appointed by the speaker, two members of the senate, appointed by the president pro tempore, the chief justice of the New Mexico supreme court or his designee and the attorney general or his designee shall serve on the constitutional revision commission in an advisory and consulting capacity.

Section 2

Section 2. OFFICERS--VACANCIES.--The constitutional revision commission shall elect a chairman and other necessary officers from among its members. Vacancies on the commission shall be filled by appointment by the original appointing authority.

Section 3

Section 3. POWERS AND DUTIES.--The constitutional revision commission shall examine the constitution of New Mexico and the constitutions of other states to recommend changes in the constitution of New Mexico as it deems desirable and necessary. Upon majority approval of the fifteen members appointed by the governor, legislation shall be drafted in accordance with the provisions of Article 19 of the constitution of New Mexico.

Section 4

Section 4. REPORTS AND RECOMMENDATIONS.--The constitutional revision commission shall make a full report of its findings and recommendations to the governor. The report and any recommended legislation shall also be made available to each member of the forty-second legislature not later than thirty days prior to the convening of its second regular session.

Section 5

Section 5. STAFFING.--The staff and research work shall be done under the supervision of the chairman of the constitutional revision commission by employees approved by the commission.

Section 6

Section 6. SUBCOMMITTEES.--In the performance of its duties, the constitutional revision commission may divide into subcommittees but the findings and recommendations of the commission shall be adopted and reported only upon a majority vote of the commission.

Section 7

Section 7. PER DIEM AND MILEAGE.--Members of the constitutional revision commission appointed by the governor shall receive per diem and mileage as provided for in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance. The legislative advisory members shall be paid per diem and mileage as provided by law for legislators serving on legislative council-appointed committees.

Section 8

Section 8. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.HB 20

CHAPTER 272

RELATING TO TAXATION; AMENDING CERTAIN PROVISIONS OF THE TAX ADMINISTRATION ACT, THE WEIGHT DISTANCE TAX ACT AND THE SPECIAL FUELS SUPPLIER TAX ACT; AMENDING AND REPEALING CERTAIN SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 7-1-6.10 NMSA 1978 (being Laws 1983, Chapter 211, Section 15, as amended) is amended to read:

"7-1-6.10. DISTRIBUTIONS--STATE ROAD FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, surcharges, penalties and interest imposed pursuant to the Gasoline Tax Act and to the taxes, surtaxes, fees, penalties and interest imposed pursuant to the Special Fuels Tax Act and Special Fuels Supplier Tax Act less:

(1) the amount distributed to the state aviation fund pursuant to Subsection B of Section 7-1-6.7 NMSA 1978;

(2) the amount distributed to the motorboat fuel tax fund pursuant to Section 7-1-6.8 NMSA 1978;

(3) the amount distributed to municipalities and counties pursuant to Subsection A of Section 7-1-6.9 NMSA 1978;

(4) the amount distributed to the county government road fund pursuant to Section 7-1-6.19 NMSA 1978;

(5) the amount distributed to the corrective action fund pursuant to Section 7-1-6.25 NMSA 1978;

(6) the amount distributed to the municipalities pursuant to Section 7-1-6.27 NMSA 1978; and

(7) the amount distributed to the municipal arterial program pursuant to Section 7-1-6.28 NMSA 1978.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, fees, interest and penalties from the Weight Distance Tax Act."

Section 2. Section 7-15A-10 NMSA 1978 (being Laws 1988, Chapter 24, Section 9) is amended to read:

"7-15A-10. ANNUAL FILING FEE.--In addition to any weight distance tax, special fuel excise tax or other use fee for the use of the public highways, every person required to pay during the prior calendar year a weight distance tax for the use of the public highways of this state with respect to any commercial motor carrier vehicle shall pay an annual fee of five dollars ($5.00) for each commercial motor carrier vehicle. This fee is required to be paid to the department by January 31 of each year in the manner required by the department."

Section 3

Section 3. Section 7-16A-1 NMSA 1978 (being Laws 1992, Chapter 51, Section 1) is amended to read:

"7-16A-1. SHORT TITLE.--Chapter 7, Article 16A NMSA 1978 may be cited as the "Special Fuels Supplier Tax Act"."

Section 4

Section 4. Section 7-16A-2 NMSA 1978 (being Laws 1978, Chapter 51, Section 2) is amended to read:

"7-16A-2. DEFINITIONS.--As used in the Special Fuels Supplier Tax Act:

A. "bulk storage" means the storage of special fuels in any tank or receptacle, other than a supply tank, for the purpose of sale by a dealer or for use by a user or for any other purpose;

B. "bulk storage user" means a user who operates, owns or maintains bulk storage in this state from which the user places special fuel into the supply tanks of motor vehicles owned or operated by that user;

C. "dealer" means any person who sells and delivers special fuel to a user;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of that department exercising authority lawfully delegated to that employee by the secretary;

E. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code:

(1) issued by the United States or by any state identifying the motor vehicle as belonging to the
United States or any of its agencies or instrumentalities or to the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or

(2) issued by any state identifying the vehicle as belonging to an Indian nation, tribe or pueblo or an agency or instrumentality thereof;

F. "gross vehicle weight" means the weight of a vehicle without load, plus the weight of any load on the vehicle;

G. "highway" means every road, highway, thoroughfare, street or way generally open to the use of the public as a matter of right for the purpose of motor vehicle travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

H. "motor vehicle" means any self-propelled vehicle or device that is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

I. "person" means an individual, firm, partnership, company, corporation, cooperative association, receiver, estate, joint venture, syndicate, limited liability company or other association; "person" also means, to the extent permitted by law, any federal, state or other government or any department, agency or instrumentality of the state, county, municipality or any political subdivision thereof;

J. "received" means:

(1) special fuel that is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state by any person, is "received" by that person when it is loaded there into tank cars, tank trucks, tank wagons or other types of transportation equipment or when it is placed into any tank or other container from which sales or deliveries not involving transportation are made; but when such special fuel is shipped or delivered to another person:

(a) registered as a special fuel supplier under the Special Fuels Supplier Tax Act, then it is "received" by the special fuel supplier to whom it is so shipped or delivered; or

(b) not registered as a special fuel supplier under the Special Fuels Supplier Tax Act for the account of a person who is so registered, it is "received" by the special fuel supplier for whose account it is shipped;

(2) notwithstanding the provisions of Paragraph (1) of this subsection, when special fuel is shipped or delivered from a refinery or pipeline terminal to another refinery or pipeline terminal, such special fuel is not "received" by reason of such shipment or delivery;

(3) any product other than special fuel that is blended to produce special fuel other than at a refinery or pipeline terminal in this state is "received" by a person who is the owner of the special fuel at the time and place the blending is completed;

(4) except as otherwise provided, special fuel is "received" at the time and place it is first unloaded in this state and by the person who is the owner thereof immediately preceding the unloading, unless the owner immediately after the unloading is a registered special fuel supplier, inwhich case the registered special fuel supplier is considered as having "received" the special fuel; and

(5) with respect to a motor vehicle that is not registered pursuant to the laws of this state or a motor vehicle for which the operator cannot produce a valid tax identification card, entry of the motor vehicle into the state. The amount of special

fuel "received" upon entry into this state shall be determined in accordance with regulations of the secretary;

K. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

L. "sale" means any delivery, exchange, gift or other disposition;

M. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

N. "special fuel" means diesel-engine fuel, kerosene, all other liquid fuels, including liquefied petroleum gases and natural gas used for the generation of power to propel a motor vehicle, except gasoline as defined in Section 7-13-2 NMSA 1978;

O. "special fuel user" means any user who is a registrant, owner or operator of a motor vehicle using special fuel and having a gross weight in excess of twenty-six thousand pounds;

P. "state" or "jurisdiction" means a state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, a foreign country or a state or province of a foreign country;

Q. "supplier" means any person, but not including the United States or any of its agencies except to the extent now or hereafter permitted by the constitution of the United States and laws thereof, who receives special fuel within the meaning of "received" as defined in this section;

R. "supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains special fuel or special fuel is delivered into it;

S. "tax" means the special fuel excise tax imposed under the Special Fuels Supplier Tax Act;

T. "use" means:

(1) the receipt or placing of special fuels by a special fuel user into the fuel supply tank of any motor vehicle registered, owned or operated by the special fuel user;

(2) the consumption by a special fuel user of special fuels in the propulsion of a motor vehicle on the highways of this state and any activity ancillary to that propulsion; or

(3) the importation of special fuels in the fuel supply tank of any motor vehicle as fuel for the propulsion of the motor vehicle on the highways; and

U. "user" means any person other than the United States government or any of its agencies or instrumentalities; the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or an Indian nation, tribe or pueblo or any agency or instrumentality of an Indian nation, tribe or pueblo who uses special fuel to propel a motor vehicle on the highways."

Section 5

Section 5. Section 7-16A-8 NMSA 1978 (being Laws 1992, Chapter 51, Section 8) is amended to read:

"7-16A-8. SPECIAL BULK STORAGE USER PERMIT.--

A. The department may issue to a user an annual special bulk storage user permit that shall entitle that user to own, operate, utilize or maintain bulk storage for the sole purpose of placing special fuel from it into the supply tank of an allowable motor vehicle registered, owned or operated by that user.

B. To secure a special bulk storage user permit, an applicant shall:

(1) file with the department upon a form furnished by the department an application for a special bulk storage user permit;

(2) accompany the application with payment of an annual special bulk storage user permit fee in the amount of ten dollars ($10.00); and

(3) accompany the application with a signed affidavit to the effect that the signer shall use the special fuel from the special bulk storage only for the purpose of placing it into the supply tanks of specified allowable motor vehicles registered, owned or operated by the signer.

C. It is a violation of the Special Fuels Supplier Tax Act for any special bulk storage user to:

(1) sell special fuel from the user's special bulk storage to any other person; or

(2) deliver special fuel from the user's special bulk storage into the supply tank of any motor vehicle except specified allowable motor vehicles registered, owned or operated by the special bulk storage user.

D. "Allowable motor vehicles", for the purposes of this section, includes but is not limited to motor vehicles used primarily for or suitable for use in construction

or farming, such as road graders, backhoes, rubber-tired rollers, front loaders, rubber-tired draglines, farm tractors, self-propelled combines or self-propelled reapers.

E. The department may revoke, after due notice and hearing as provided in Section 7-1-24 NMSA 1978, the special bulk storage user permit of any user found to be in violation of any provision of the Special Fuels Supplier Tax Act.

F. Special fuel purchased for bulk storage under a special bulk storage user permit shall not be subject to the special fuel excise tax at the time of purchase but special fuel excise tax shall be due on any special fuel removed from bulk storage if delivered into the supply tank of a motor vehicle that is operated on the highways of this state.

G. All special fuel acquired, purchased or received under a special bulk storage user permit shall be acquired, purchased or received from a registered dealer or supplier. It is unlawful for any person to sell special fuel in bulk quantities to special bulk storage users unless that person is registered under the Special Fuels Supplier Tax Act."

Section 6

Section 6. Section 7-16A-10 NMSA 1978 (being Laws 1992, Chapter 51, Section 10) is amended to read:

"7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL FUEL SUPPLIERS.--In computing the special fuel excise tax due, the following amounts of special fuel may be deducted from the total amount of special fuel received in New Mexico during the tax period, provided that satisfactory proof thereof is furnished to the department:

A. special fuel received in New Mexico, but sold for export or exported from this state by a special fuel supplier, other than in the fuel supply tank of a motor vehicle;

B. special fuel sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof; special fuel sold to the United States includes special fuel delivered into the supply tank of a government-licensed vehicle;

C. special fuel sold to the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof; special fuel sold to the state of New Mexico includes special fuel delivered into the supply tank of a government-licensed vehicle;

D. special fuel sold to an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any agency or instrumentality thereof; special fuel sold to an Indian nation, tribe or pueblo includes special fuel delivered into the supply tank of a government-licensed vehicle;

E. special fuel sold to the holder of a special bulk storage user permit and delivered into special bulk storage under the provisions of Section 7-16A-8 NMSA 1978; and

F. special fuel sold for non-highway use."

Section 7

Section 7. Section 7-16A-19 NMSA 1978 (being Laws 1992, Chapter 51, Section 19) is amended to read:

"7-16A-19. TEMPORARY SPECIAL FUEL USER PERMITS.--

A. The department may issue temporary special fuel user permits for the privilege of using special fuel in New Mexico to special fuel users whose vehicles are not registered with the department. The temporary special fuel user permit shall be valid for one entrance and one exit of the state, within a period that shall not exceed forty-eight hours from the time of issuance.

B. Temporary special fuel user permits shall be secured from the department.

C. The fee for a temporary special fuel user permit is five dollars ($5.00) for each motor vehicle.

D. It is a violation of the Special Fuels Supplier Tax Act for any person to act as a temporary special fuel user without obtaining a valid temporary special fuel user permit from the department."

Section 8

Section 8. REPEAL.--Sections 7-16A-17 and 7-16A-18 NMSA 1978 (being Laws 1992, Chapter 51, Sections 17 and 18) are repealed.

Section 9

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1993.

Section 10

Section 10. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.HB 48

CHAPTER 273

RELATING TO THE COURTS; CREATING THE JUDICIAL EDUCATION FUND; CREATING THE JUDICIAL EDUCATION CENTER; PROVIDING FOR JUDICIAL EDUCATION; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. JUDICIAL EDUCATION FUND CREATED--ADMINISTRATION--INCOME TO THE FUND.--

A. The "judicial education fund" is created in the state treasury and shall be administered by the institute of public law at the university of New Mexico law school. Money in the fund shall be invested by the state treasurer as provided by law and earnings of the fund shall be credited to the fund. Unexpended or unencumbered balances remaining in the fund at the end of any fiscal year shall not revert.

B. Money from the fund may only be expended upon appropriation by the legislature.

C. The judicial education fund consists of judicial

education fees levied and collected pursuant to Sections 35-6-1, 35-7-4, 35-14-11, 66-8-116.3 and 66-8-119 NMSA 1978.

Section 2

Section 2. JUDICIAL EDUCATION CENTER CREATED--PURPOSE.--

A. The "judicial education center" is created at the institute of public law at the university of New Mexico law school.

B. The judicial education center shall provide education, training and instruction for the justices, judges, magistrates and court personnel of the state, municipalities and counties, with an appropriate amount of time to be devoted each year to training and instruction on the disposition of driving while under the influence cases.

Section 3

Section 3. Section 35-6-1 NMSA 1978 (being Laws 1968, Chapter 62, Section 92, as amended) is amended to read:

"35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF "CONVICTED".--

A. Each magistrate, including metropolitan court judges, shall collect the following costs:

Docket fee, criminal actions under Section 29-5-1 NMSA 1978 . . . . . $1.00

Docket fee, to be collected prior to docketing any other criminal action, except as provided in Subsection B of Section 35-6-3 NMSA 1978 . . . . . $20.00

Docket fee, to be collected prior to docketing any civil action, except as provided in Subsection A of Section 35-6-3 NMSA 1978 . . . . . .
$37.00

Jury fee, to be collected from the party demanding trial by jury in any civil action at the time the demand is filed or made $25.00

Copying fee, for making and certifying copies of any records in the court, for each page copied by photographic process $0.50

Copying fee, for computer-generated or electronically transferred copies, per page . . .$1.00.

Proceeds from this copying fee shall be transferred to the administrative office of the courts for deposit in the court automation fund. Except as otherwise specifically provided by law, docket fees shall be paid into the general fund.

B. Except as otherwise provided by law, no other costs or fees shall be charged or collected in the magistrate or metropolitan court.

C. The magistrate or metropolitan court may grant free process to any party in any civil proceeding or special statutory proceeding upon a proper showing of indigency. The magistrate or metropolitan court may deny free process if it finds that the complaint on its face does not state a cause of action.

D. As used in this subsection, "convicted" means the defendant has been found guilty of a criminal charge by the magistrate or metropolitan judge, either after trial, a plea of guilty or a plea of nolo contendere. Each magistrate, including metropolitan court judges, shall collect the following costs:

(1) corrections fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of

a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of mprisonment $10.00;

(2) court automation fee, to be collected upon conviction from persons convicted of violating any
provision of the Motor Vehicle Code involving the operation of a motor vehicle $3.00;

(3) traffic safety fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle $3.00;
and

(4) judicial education fee, to be collected upon conviction from persons convicted of operating a motor vehicle in violation of the Motor Vehicle Code, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance punishable by a term of imprisonment . . . . . $1.00.

E. Metropolitan court judges shall collect as costs a mediation fee not to exceed five dollars ($5.00) for the docketing of small claims and criminal actions specified by metropolitan court rule. Proceeds of the mediation fee shall be deposited into the metropolitan court mediation fund."

Section 4

Section 4. Section 35-7-4 NMSA 1978 (being Laws 1968, Chapter 62, Section 99, as amended) is amended to read:

"35-7-4. MAGISTRATE ADMINISTRATION--MONTHLY REMITTANCES.--Each magistrate court shall pay to the administrative office of the courts, not later than the date each month established by regulation of the director of the administrative office, the amount of all fines, forfeitures and costs collected by him during the previous month, except for amounts disbursed in accordance with law. The administrative office shall return to each magistrate a written receipt itemizing all money received. The administrative office shall deposit the amount of all fines and forfeitures with the state treasurer for credit to the current school fund. The administrative office shall deposit the amount of all costs, except all costs collected pursuant to Subsections D and E of Section 35-6-1 NMSA 1978, for credit to the general fund. The amount of all costs collected pursuant to Subsections D and E of Section 35-6-1 NMSA 1978 shall be credited as follows:

A. the amount of all costs collected pursuant to Paragraph (1) of Subsection D of Section 35-6-1 NMSA 1978 for credit to the local government corrections fund;

B. the amount of all costs collected pursuant to Paragraph (2) of Subsection D of Section 35-6-1 NMSA 1978 for credit to the court automation fund;

C. the amount of all costs collected pursuant to Paragraph (3) of Subsection D of Section 35-6-1 NMSA 1978 for credit to the traffic safety education and enforcement fund;

D. the amount of all costs collected pursuant to Paragraph (4) of Subsection D of Section 35-6-1 NMSA 1978 for credit to the judicial education fund; and

E. the amount of all costs collected pursuant to Subsection E of Section 35-6-1 NMSA 1978 for credit to the metropolitan court mediation fund."

Section 5

Section 5. Section 35-14-11 NMSA 1978 (being Laws 1983, Chapter 134, Section 6, as amended) is amended to read:

"35-14-11. MUNICIPAL ORDINANCE--COURT COSTS--COLLECTION--PURPOSE.--

A. Every municipality shall enact an ordinance requiring assessment of corrections fees and judicial education fees to be collected as court costs and used as provided in this section.

B. As used in this subsection, "convicted" means the defendant has been found guilty of a criminal charge by a municipal judge, either after trial, a plea of guilty or a plea of nolo contendere. A municipal judge shall collect the following costs:

(1) a corrections fee of ten dollars ($10.00); and

(2) a judicial education fee of one dollar ($1.00).

C. The fees are to be collected upon conviction from persons convicted of violating any ordinance relating to the operation of a motor vehicle or any ordinance that may be enforced by the imposition of a term of imprisonment.

D. All money collected pursuant to Paragraph (1) of Subsection B of this section shall be deposited in a special fund in the municipal treasury and shall be used for municipal jailer or juvenile detention officer training, for the construction planning, construction, operation and maintenance of a municipal jail or juvenile detention facility, for paying the cost of housing municipal prisoners in a county jail or housing juveniles in a detention facility or for complying with match or contribution requirements for the receipt of federal funds relating to jails or juvenile detention facilities.

E. All money collected pursuant to Paragraph (2) of Subsection B of this section shall be remitted monthly to the state treasurer for credit to the judicial education fund and shall be used for the education and training, including production of bench books and other written materials, of municipal judges and other municipal court employees."

Section 6

Section 6. Section 66-8-116.3 NMSA 1978 (being Laws 1989, Chapter 320, Section 5, as amended) is amended to read:

"66-8-116.3. PENALTY ASSESSMENT MISDEMEANORS--ADDITIONAL FEES.--In addition to the penalty assessment established for each penalty assessment misdemeanor, there shall be assessed:

A. ten dollars ($10.00) to help defray the costs of local government corrections;

B. a court automation fee of three dollars ($3.00);

C. a traffic safety fee of three dollars ($3.00), which shall be credited to the traffic safety education and enforcement fund; and

D. a judicial education fee of one dollar ($1.00), which shall be credited to the judicial education fund."

Section 7

Section 7. Section 66-8-119 NMSA 1978 (being Laws 1968, Chapter 62, Section 159, as amended) is amended to read:

"66-8-119. PENALTY ASSESSMENT REVENUE--DISPOSITION.--The division shall remit all penalty assessment receipts, except receipts collected pursuant to Subsections A through D of Section 66-8-116.3 NMSA 1978, to the state treasurer for credit to the general fund. The division shall remit all penalty assessment fee receipts collected pursuant to Subsection A of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the local government corrections fund; the court automation fee collected pursuant to Subsection B of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the court automation fund; the traffic safety fee collected pursuant to Subsection C of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the traffic safety education and enforcement fund; and the judicial education fee collected pursuant to Subsection D of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the judicial education fund."

Section 8

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 135

CHAPTER 274

RELATING TO JUDGES; PROVIDING FOR AN ADDITIONAL JUDGE IN THE TWELFTH JUDICIAL DISTRICT; AMENDING A CERTAIN SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 34-6-15 NMSA 1978 (being Laws 1971, Chapter 52, Section 2, as amended) is amended to read:

"34-6-15. JUDGES--TWELFTH JUDICIAL DISTRICT.--There shall be four district judges in the twelfth judicial district. The judge of division three shall reside and maintain his principal office in Lincoln county."

Section 2

Section 2. TEMPORARY PROVISION--APPOINTMENT.--The additional judgeship provided for in Section 1 of this act shall be filled by appointment by the governor pursuant to Article 6, Section 36 of the constitution of New Mexico.

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1994.HB 162

CHAPTER 275

RELATING TO HIGHWAYS; AMENDING PROVISIONS OF THE LITTER CONTROL AND BEAUTIFICATION ACT; MAKING AN APPROPRIATION.

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

Section 1

Section 1. Section 67-16-3 NMSA 1978 (being Laws 1985, Chapter 23, Section 3, as amended) is amended to read:

"67-16-3. DEFINITIONS.--As used in the Litter Control and Beautification Act:

A. "keep America beautiful system" means a comprehensive program to improve waste handling practices and the control of litter;

B. "keep New Mexico beautiful, incorporated" is a statewide organization which is the official clearinghouse for beautification projects in the state;

C. "council" means the litter control council;

D. "department" means the state highwayand transportation department;

E. "litter" means weeds, graffiti and all waste material, including but not limited to disposable packages or containers, but not including the waste of the primary processes of mining, logging, sawmilling or farming;

F. "person" means any individual, corporation, partnership, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary or representative or group of individuals or entities of any kind;

G. "public place" means any area that is used or held out for use by the public, whether owned or operated by public or private interests; and

H. "recycling" means the collection, separation or processing and return to the economic mainstream of raw materials or products that would otherwise become solid waste."

Section 2

Section 2. Section 67-16-12 NMSA 1978 (being Laws 1985, Chapter 23, Section 12, as amended) is amended to read:

"67-16-12. FURTHER DUTIES OF DEPARTMENT.--

A. The department shall:

(1) serve as the coordinating agency between various industry and business organizations seeking to aid in the anti-litter effort;

(2) cooperate with all local governments to accomplish coordination of local anti-litter efforts;

(3) encourage voluntary local anti-litter campaigns seeking to focus the attention of the public on programs to control and remove litter;

(4) encourage voluntary recycling programs and aid in identifying programs and available markets for recycled materials;

(5) apply for funds available from any other source for use in the administration of the Litter Control and Beautification Act;

(6) adopt rules and regulations to enter into contracts for making either direct or matching grants with other state agencies, cities, counties or Indian nation, tribe or pueblo government for the purpose of promoting local keep America beautiful system programs; and

(7) aid in the adoption and enforcement of model anti-litter statutes and ordinances and improve state and local litter control programs.

B. The department shall also allocate funds generated by the Litter Control and Beautification Act according to the following formula:

(1) no more than fifteen percent of the fees received in a year for operating expenses directly related to the administration of the council, including:

(a) research, development and implementation of a statewide evaluation system;

(b) professional services provided to the state by representatives of keep America beautiful, incorporated; and

(c) the promotion of and encouragement of private recycling efforts for all recyclable items;

(2) no more than twenty percent of the fees received in a year to purchase litter bags and receptacles and to conduct a public awareness and media campaign to include brochures, literature and educational materials, production of public service announcements and other expenses relating to public relations;

(3) no more than fifty percent of the fees received in a year to local governments to establish and help continue local keep America beautiful system programs;

(4) no more than sixty percent of the fees received in a year to local governments to establish a summer youth employment program to aid in litter control and beautification projects; and

(5) no more than ten percent of fees received in a year to keep New Mexico beautiful, incorporated to further beautification and educational programs."

Section 3

Section 3. Section 67-16-14 NMSA 1978 (being Laws 1985, Chapter 23, Section 14) is amended to read:

"67-16-14. BEAUTIFICATION FEES.--In addition to all other fees collected by registration of passenger cars, trailers, recreational vehicles, commercial buses, taxis and motorcycles, as well as any registration of a vehicle pursuant to the Motor Transportation Act, there is imposed on each vehicle or registration a beautification fee of fifty cents ($.50) to be deposited in a "litter control and beautification fund", hereby created in the state treasury. All income earned on the fund shall be credited to the fund. The fund is appropriated to the department for the purpose of carrying out the provisions of the Litter Control and Beautification Act. The money in the fund shall not revert at the end of any fiscal year." HB 231

CHAPTER 276

RELATING TO ADULTS; CREATING THE TASK FORCE FOR ADULT SERVICES; DECLARING AN EMERGENCY.

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

Section 1

Section 1. TEMPORARY PROVISION--TASK FORCE FOR ADULT SERVICES--CREATION-- MEMBERS--DUTIES.--

A. The "task force for adult services" is created. The task force shall be composed of fifteen members, thirteen of which shall be appointed by the governor, one of which shall be a member of the senate, appointed by the president pro tempore of the senate and one of which shall be a member of the house of representatives, appointed by the speaker of the house of representatives.

B. The governor shall appoint persons with demonstrated interest in adult services, particularly those services and programs administered or funded by a state agency. Members shall be appointed so as to provide adequate representation of ethnic groups and geographic areas of the state. At least two members shall be recipients of adult services provided by a state agency.

C. The task force for adult services shall:

(1) establish policies on issues confronting the state's adults;

(2) develop a unified continuum of services that avoids unnecessary duplication;

(3) investigate restructuring and reorganization of current state services directed towards adults;

(4) solicit input from consumers, advocates and providers of adult services, as well as the general public; and

(5) report its findings and recommendations to the health and human services legislative interim committee by October 15, 1993.

D. The members of the task force for adult services shall be reimbursed for their services as provided
in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.HB 246

CHAPTER 277

RELATING TO THE MUNICIPAL ARTERIAL PROGRAM; ALLOWING FOR RIGHT-OF-WAY ACQUISITION; AMENDING SECTION 67-3-28.2 NMSA 1978 (BEING LAWS 1986, CHAPTER 20, SECTION 125, AS AMENDED).

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

Section 1

Section 1. Section 67-3-28 NMSA 1978 (being Laws 1929, Chapter 100, Section 1, as amended) is amended to read:

"67-3-28. COOPERATION WITH THE STATE, MUNICIPALITIES, COUNTIES, SCHOOL DISTRICTS, ADJOINING STATES AND FEDERAL AGENCIES.--The department may enter into cooperative agreements with any branch, agency, department, board, instrumentality or institution of the state or United States government; with the respective municipalities, school districts and counties in this state; or with any adjoining state for the construction or improvement of public highways and streets within the control of a branch, agency, department, board, instrumentality or institution of the state or United States government or within a municipality, county, school district or adjoining state for the division between the department and the branch, agency, department, board, instrumentality or institution of the state or United States government, county, school district, municipality or adjoining state of the expense of the project development, construction, reconstruction, improvement, maintenance or repair of public highways, streets and public school parking lots, or for the acquisition of rights-of-way therefor or for materials for the construction or improvement thereof. The department shall bear all costs of the acquisition of rights-of-way for federal-aid interstate roads, both rural and urban."

Section 2

Section 2. Section 67-3-28.2 NMSA 1978 (being Laws 1986, Chapter 20, Section 125, as amended) is amended to read:

"67-3-28.2. LOCAL GOVERNMENTS ROAD FUND CREATED--USES.--

A. There is created in the state treasury the "local governments road fund" to be administered by the department. All income received from investment of the fund shall be credited to the fund. No money in the fund shall be used by the department to administer any program, and no entity receiving a distribution pursuant to a program requiring matching funds shall use another distribution made pursuant to this section to meet the match required.

B. Money in the local governments road fund shall be distributed in the following amounts for the specified purposes:

(1) forty-two percent for the cooperative agreements program to be used solely for the cooperative agreements entered into pursuant to Section 67-3-28 NMSA 1978 and in accordance with the match authorized pursuant to Section 67-3-32 NMSA 1978; provided, however, that distribution amounts made pursuant to this paragraph in each year shall be based on the following allocations:

(a) thirty-three percent for agreements entered into with counties;

(b) forty-nine percent for agreements entered into with municipalities;

(c) fourteen percent for agreements entered into with school districts; and

(d) four percent for agreements entered into with other entities;

(2) sixteen percent for the municipal arterial program to be used solely for the necessary project development, construction, reconstruction, improvement, maintenance, repair and right-of-way and material acquisition of and for those streets that are principal extensions of rural state highways and of other streets not on the state highway system but that qualify under the designated criteria established by the department. In entering into agreements with municipalities to provide funds for any project qualifying for the municipal arterial program, the department shall give preference to municipalities that contribute an amount equal to at least twenty-five percent of the project cost;

(3) sixteen percent for school bus routes to be used solely for acquiring rights of way and constructing, maintaining, repairing, improving and paving school bus routes and public school parking lots; and

(4) twenty-six percent for the county arterial program to be used for project development, construction, reconstruction, improvement, maintenance, repair, right-of-way and material acquisition of and for county roads for which individual counties have prioritized road projects. Prior to entering into any agreements for projects with the counties for the following fiscal year, in June of each year the department shall determine and certify the amount to which each county is entitled pursuant to the following schedule:

Road Mileage Category Based on Number of Miles Maintained By a County:	Entitlement to County:
400 miles or under	$250 for each mile
401 to 800 miles	$100,000 plus $200 for each mile over 400 miles
801 to 1,200 miles	$180,000 plus $150 for each mile over 800 miles
1,201 to 1,600 miles	$240,000 plus $100 for each mile over 1,200 miles
Over 1,600 miles	$300,000 plus $50 for each mile over 1,600 miles.

If in any year there is an insufficient amount in the fund of the county arterial program to certify the total amount to which all counties are entitled, the department shall decrease the entitlement amount due to each county in the same proportion as the insufficiency is to the total entitlements to all counties. Distribution of an entitlement amount and an agreement entered into with a county for any of the purposes for which the money may be spent requires an amount from the county equal to at least twenty-five percent of the entitlement. Any uncommitted or unencumbered balance remaining in the county arterial program fund at the end of a fiscal year shall be transferred to the cooperative agreement program specified in Paragraph (1) of this subsection for additional funding of that program in the next fiscal year.

C. The department may transfer funds from the state road fund to the local governments road fund to facilitate cash flow for the funding of these local governments road projects. The administrator of the local governments road fund shall reimburse the state road fund in a timely manner for any such transfers." HB 268

CHAPTER 278

RELATING TO COURTS; PROVIDING FOR THE SALARIES OF JUSTICES, JUDGES AND MAGISTRATES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. A new Section 34-1-9 NMSA 1978 is enacted to read:

"34-1-9. SALARIES OF JUSTICES, JUDGES AND MAGISTRATES.--

A. Justices of the supreme court shall each receive an annual salary of seventy-seven thousand two hundred fifty dollars ($77,250). The chief justice of the supreme court shall receive an annual salary that is two thousand dollars ($2,000) more than the annual salary of a justice of the supreme court.

B. The chief judge of the court of appeals shall receive an annual salary that is ninety-five percent of the annual salary of the chief justice of the supreme court.

C. Notwithstanding any other provision of law or any other provision of this section, the annual salaries of the following judges and magistrates shall be established as follows:

(1) a judge of the court of appeals shall receive an annual salary that is ninety-five percent of the annual salary of a justice of the supreme court;

(2) a district court judge shall receive an annual salary that is ninety-five percent of the annual salary of a judge of the court of appeals;

(3) a metropolitan court judge shall receive an annual salary that is ninety percent of the annual salary of a district court judge;

(4) a full-time magistrate shall receive an annual salary that is seventy-five percent of the annual salary of a metropolitan court judge;

(5) a half-time magistrate shall receive an annual salary that is fifty percent of the annual salary of a
full-time magistrate; and

(6) a quarter-time magistrate shall receive an annual salary that is twenty-five percent of the annual salary of a full-time magistrate.

D. For the eighty-third fiscal year and all subsequent fiscal years, the annual salary for justices of the supreme court, judges of the court of appeals, district court judges, metropolitan court judges and magistrates shall be established by the legislature in an appropriations act.

E. No additional salaries shall be paid to justices, judges or magistrates on account of services rendered the state. Justices of the supreme court, judges of the court of appeals, district court judges, metropolitan court judges and magistrates shall

receive per diem and mileage for necessary travel on official business of the court as provided in the Per Diem and Mileage Act."

Section 2

Section 2. Section 34-8A-4 NMSA 1978 (being Laws 1979, Chapter 346, Section 4, as amended) is amended to read:

"34-8A-4. METROPOLITAN COURT--JUDGES.--

A. Metropolitan judges shall be elected as provided in Section 34-8A-4.1 NMSA 1978. The governor shall fill vacancies in the office of metropolitan judge, by appointment of persons who possess the personal qualifications established by law, until the next general election.

B. No person shall be eligible for election or appointment to the office of metropolitan judge unless he is a member of the bar of and has practiced in this state for a period of three years. There shall be a chief metropolitan judge of a metropolitan court. The chief metropolitan judge shall designate each metropolitan judge position as a separate and consecutively numbered division, and any additional metropolitan judge authorized within a metropolitan court shall be designated as metropolitan judge of the next consecutive division. A district court judge may designate a metropolitan judge as a special master."

Section 3

Section 3. Section 35-1-36.1 NMSA 1978 (being Laws 1986, Chapter 96, Section 1, as amended) is amended to read:

"35-1-36.1. MAGISTRATE COURT--COMPENSATION.--

A. All magistrates, except for Lea magistrate district division 4 and McKinley magistrate district division 3, shall be full-time magistrates. The Lea magistrate district division 4 magistrate shall serve one-quarter time and the McKinley magistrate district division 3 magistrate shall serve one-half time.

B. A full-time magistrate is defined as a magistrate who holds office hours a minimum of forty hours per week and who holds no other employment that may conflict with his full-time judicial duties.

C. A half-time magistrate is defined as a magistrate who holds office hours a minimum of twenty hours per week.

D. A quarter-time magistrate is defined as a magistrate who holds office hours a minimum of ten hours per week."

Section 4

Section 4. REPEAL.--Sections 34-2-2, 34-5-3 and 34-6-3 NMSA 1978 (being Laws 1955, Chapter 52, Section 1, Laws 1966, Chapter 28, Section 3 and Laws 1968, Chapter 69, Section 6, as amended) are repealed.

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 1994.HB 278

CHAPTER 279

RELATING TO PUBLIC EMPLOYEES RETIREMENT; PROVIDING FOR APPLICATION TO THE EDUCATIONAL RETIREMENT ACT; PROVIDING FOR RESTRICTIONS FOR CALCULATING A MEMBER'S SALARY; AMENDING AND REPEALING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 10-13A-2 NMSA 1978 (being Laws 1992, Chapter 116, Section 14) is amended to read:

"10-13A-2. DEFINITIONS.--As used in the Public Employees Retirement Reciprocity Act:

A. "association" means the public employees retirement association of New Mexico;

B. "board" means the retirement board provided for in the Public Employees Retirement Act or the educational retirement board;

C. "educational retirement system" means that retirement system provided for in the Educational Retirement Act;

D. "eligible reciprocal service credit" means a minimum of one month of service credit under any state system as calculated according to the retirement act applicable to the member;

E. "former member" means a person who was previously employed by an employer covered by a state system, who has terminated that employment and who has received a refund of member contributions;

F. "judicial retirement system" means that retirement system provided for in the Judicial Retirement Act;

G. "magistrate retirement system" means that retirement system provided for in the Magistrate Retirement Act;

H. "member" means:

(1) a currently employed, contributing employee of an employer covered by a state system; or

(2) a person who has been but is not currently employed by an employer covered by a state system, who has not retired and who has not received a refund of member contributions from the state system under which he was covered;

I. "member contributions" means the amounts deducted from the salary of a member and credited to the member's individual account in a state system, together with interest, if any, credited to that account;

J. "pension" means a series of monthly payments to a retired member or survivor beneficiary as defined and provided in the Educational Retirement Act, the Public Employees Retirement Act, the Magistrate Retirement Act or the Judicial Retirement Act;

K. "public employees retirement system" means that retirement system provided for in the Public Employees Retirement Act;

L. "retire" means to:

(1) terminate employment with all employers covered by any state system; and

(2) receive a pension benefit from one state system;

M. "salary" means the member's salary as defined under the applicable retirement act; and

N. "state system" means a retirement program provided for in the Educational Retirement Act, the Public Employees Retirement Act, the Magistrate Retirement Act or the Judicial Retirement Act."

Section 2

Section 2. Section 10-13A-3 NMSA 1978 (being Laws 1992, Chapter 116, Section 15) is amended to read:

"10-13A-3. SERVICE CREDIT--FORFEITURE--REINSTATEMENT.--Forfeited service credit under any state system shall be reinstated according to the provisions of the retirement act applicable to that state system before that service credit may be considered eligible reciprocal service credit."

Section 3

Section 3. Section 10-13A-4 NMSA 1978 (being Laws 1992, Chapter 116, Section 16) is amended to read:

"10-13A-4. NORMAL RETIREMENT--PENSION BENEFIT.--If a member has one month or more of eligible reciprocal service credit under each of two or more state systems, the following provisions shall apply, together with the applicable provisions of the Public Employees Retirement Reciprocity Act, the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act and the rules and regulations for those acts promulgated by the board:

A. a member's total eligible reciprocal service credit under all state systems shall be used in satisfying the service credit requirements for normal retirement under the state system from which the member retires;

B. when a member with eligible reciprocal service credit retires, the member shall receive a pension that is equal to the sum of the pensions attributable to the service credit the member has accrued under each state system, subject to the folloing restrictions:

(1) the salary used in calculating each component of the pension shall be the salary, average annual salary or final average salary, as those terms are defined under the applicable act, earned while the member was covered under the state system calculating that component as follows:

(a) the member's entire salary history under the public employees retirement system and the educational retirement system shall be used to determine the final average salary and annual average salary under each state system if the member has eligible reciprocal service credit under both state systems;

(b) the member's entire salary history under the educational retirement system and the judicial retirement system or the magistrate retirement system, or both, shall be used to determine the average annual salary under the Educational Retirement Act if the member has eligible reciprocal service credit under those state systems, but has less than five years of service credit under the educational retirement system;

(c) the member's salary history under the educational retirement system shall be used to determine the average annual salary under that system if the member has eligible reciprocal service credit under the Educational

Retirement Act and the Judicial Retirement Act or the Magistrate Retirement Act, or both, and has five or more years of service credit under the educational retirement system; or

(d) if a member has less than twelve months of credited service under the judicial retirement system or the magistrate retirement system, the final year's salary shall be the aggregate amount of salary paid to the member for the period of credited service divided by the member's credited service times twelve;

(2) the member shall meet the age and service credit requirements for retirement under each applicable state system before the component of the pension attributable to service credit accrued under that state system may be paid; provided the member's total eligible reciprocal service credit under all state systems shall be used in satisfying the service credit requirement for normal retirement under each state system;

(3) the member shall terminate employment under all state systems before the member may receive a pension from any state system; and

(4) the member shall file an application for retirement under the state system under which the member was last employed, in accordance with the requirements of that state system;

C. subject to the restrictions contained in this section, the component of the pension attributable to each state system shall be calculated based upon:

(1) the member's eligible reciprocal service credit acquired as a member of that state system; and

(2) the pension calculation formula applicable to the member under that state system;

D. the following limitations shall apply to pensions calculated under the Public Employees Retirement Reciprocity Act:

(1) in no case shall the total amount of the pension, calculated under the Public Employees Retirement Reciprocity Act and received by a member attributable to all state systems exceed the amount allowable under Section 415 of the Internal Revenue Code; and

(2) where the member has less than five years of service credit in one state system, the pension from that state system shall not exceed six hundred twenty-five one thousandths percent per month of service under that state system multiplied by the following amount applicable under that state system:

(a) one-twelfth of the member's magistrate salary received during the last year in office;

(b) one-twelfth of the member's judicial salary received during the last year in office; or

(c) the member's final average salary as defined pursuant to the Public Employees Retirement Act;

E. the state system from which a member with eligible reciprocal service credit retires shall be the payor fund for the pension; provided that:

(1) each state system shall reimburse the payor fund the amount of the component of the pension attributable to service credit accrued under that state system; and

(2) reimbursements shall be made in the manner and frequency determined by the boards;

F. in no case shall any member retire from more than one state system; and

G. if a member retires from any state system with eligible reciprocal service credit and is subsequently employed by any employer covered by a state system, the retired member's eligibility to continue to receive pension payments shall be governed by the retirement act governing the state system from which the member retired. Subsequent membership in the retirement program under which the subsequent employee is covered shall be governed by that retirement act."

Section 4

Section 4. REPEAL.--Sections 10-13-1 through 10-13-5 NMSA 1978 (being Laws 1963, Chapter 275, Sections 1 through 5, as amended) are repealed.

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 323

CHAPTER 280

RELATING TO LIMITED LIABILITY COMPANIES; ENACTING THE LIMITED LIABILITY COMPANY ACT; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. SHORT TITLE.--Sections 1 through 74 of this act may be cited as the "Limited Liability Company Act".

Section 2

Section 2. DEFINITIONS.--As used in the Limited Liability Company Act:

A. "articles of organization" means the original or restated articles filed pursuant to the Limited Liability Company Act and any amendments to those articles, including articles of merger or consolidation;

B. "corporation" means an organization incorporated under the laws of New Mexico or a foreign corporation;

C. "commission" means the state corporation commission or its designee;

D. "court" means a court having jurisdiction in the case;

E. "event of dissociation" means an event that causes a person to cease to be a member of a limited liability company;

F. "foreign corporation" means a corporation that is organized under the laws of another state or a foreign country;

G. "foreign limited liability company" means an entity that is:

(1) an unincorporated association;

(2) organized under the laws of another state or foreign country;

(3) organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(4) is not required to be registered or organized under the laws of New Mexico other than the Limited Liability Company Act;

H. "foreign limited partnership" means a limited partnership formed under the laws of another state or a foreign country;

I. "limited liability company" or "domestic limited liability company" means an organization formed pursuant to the provisions of the Limited Liability Company Act;

J. "limited liability company interest" means a member's or assignee's right to receive distributions and a return of capital from the limited liability company. A member's or assignee's limited liability company interest does not include rights the

member or assignee has on account of other matters, such as a right to receive accrued salary for services the member or assignee rendered to, repayment of a loan the member or assignee made to or indemnification by, the limited liability company;

K. "limited partnership" means a limited partnership under the laws of New Mexico or a foreign limited partnership;

L. "manager" means, with respect to a limited liability company that has included a statement in its articles of organization that it is to be managed by a manager or managers, the person or persons designated as managers in accordance with the articles of organization or an operating agreement;

M. "member" means a person who has been admitted to membership in a limited liability company and who has not dissociated from that company;

N. "membership interest" or "interest" means a member's limited liability company interest and his rights to participate in management and control of the limited liability company;

O. "operating agreement" means a written agreement providing for the conduct of the business and affairs of a limited liability company and that agreement as amended in writing;

P. "person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal entity; and

Q. "state" means a state, territory or possession of the United States, the District of Columbia or the commonwealth of Puerto Rico.

Section 3

Section 3. NAME.--

A. The name of a limited liability company shall be stated in its articles of organization and shall contain the words "limited liability company" or "limited company". The word "limited" may be abbreviated as "ltd." and the word "company" may be abbreviated as "co.".

B. A limited liability company name must be distinguishable from the name of any:

(1) limited liability company, limited partnership or corporation existing under the laws of this state;

(2) foreign limited liability company, limited partnership or corporation authorized to transact business in this state; and

(3) name reserved or registered under Section 4 of the Limited Liability Company Act, Chapter 53, Article 11 NMSA 1978 or Chapter 57, Article 2 or Article 3 NMSA 1978.

C. The provisions of Subsection B of this section do not apply if the applicant files with the commission a certified copy of a final decree of a court establishing the prior right of the limited liability company to use such name in this state.

Section 4

Section 4. RESERVATION OF NAME.--

A. The exclusive right to use a name may be reserved by:

(1) any person intending to organize a limited liability company and to adopt that name;

(2) any limited liability company or any foreign limited liability company registered in New Mexico
that intends to adopt that name;

(3) any foreign limited liability company intending to register in New Mexico and to adopt that name; or

(4) any person intending to organize a foreign limited liability company and to have it registered in New Mexico and to adopt that name.

B. The reservation shall be made by filing with the commission an application executed by the applicant to reserve a specified name. If the commission finds that the name is available for use by a domestic or foreign limited liability company, it shall reserve the name for the exclusive use of the applican for a period of one hundred twenty days after the date the application is filed with the commission.

C. The holder of a reserved name may renew the reservation for successive periods of one hundred twenty days each.

D. The right to the exclusive use of a reserved name may be transferred to another person by filing with the commission a notice of the transfer executed by the applicant for whom the name was reserved and specifying the name to be transferred and the name and address of the transferee. The transfer shall not extend the term during which the name is reserved.

Section 5

Section 5. REGISTERED OFFICE AND REGISTERED AGENT--CHANGE OF PRINCIPAL PLACE OF BUSINESS.--

A. Each limited liability company shall maintain in New Mexico:

(1) a registered office that may be the same as the limited liability company's principal place of business; and

(2) a registered agent for service of process on the limited liability company that is either:

(a) an individual resident of New Mexico;

(b) a domestic corporation, limited liability company or partnership having a place of business in New Mexico that is the same as the registered office; or

(c) a foreign corporation, limited liability company or partnership authorized to transact business in New Mexico, having a place of business that is the same as the registered office.

B. A limited liability company may change its registered office or registered agent by delivering to the commission a statement setting forth:

(1) the name of the limited liability company;

(2) the name of its current registered agent;

(3) the street address of its current registered office; and

(4) if its current registered agent is to be changed:

(a) the name of its successor registered agent;

(b) the street address of the successor registered agent's place of business;

(c) a statement that such address is the same as the current address of the limited liability company's current registered office or, if there is a concurrent change in the address of the registered office, as the new address of the registered office; and

(d) the affidavit of the successor registered agent that the agent accepts the appointment;

(5) if the current address of the place of business of its current registered agent is to be changed, the new street address of the place of business of the current registered agent and a statement that the new street address is the same as the address of the limited liability company's registered office or, if there is a concurrent change in the address of the registered office, as the new street address of the registered office; or

(6) if the address of its current registered office is to be changed, the new street address to which the current registered office is to be changed and a statement that the new address is the same as the street address of the place of business of the current or, if there is a concurrent change of the current registered agent, of the successor registered agent of the limited liability company.

C. A registered agent may change the address of the agent's place of business to another place in New Mexico and thereby, except in the case of a registered agent who is an individual resident, also change the address of the registered office of the limited liability company by delivering to the commission a statement containing the information and statement required by Paragraph (6) of Subsection B of this section, except that it need be signed only by the registered agent and shall recite that a copy has been mailed to the limited liability company.

D. If the commission finds that the statement conforms to the provisions of this section, it shall file the statement in its office and, upon such filing, the change of registered agent, change of address of the registered office or change of the registered agent's place of business shall become effective and fulfill any requirement that such change be reported to the commission.

E. A registered agent of a limited liability company may resign as registered agent by delivering a written notice, executed in duplicate, to the commission, which shall mail a copy of the notice to the limited liability company at its principal place of business as shown on the records of the commission. The resigning registered agent's appointment terminates thirty days after receipt of the notice by the commission or on the effective date of the appointment of a successor registered agent, whichever occurs first.

F. A limited liability company shall notify the commission of a change in the street address of its principal place of business by delivering a written statement to the commission setting forth such change.

Section 6

Section 6. NATURE AND DURATION OF BUSINESS.--A limited liability company may conduct or promote any lawful business or purpose. If the purpose for which a limited liability company is organized makes it subject to provisions of other laws, the limited liability company shall also be subject to such provisions. The duration

of existence of a limited liability company may be perpetual or may be limited to a definite term or until completion of a particular undertaking.

Section 7

Section 7. FORMATION.--One or more persons may form a limited liability company by filing articles of organization with the commission. The persons forming the limited liability company need not be members of the limited liability company.

Section 8

Section 8. ARTICLES OF ORGANIZATION.--The articles of organization shall set forth:

A. a name for the limited liability company that satisfies the requirements of Section 3 of the Limited Liability Company Act;

B. the street address of the registered office and the name of the registered agent and the street address of the limited liability company's current principal place of business, if different from the address of its registered office;

C. the latest date upon which the limited liability company is to dissolve;

D. if management of the limited liability company is vested to any extent in a manager, a statement to that effect and of the extent to which management is so vested; and

E. any other provision that the persons signing the articles choose to include in the articles, including provisions for the regulation of the internal affairs of the limited liability company.

Section 9

Section 9. FILING.--

A. The organizers of a limited liability company shall file with the commission:

(1) the signed original of the articles of organization, together with a duplicate copy which may be either signed, photocopied or conformed;

(2) the affidavit of the person appointed registered agent, accepting appointment as registered agent; and

(3) any other documents required to be filed pursuant to the Limited Liability Company Act.

B. The commission may accept a facsimile transmission for filing.

C. If the commission determines that the documents delivered for filing conform with the provisions of the Limited Liability Company Act, it shall, when all required filing fees have been paid:

(1) endorse on each signed original and duplicate copy the word "filed" and the date of its acceptance for filing;

(2) retain a signed original in the files of the commission; and

(3) return each duplicate copy to the person who delivered it to the commission or to that person's representative.

Section 10

Section 10. EFFECT OF FILING OF ARTICLES OF ORGANIZATION.--

A. A limited liability company is formed when the articles of organization are filed with the commission or at any later date or time specified in the articles of organization if there has been substantial compliance with the requirements of the Limited Liability Company Act. A limited liability company formed pursuant to the Limited Liability Company Act is a separate legal entity.

B. Each copy of the articles of organization stamped "filed" and marked with the filing date is conclusive evidence that there has been substantial compliance with all conditions required to be performed by the organizers and that the limited liability company has been legally organized and formed pursuant to the Limited Liability Company Act.

Section 11

Section 11. AMENDMENT AND RESTATEMENT OF ARTICLES OF ORGANIZATION.--

A. The articles of organization of a limited liability company are amended when articles of amendment are filed with the commission or at any later date or time specified in the articles of amendment if there has been substantial compliance with the requirements of the Limited Liability Company Act. The articles of amendment shall set forth:

(1) the name of the limited liability company;

(2) the date the articles of organization were filed; and

(3) the amendments of the articles of organization.

B. The articles of organization may be amended in any respect desired, so long as the articles of organization as amended contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.

C. The articles of organization shall be amended to reflect any change in the name of the limited liability company, the latest date on which the limited liability company is to dissolve or whether the limited liability company is to be managed by members or managers.

D. Articles of organization may be restated at any time. Restated articles of organization shall be filed with the commission and shall be designated as such in the heading and shall state either in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its articles of organization. Restated articles of organization shall supersede the original articles of organization and all prior amendments and restatements.

Section 12

Section 12. EXECUTION OF DOCUMENTS.--

A. Unless otherwise specified in the Limited Liability Company Act, any document required to be filed with the commission shall be executed:

(1) by a manager, if management of the limited liability company is vested in one or more managers, or by a member, if management of the limited liability company is reserved to the members;

(2) by a person forming the limited liability company if the limited liability company has not been formed; or

(3) by a receiver, trustee or court-appointed fiduciary if the limited liability company is in the hands of a receiver, trustee or fiduciary.

B. The person executing the document shall sign it and state, beneath or opposite his signature, his name and the capacity in which he signs.

C. The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document do not need to be shown to or filed with the commission.

Section 13

Section 13. LIABILITY OF MEMBERS AND MANAGERS TO THIRD PARTIES.--Except as otherwise provided in the Limited Liability Company Act, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or

otherwise, shall be solely the debts, obligations and liabilities of the limited liability company. No member or manager of a limited liability company and no other person with authority pursuant to the Limited Liability Company Act to wind up the business or affairs of the limited liability company following its dissolution, shall be obligated personally for any debt, obligation or liability of the limited liability company solely by reason of being a member or manager of the limited liability company or having authority pursuant to the Limited Liability Company Act to wind up the company's business and affairs following its dissolution. A person may be liable for any act or omission performed in his capacity as a manager of a limited liability company if there is a basis for liability. Nothing in this section shall be construed to immunize any person from liability for the consequences of his own acts or omissions for which he otherwise may be liable.

Section 14

Section 14. PARTIES TO ACTIONS.--A member of a limited liability company is not a proper party to a proceeding by or against the limited liability company solely by reason of being a member of the limited liability company, except where the object of the proceeding is to enforce a member's right against or liability to the limited liability company.

Section 15

Section 15. MANAGEMENT BY MEMBERS OR MANAGERS.--

A. Except to the extent the articles of organization vest management of the limited liability company in one or more managers, management of the business and affairs of the limited liability company shall be vested in the members, subject to any provision in the articles of organization, an operating agreement or the Limited Liability Company Act, which vests particular management responsibilities in any member or group or class of members.

B. If the articles of organization vest management of the limited liability company in one or more managers, the articles of organization or an operating agreement may prescribe the qualifications and the number of managers, the method in accordance with which managers shall be selected and duties and responsibilities of such managers. Each manager shall have such power to manage the business or affairs of the limited liability company as the articles of organization or an operating agreement shall provide. Unless otherwise provided by the articles of organization or an operating agreement:

(1) a manager shall be appointed and may be removed by the affirmative vote, approval or consent of the members having a majority share of the voting power of all of the members;

(2) a manager need not be a member of the limited liability company or a natural person;

(3) unless a manager is removed or resigns, he shall hold office until his successor has been elected and qualified; and

(4) the manager or managers designated by or in accordance with the articles of organization and operating agreement shall have exclusive power to make all decisions on behalf of the limited liability company that are not specifically reserved to the members by the Limited Liability Company Act.

Section 16

Section 16. LIABILITIES AND DUTIES OF MANAGERS AND MEMBERS.--Unless otherwise provided by the articles of organization or an operating agreement:

A. a member who is not a manager and is not vested with particular management responsibilities by the articles of organization or an operating agreement shall not be liable to the limited liability company or to the other members solely by reason of his act or omission in his capacity as a member;

B. a member who is vested with particular management responsibilities by the articles of organization or an operating agreement or a manager shall not be liable, responsible or accountable in damages or otherwise to the limited liability company or to the other members solely by reason of his act or omission on behalf of the limited liability company in his capacity as a member having particular management responsibilities or as a manager, unless such act or omission constitutes gross negligence or willful misconduct;

C. a member or manager may lend money to and transact other business with the limited liability company, and except as otherwise provided in Subsections D and E of this section, and subject to other applicable law, he shall have the same rights and obligations with respect to such loan or transaction of business as he would have if he were not a member or manager;

D. every member who is vested with particular management responsibilities by the articles of organization or an operating agreement and every manager shall account to the limited liability company and hold as trustee for it any profit or benefit he derives from:

(1) any transaction connected with the conduct or winding up of the limited liability company; or

(2) any use by such member or manager of the company's property, including confidential or proprietary information of the limited liability company

or other matters entrusted to him as a result of his status as a member or manager unless:

(a) the material facts of the relationship of the interested manager or member to the contract, transaction or use were disclosed or known to all of the other managers or members who, in good faith, authorized or approved the contract, transaction or use by: 1) the affirmative vote of a majority of all of the disinterested managers; or 2) the affirmative vote of all of the disinterested members, even though all of the disinterested managers were less than a majority of all of the managers, or even though all of the disinterested members did not have a majority share of the voting power of all of the members; or

(b) the contract, transaction or use was fair to the limited liability company when it was authorized or approved.

Section 17

Section 17. VOTING.--

A. Except as provided by the articles of organization, an operating agreement or the Limited Liability Company Act, members who have contributed to the capital of the limited liability company shall vote in proportion to the value of their contributions to the capital of the limited liability company, determined in accordance with the Limited Liability Company Act and adjusted to the time the vote is taken to reflect all contributions made and all withdrawals of capital by the members prior to such time.

B. Except as provided by the articles of organization, an operating agreement or the Limited Liability Company Act, and subject to the provisions of Subsection C of this section:

(1) the affirmative vote, approval or consent of the members having a majority share of the voting power of all members shall be required to amend the articles of organization or an operating agreement to approve the sale, mortgage, pledge or other hypothecation or disposition of all or substantially all of the assets of the limited liability company, to approve the merger or consolidation of the limited liability company or, except as provided in Paragraph (3) of this subsection, to approve any other action required or permitted to be approved by the members;

(2) the affirmative vote, approval or consent of all of the members shall be required to expel or remove a member from membership in the limited liability company;

(3) if the articles of incorporation or operating agreement vest management responsibility in one or more managers, the affirmative vote, approval or consent of a majority of the managers is required to decide or resolve any difference on

any matter connected with carrying on the business and affairs of the limited liability company which is within the scope of the managers' authority; and

(4) any matter connected with the carrying on of the business and affairs of the limited liability company that is not within the scope of the authority of one or more managers, or of one or more members in whom the articles of organization and operating agreement vest particular management responsibility, shall be decided or resolved by the affirmative vote, approval or consent of members having a majority share of the voting power of all members.

C. Notwithstanding the provisions of Subsection B of this section, if a provision in the articles of organization or operating agreement requires a greater than majority vote to approve a matter, the same greater than majority vote shall be required to amend that provision.

Section 18

Section 18. INDEMNIFICATION OF MEMBERS AND MANAGERS.--The articles of organization or an operating agreement may provide for indemnification of a member or manager for judgments, settlements, penalties, fines or expenses incurred in a proceeding to which a person is a party because he is or was a member or manager and for advancement of expenses, including costs of defense, prior to final disposition of such proceeding.

Section 19

Section 19. RECORDS AND INFORMATION.--

A. A limited liability company shall keep at its principal place of business, and notify all of its members of the location of such place, the following:

(1) a list containing the full name and last known mailing address of all current and former members and managers;

(2) a copy of the articles of organization and all amendments or restatements of the articles, together with executed copies of any powers of attorney pursuant to which any articles, amendments or restatements have been executed;

(3) a copy of each of the limited liability company's federal, state and local income tax returns and financial statements for the three most recent years or, if such returns or statements were not prepared for any reason, copies of the information and statements necessary to enable the members to prepare their own federal, state and local tax returns for such periods;

(4) a copy of every current and prior operating agreement, and every amendment to each of those operating agreements;

(5) unless the following statements are included in the articles of organization or an operating agreement:

(a) a current statement of the capital contributions made by each member specifying the amount of cash and the agreed value of other property received by the limited liability company and the agreed value of services as a capital contribution that each member has rendered to the limited liability company;

(b) a statement of the cash, property and services that each member has agreed to contribute or render to the limited liability company in the future, and of the principal balance outstanding under any promissory note payable in respect of a capital contribution, and of the amount of the capital contribution with which each such member shall be credited upon receipt of such cash, property or services, or any part thereof, by the limited liability company; and

(c) a statement of the times at which, or the events on the happening of which, any additional contributions to or withdrawals from capital to which the members have agreed are to occur; and

(6) documents or any other writings required to be made available to members by the articles of organization or operating agreement.

B. A member or his representative may, at the member's expense, inspect and copy any limited liability company record, wherever such record is located, upon reasonable request during ordinary business hours.

C. Managers or members in whom the articles of organization or an operating agreement vest a particular management responsibility for one or more material matters shall, if requested by a member, the personal representative of a deceased member or the legal representative of a member under a legal disaility, render to that member or representative, to the extent the circumstances render it reasonable to do so, true and full information on all such material matters affecting the requesting member in his capacity as a member.

D. Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

Section 20

Section 20. CONTRIBUTIONS TO CAPITAL--CERTIFICATES OF MEMBERSHIP INTEREST.--

A. A membership interest in a limited liability company may be issued in exchange for a contribution of cash or property received by the limited liability company

or services rendered to the limited liability company, the value of which shall be established and recorded as of the date the contribution was made by the persons in whom management of the limited liability company is vested. If permitted by the articles of organization or an operating agreement, a membership interest in a limited liability company may be issued in exchange for such member's promissory note or other written promise to contribute cash or property or perform services, the value of which shall be determined by the persons in whom management of the limited liability company is vested.

B. The articles of organization or an operating agreement may:

(1) provide that a membership interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company;

(2) provide for the assignment or transfer of a membership interest represented by such a certificate by transfer of the certificate; and

(3) make other provisions for such certificates.

Section 21

Section 21. LIABILITY FOR CONTRIBUTION.--

A. Except as provided in the articles of organization or an operating agreement, a member's written promise to the limited liability company to contribute cash or property or render services is not excused by reason of the member's death, disability or other inability to perform.

B. The articles of organization or an operating agreement may provide that the interest of a member who fails to make a payment of cash or transfer of property to the limited liability company or fails to render services required by a written promise is subject to specified consequences. Such consequences may take the form of a reduction of the defaulting member's interest in the limited liability company, subordination of the member's interest to that of nondefaulting members, a forced sale of the member's interest, forfeiture of the member's interest, the lending of money to the defaulting member by other members of the amount necessary to meet the defaulting member's commitment, a determination of the value of a defaulting member's interest by appraisal or by formula and redemption or sale of the interest at that value, or any other specified consequence. Unless otherwise provided by the articles of organization or an operating agreement, a member who does not perform a written promise to contribute cash or property or render service shall be obligated, at the option of the limited company, to contribute cash equal to the fair market value of that portion of the promised performance that has not been received by the limited liability company.

C. Unless otherwise provided in the articles of organization or an operating agreement, the obligation of a member to make a contribution may be compromised only with the unanimous consent of the members.

Section 22

Section 22. SHARING OF PROFITS AND LOSSES.--The profits and losses of a limited liability company shall be allocated among the members in the manner provided in the articles of organization or an operating agreement. If neither the articles of organization nor an operating agreement provide for allocation, such profits and losses shall be allocated among the members in proportion to the value of their respective contributions to capital, adjusted to reflect all withdrawals from capital.

Section 23

Section 23. SHARING OF INTERIM DISTRIBUTIONS.--Except as provided in Sections 24 and 44 of the Limited Liability Company Act, distributions of cash or other assets of a limited liability company shall be shared among the members and among classes of members in the manner provided by the articles of organization or an operating agreement. If neither the articles of organization nor an operating agreement provides otherwise, cash or other assets shall be distributed on the basis of the value of contributions made by each member, to the extent that such contributions have not been returned. A member is entitled to receive distributions described in this section to the extent and at the times or upon the happening of the events specified by the articles of organization or an operating agreement or at the times determined by the persons in whom management is vested.

Section 24

Section 24. DISTRIBUTION ON EVENT OF DISSOCIATION.--Upon the happening of an event of dissociation that does not require the winding up of the affairs of the limited liability company pursuant to Section 39 of the Limited Liability Company Act, a dissociating member is entitled to receive any distribution to which the member is entitled under the provisions of the articles of organization or operating agreement and if such provisions do not specify the
effect of such dissociation, such dissociating member shall be entitled only to receive, within a reasonable time after dissociation, the fair market value of his limited liability company interest as of the date of dissociation.

Section 25

Section 25. WITHDRAWALS OF CAPITAL AND DISTRIBUTIONS IN KIND.--Except as provided in the articles of organization or an operating agreement:

A. unless approved by all members, no member shall have the right to withdraw any part of his contribution to capital;

B. a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash; and

C. no member may be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the value of the percentage of the asset distributed to the member exceeds a percentage of the value of that asset which is equal to the percentage in which the member shares in distributions from the limited liability company.

Section 26

Section 26. WRONGFUL DISTRIBUTIONS.--

A. No distribution may be made if, after giving effect to the distribution:

(1) the limited liability company would not be able to pay its debts as they become due in the usual course of business; or

(2) the fair market value of the limited liability company's total assets would be less than the sum of all of its liabilities other than liabilities to members with respect to their membership interests and liabilities for which the recourse of the creditors is limited to specific property of the limited liability company. For purposes of this provision, in the case of specific property that is subject to a liability for which the recourse of the creditors is limited to such property, only the fair market value of such property in excess of such liability shall be included in the fair market value of the limited liability company's assets.

B. The limited liability company may base a determination that a distribution is not prohibited under Subsection A of this section either on:

(1) financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(2) any other valuation method that is reasonable under the circumstances.

C. Except as provided in Subsection E of this section, the effect of a distribution under Subsection A of this section is measured as of:

(1) the date the distribution is authorized if the distribution occurs within one hundred twenty days after the date of authorization; or

(2) the date distribution is made if it occurs more than one hundred twenty days after the date of authorization.

D. Indebtedness of the limited liability company that it issued as a distribution to its members or the terms of which provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to members would not be wrongful under this section, is not a liability for purposes of determinations made pursuant to Paragraph (2) of Subsection A of this section.

E. Each payment of principal or interest on indebtedness of a limited liability company that it issued as a distribution shall be treated as a distribution, the effect of which is measured on the date such payment is actually made.

Section 27

Section 27. LIABILITY UPON WRONGFUL DISTRIBUTION.--

A. In addition to any other liabilities, a member or manager who votes for, approves or consents to any distribution that violates any provision of the articles of organization, an operating agreement or Section 26 of the Limited Liability Company Act shall be liable to the limited liability company, jointly but not severally, with all other members or managers so voting, approving or consenting for the amount of the distribution that exceeds what could have been distributed without violating Section 26 of that act, the articles of organization or an operating agreement,
unless the member or manager based his determination that the distribution did not violate such provisions on the statements or other valuation method authorized by Subsection B of Section 26 of that act and had no actual knowledge that rendered his reliance on such statements, valuation or method unwarranted.

B. Each member or manager who is liable pursuant to Subsection A of this section is entitled to contribution:

(1) from each other member or manager who is liable under Subsection A of this section; and

(2) from each member for the amount the member received knowing that the distribution was made in violation of a provision of the articles of organization, an operating agreement or Section 26 of the Limited Liability Company Act.

Section 28

Section 28. RIGHT TO DISTRIBUTION.--At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled, with respect to the distribution, to all remedies available to a creditor of the limited liability company. A member to whom a limited liability company is indebted as a consequence of a

distribution to such member, which is not prohibited by Section 26 of the Limited Liability Company Act, shall be a creditor at parity with the limited liability company's other general unsecured creditors, except to the extent that the limited liability company's indebtedness to such member is subordinated by agreement.

Section 29

Section 29. OWNERSHIP OF PROPERTY BY THE LIMITED LIABILITY COMPANY.--

A. Property transferred to or otherwise acquired by a limited liability company is property of the limited liability company and not of the members. A member has no interest in an item of limited liability company property.

B. Property acquired or owned by the limited liability company shall be acquired, held and conveyed in the name of the limited liability company. A limited liability company may acquire any estate in real or personal property in the name of the limited liability company, and title to any estate so acquired shall vest in the limited liability company rather than in the members.

C. Property may be owned by a limited liability company, even though the property is not acquired or held in its name.

D. Subject to Subsection G of this section, property is presumed to be owned by the limited liability company if it is acquired in the name of the limitd liability company.

E. Subject to Subsection G of this section, property is presumed to be owned by the limited liability company if it is purchased with funds of the limited liability company, even if it is acquired in the name of a member or other person.

F. Subject to Subsection G of this section, property is presumed to be the property of one or more members or other persons if it is acquired in the names of such persons without use of funds of the limited liability company, even though the property is used for purposes of the business of the limited liability company.

G. Real property and other property held of public record otherwise than in the name of the limited liability company, the ownership of which is customarily publicly recorded, shall not be deemed to be owned by the limited liability company to the prejudice of a person who did not have actual knowledge of the limited liability company's ownership.

Section 30

Section 30. TRANSFER OF PROPERTY OF LIMITED LIABILITY COMPANY.--

A. Except as provided in Subsection E of this section, Section 42 or 43 of the Limited Liability Company Act or otherwise in the articles of organization or an operating agreement, title to property of a limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

B. Title to property of a limited liability company that is held in the name of one or more members or managers with an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company, or of the existence of a limited liability company, even if the name of the limited liability company is not indicated, may be transferred by an instrument of transfer executed by the one
or more members or managers in whose name title is held.

C. Property transferred under Subsection A or B of this section, or the proceeds of that property, may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company, unless the initial transferee, or a person claiming through the initial transferee, gave value without having notice that the person who executed the instrument on behalf of the limited liability company lacked authority to bind the limited liability company.

D. Title to property of a limited liability company that is held in the name of one or more persons other than the limited liability company without an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company, or of the existence of a limited liability company, may be transferred free of any claims of the limited liability company or of the members, by the persons in whose name title is held, to a transferee who gives value without having notice that the property transferred is the property of a limited liability company.

E. Unless otherwise provided in the articles of organization or an operating agreement, if the articles of organization provide that management of the limited liability company is vested in a manager:

(1) title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company; and

(2) a member, acting solely in his capacity as a member, shall not have such authority.

Section 31

Section 31. NATURE OF MEMBERSHIP INTEREST.--A membership interest is personal property.

Section 32

Section 32. ASSIGNMENT OF INTERESTS.--

A. Except as provided in the articles of organization or an operating agreement:

(1) a membership interest or a limited liability company interest is assignable in whole or in part;

(2) until the assignee becomes a member in accordance with the provisions of Subsection A of Section 33 of the Limited Liability Company Act, an assignment entitles the assignee to receive only the distributions and return of capital to which the assignor would be entitled with respect to the interest he assigned if he had not assigned such interest;

(3) an assignment does not of itself dissolve the limited liability company;

(4) until the assignee of a membership interest becomes a member, the assignor continues to be a member and to have the power to exercise all rights of a member, subject to the provisions of Paragraph (2) of this subsection and the members' right to remove the assignor pursuant to Subparagraph (b) of Paragraph (3) of Subsection A of Section 38 of the Limited Liability Company Act;

(5) until the assignee of a membership interest becomes a member, the assignee has no liability of a member solely as a result of the assignment; and

(6) the assignor is not released from any liability that he may have as a member solely as a result of his assignment.

B. Unless otherwise provided by the articles of organization or an operating agreement, the pledge or granting of a security interest, lien or other encumbrance in or against all or any portion of the interest of a member is not an assignment and shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

Section 33

Section 33. RIGHT OF ASSIGNEE TO BECOME A MEMBER.--

A. Except as otherwise provided in the articles of organization or an operating agreement, an assignee may become a member only if the other members unanimously consent. Such consent shall be evidenced in the manner specified in the articles of organization or an operating agreement; however, in the absence of such

specification, such consent shall be evidenced by an instrument, dated and signed by the other members.

B. An assignee who becomes a member has the rights and powers, and is subject to the restrictions and liabilities of a member under the articles of organization, any operating agreement and the Limited Liability Company Act. An assignee who becomes a member shall not be liable for the obligations of his assignor under that act to make contributions and to return distributions, except to the extent that the assignor and assignee agree that the assignee is so liable. The assignee shall not, however, be obligated as a result of his agreement with his assignor for liabilities of which the assignee had no knowledge at the time the assignee became a member and which could not be ascertained from the articles of organization or an operating agreement.

C. Whether or not an assignee becomes a member, the assignor is not released from his liability pursuant to Section 21 of the Limited Liability Company Act to make contributions to the limited liability company unless all members consent in writing to such a release.

D. A member who assigns his entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member when any assignee of his interest becomes a member as provided in Subsection A of this section.

Section 34

Section 34. INTEREST OF A DECEASED, INCOMPETENT OR TERMINATED MEMBER.--If a member who is an individual dies or a court adjudges him to be incompetent to manage his person or property, or if a member that is not an individual is dissolved, liquidated or otherwise completely terminated, the member's executor, administrator, guardian, conservator, liquidating trustee or other legal representative has all of the rights of an assignee of the member's limited liability company interest.

Section 35

Section 35. RIGHTS OF JUDGMENT CREDITOR OF MEMBER.--On application to a court by any judgment creditor of a member, the court may charge the interest of the member with payment of the unsatisfied amount of the judgment, with interest. To the extent so charged, the judgment creditor has no more rights than those to which an assignee of the member's limited liability company interest would be entitled under the provisions of Section 32 of the Limited Liability Company Act. That act does not deprive any member of the benefit of any exemption laws applicable to his membership interest.

Section 36

Section 36. ADMISSION OF MEMBERS.--

A. Subject to the provisions of Subsection B of this section, a person may become a member of a limited
liability company:

(1) in the case of a person acquiring a membership interest directly from the limited liability company, upon compliance with the articles of organization or an operating agreement or, if neither the articles nor an operating agreement so provides, upon the written consent of all members; and

(2) in the case of an assignee of a member's interest, as provided in Subsection A of Section 33 of the Limited Liability Company Act.

B. The effective time of admission of a member is the later of:

(1) the date the limited liability company is formed; or

(2) the time provided in the articles of organization or an operating agreement or, if no such time is provided in the articles of organization or an operating agreement, then when the person's admission is reflected in the records of the limited liability company.

Section 37

Section 37. VOLUNTARY WITHDRAWAL OF MEMBERS.--

A. Unless the articles of organization or an operating agreement provide otherwise, a member of a limited liability company with perpetual existence has the right to voluntarily withdraw from such limited liability company at any time by giving thirty days prior written notice to the other members, or such other notice as a provision in the articles of organization or an operating agreement requires.

B. Unless the articles of organization or an operating agreement provide otherwise, a member of a limited liability company for a definite term or particular undertaking has no right to withdraw voluntarily before the expiration of that term or the achievement of that undertaking. If a member of a limited liability company for a definite term or particular undertaking attempts to withdraw voluntarily without a right to do so, such attempt shall be ineffective except that such member shall be deemed to have relinquished by such attempt all of his right and power to vote or to otherwise participate thereafter, in any way, in management or control of the limited liability company.

C. Unless the articles of organization or an operating agreement provide otherwise, a member who elects voluntarily to withdraw pursuant to a right to do so shall be entitled to receive, within a reasonable time following the effective date of such withdrawal, the fair market value of his limited liability company interest. From and after the effective date of such withdrawal he shall cease to be a member and shall be deemed to have relinquished all right and power to vote or to otherwise participate in

any way in the management or control of the limited liability company or to participate in distributions or otherwise to receive a return of capital from the limited liability company.

Section 38

Section 38. EVENTS OF DISSOCIATION.--

A. A member ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(1) the member withdraws by voluntary act from a limited liability company whose articles of organization or operating agreement grants him the right to voluntarily withdraw or from a limited liability company with perpetual existence whose articles of incorporation and operating agreement do not prohibit such voluntary withdrawal;

(2) the member ceases to be a member as provided in Subsection D of Section 33 of the Limited Liability Company Act; or

(3) the member is removed as a member:

(a) in accordance with a provision in the articles of organization or an operating agreement; or

(b) by an affirmative vote of all of the members who have not assigned their interests, when such member assigns all of his interest in the limited liability company, unless a provision in the articles of organization or an operating agreement provides otherwise.

B. Unless the articles of organization or an operating agreement provides otherwise, or the member shall obtain the written consent of all members to his continuing membership, a member ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(1) the member:

(a) makes an assignment for the benefit of creditors;

(b) files a voluntary petition in bankruptcy;

(c) is adjudicated a bankrupt or insolvent;

(d) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law or regulation; or

(e) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his assets;

(2) one hundred twenty days shall elapse after any proceeding shall have been commenced against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law or regulation and such proceeding shall not have been dismissed, or ninety days shall have elapsed after the appointment, without his consent or acquiescence, of a trustee, receiver or liquidator of the member or of all or any substantial part of his assets, and the appointment shall not have been vacated or stayed, or within ninety days after the expiration of any stay, the appointment shall not have been vacated;

(3) in the case of a member who is an individual, his death or the entry of an order by a court adjudicating him incompetent to manage his person or estate;

(4) in the case of a member that is a trust or is a member in his capacity as trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(5) in the case of a member that is a limited liability company, or a partnership, the dissolution and commencement of winding up of the separate limited liability company or partnership;

(6) in the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent, or the revocation of its charter, and the lapse of ninety days after notice to the corporation of a revocation of its charter, without a reinstatement of its charter during that ninety days; or

(7) in the case of a member that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

C. The members may provide in the articles of organization or an operating agreement for other events the occurrence of which result in a member ceasing to be a member of the limited liability company.

D. A member who ceases to be a member of a limited liability company shall no longer be entitled to vote or to participate in the management or control of the limited liability company or to demand information pursuant to the Limited Liability Company Act, but may, depending upon the circumstances, continue to hold a limited liability company interest in such limited liability company.

Section 39

Section 39. DISSOLUTION.--

A. A limited liability company is dissolved upon the happening of any of the following events:

(1) an event specified in the articles of organization or an operating agreement;

(2) except as otherwise provided in the articles of organization or an operating agreement, upon the written consent of members having a majority share of the voting power of all members;

(3) all the remaining members do not give their written consent to continue the business of the limited liability company within ninety days after a member's death, insanity, bankruptcy, retirement, resignation, expulsion or removal, dissolution, termination or voluntary withdrawal pursuant to a right to do so; or

(4) entry of a decree of judicial dissolution pursuant to Section 40 of the Limited Liability Company Act.

B. On the dissolution of the limited liability company, the limited liability company shall cease to carry on its business and affairs, except insofar as necessary for winding up the company's business and affairs, but its legal existence shall continue until all its business and affairs are wound up.

Section 40

Section 40. JUDICIAL DISSOLUTION.--On application by or for a member, a court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on its business in conformity with its articles of organization or operating agreement.

Section 41

Section 41. ARTICLES OF DISSOLUTION.--

A. On the dissolution of a limited liability company, persons with authority under Subsection A of Section 42 of the Limited Liability Company Act to wind up its business and affairs shall sign and deliver, to the office of the commission for filing, articles of dissolution.

B. The articles of dissolution shall state:

(1) the name of the limited liability company;

(2) the dates of filing the articles of organization and all amendments and restatements to the articles of organization;

(3) the event causing the dissolution;

(4) the effective date, which shall be a date certain, of the articles of dissolution if the articles of dissolution are not to be effective on filing;

(5) the name and address of each person who has the authority to act for the limited liability company in connection with the winding up of its business and affairs;

(6) whether the winding up of the business and affairs of the limited liability company is being supervised by a court pursuant to the provisions of Paragraph (2) of Subsection A of Section 42 of the Limited Liability Company Act; and

(7) any other information persons signing the articles of dissolution choose to include.

C. After the articles of dissolution have been filed, only a person named in the articles of dissolution as having authority to act for the limited liability company in connection with the winding up of its business and affairs shall have such authority, including the authority to bind the limited liability company, transact business on its behalf, act as its agent and execute any instrument for it and in its name.

D. Articles of dissolution that have been filed may be amended at any time and from time to time or revoked at anytime and, unless an amendment or revocation states otherwise, it shall be effective upon delivery to the office of the commission for filing.

Section 42

Section 42. WINDING UP.--

A. Except as may be provided in the articles of organization or an operating agreement, the business and affairs of the limited liability company shall be wound up:

(1) by one or more persons designated in writing by members holding a majority of the voting power of all members, or if no such persons are so designated, by the members or managers who have authority to manage the limited liability company; or

(2) by a court at any time, on application of any member, his legal representative or his assignee, if any person with authority to act pursuant to Paragraph (1) of this subsection shall have engaged in wrongful conduct or on other cause shown.

B. The members, managers or other persons named in the articles of dissolution as having authority to wind up the business and affairs of the limited liability company may, in the name of, and for and on behalf of, the limited liability company:

(1) prosecute and defend suits;

(2) complete the performance of obligations undertaken prior to dissolution and settle and close the business of the limited liability company;

(3) dispose of and transfer the property of the limited liability company;

(4) discharge the liabilities of the limited liability company; and

(5) distribute to the members any remaining assets of the limited liability company.

Section 43

Section 43. POWER OF MANAGERS OR MEMBERS AFTER DISSOLUTION.--

A. Subject to Subsections C and D of this section, on and after dissolution of the limited liability company and until articles of dissolution shall have been filed with the commission, any manager of a limited liability company whose articles of organization vest management in managers and any member of a limited liability company whose articles of organization do not vest management in managers can bind the limited liability company:

(1) by any act authorized by Section 42 of the Limited Liability Company Act for winding up the limited liability company's business and affairs; and

(2) by any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

B. The filing of the articles of dissolution required by Section 41 of the Limited Liability Company Act shall be notice of dissolution for purposes of Paragraph (2) of Subsection A of this section.

C. An act of a member, manager or other person that is not otherwise binding on the limited liability company pursuant to Subsection A of this section is binding if it is otherwise authorized or ratified by the limited liability company.

D. An act of any person that is in contravention of a restriction on authority, shall not bind the limited liability company to persons having knowledge of the restriction.

Section 44

Section 44. DISTRIBUTION OF ASSETS.--In winding up the business and affairs of a limited liability company, its assets shall be applied or distributed, and its accounts settled, in the following order of priority:

A. first, to payment or adequate provision for payment to creditors, excluding members who by reason of the provisions of Section 28 of the Limited Liability Company Act are creditors with respect to distributions by the limited liability company, but including to the extent permitted by law members who are creditors without application of the provisions of that section;

B. second, except as otherwise provided in the articles of organization or an operating agreement, in satisfaction of liabilities:

(1) under Section 28 of the Limited Liability Company Act to members or former members for distributions; and

(2) to former members as a result of dissociation requiring a payment under Section 24 of the Limited Liability Company Act or as a result of a voluntary withdrawal requiring payment under Subsection C of Section 37 of the Limited Liability Company Act; and

C. third, except as otherwise provided in the articles of organization or an operating agreement, to members at the date of dissolution in the proportions, determined as of that date, of the values of their contributions to the capital of the limited liability company adjusted for withdrawals of capital.

Section 45

Section 45. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.--

A. A dissolved limited liability company may dispose of the known claims against it by filing articles of dissolution pursuant to Section 41 of the Limited Liability Company Act and following the procedure described in this section.

B. The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of such dissolution. The written notice shall:

(1) describe information that must be included in a claim;

(2) provide a mailing address where a claim may be sent;

(3) state the deadline, which may not be less than one hundred twenty days after the later of the effective date of the written notice and the date on which the articles of dissolution were filed pursuant to Section 41 of the Limited Liability Company Act, by which deadline the dissolved limited liability company must receive the claim; and

(4) state that the claim shall be barred if not received by the deadline.

C. A claim against the dissolved limited liability company is barred:

(1) if a claimant who was given written notice pursuant to Subsection B of this section does not deliver the claim to the dissolved limited liability company by the deadline; or

(2) if a claimant whose claim was rejected in writing by the dissolved limited liability company does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

D. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Section 46

Section 46. UNKNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.--

A. A dissolved limited liability company may publish notice of its dissolution pursuant to this section and request that persons with claims against the limited liability company present them in accordance with the notice.

B. The notice shall:

(1) be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office or registered office is or was located;

(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) state that a claim against the limited liability company shall be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.

C. If the dissolved limited liability company publishes a newspaper notice in accordance with Paragraph (1) of Subsection B of this section and files articles of

dissolution pursuant to Section 41 of the Limited Liability Company Act, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within three years after the later of the publication date of the newspaper notice and the date on which the articles of dissolution were filed:

(1) a claimant who did not receive written notice under Section 45 of the Limited Liability Company Act;

(2) a claimant whose claim was timely delivered to the dissolved limited liability company but neither accepted nor rejected; and

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

D. A claim may be enforced under this section:

(1) against the dissolved limited liability company, to the extent of its undistributed assets; or

(2) if the assets have been distributed in winding up, against a member of the dissolved limited liability company to the extent of the lesser of his pro rata share of the claim and the fair market value of the assets of the limited liability company distributed to him in winding up, determined as of the times of such distributions; but a member's total liability for all claims under this section shall not exceed the total fair market value of the assets distributed to him determined as of the date of distribution.

Section 47

Section 47. LAWS GOVERNING FOREIGN LIMITED LIABILITY COMPANY.--

A. Subject to the constitution of New Mexico, the laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its managers and members.

B. A foreign limited liability company may not be denied registration by reason of any difference between the laws of the state and other jurisdictions under which it was organized and the laws of New Mexico.

Section 48

Section 48. REGISTRATION.--Before transacting business in New Mexico, a foreign limited liability company shall register with the commission by submitting an original signed application for registration as a foreign limited liability company, together with a duplicate copy that may be either a signed, photocopied or confirmed copy,

executed by a person with authority to do so under the laws of the state or other jurisdiction of its organization. The application shall set forth:

A. the name of the foreign limited liability company and, if different, the name under which it proposes to transact business in New Mexico;

B. the state or other jurisdiction where the foreign limited liability company was organized and the date of its organization;

C. the name and address of a registered agent for service of process which agent meets the requirements of Section 5 of the Limited Liability Company Act, whose original, signed affidavit, together with a duplicate copy, to the effect that such person accepts designation as the registered agent of the foreign limited liability company, shall be submitted with the application;

D. a statement that the secretary of state is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed or, if appointed, the agent's authority has been revoked or the agent cannot be found or served in the exercise of reasonable diligence;

E. the address of the office required to be maintained in the state or other jurisdiction of its organization by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company;

F. a statement that the foreign limited liability company is a foreign limited liability company as defined in Section 2 of the Limited Liability Company Act; and

G. the identity of persons in whom management of the foreign limited liability company is vested.

Section 49

Section 49. ISSUANCE OF REGISTRATION.--If the commission determines that the application for registration conforms to the provisions of the Limited Liability Company Act and all requisite fees have been paid, the commission shall:

A. endorse on the signed original and each duplicate copy the word "filed" and the date of its acceptance for filing;

B. retain a signed original in the files of the commission; and

C. return each duplicate copy to the person who delivered it to the commission or to that person's representative.

Section 50

Section 50. NAME.--A foreign limited liability company may register with the commission under any name, whether or not it is the name under which it is registered in the state or other jurisdiction of organization, as long as the name could be registered by a domestic limited liability company pursuant to Section 3 of the Limited Liability Company Act.

Section 51

Section 51. AMENDMENTS.--

A. The application for registration of a foreign limited liability company may be amended by filing articles of amendment with the commission signed by a person with authority to do so under the laws of the state or other jurisdiction of its organization. The articles of amendment shall set forth:

(1) the name of the foreign limited liability company;

(2) the date the original application for registration was filed; and

(3) the amendment to the application for registration.

B. The application for registration may be amended in any way, so long as the application for registration as amended contains only provisions that, at the time of the amendment, may be lawfully contained in an application for registration.

C. An application for registration shall be amended to reflect any change in the identity of the persons in whom management of the foreign limited liability company is vested.

Section 52. CANCELLATION OF REGISTRATION.--

A. A foreign limited liability company authorized to transact business in New Mexico may cancel its registration by application to the commission for a certificate of cancellation. The application for cancellation shall set forth:

(1) the name of the foreign limited liability company and the state or other jurisdiction under the laws of which it is organized;

(2) that the foreign limited liability company is not transacting business in New Mexico;

(3) that the foreign limited liability company surrenders its registration to transact business in New Mexico;

(4) that the foreign limited liability company confirms the authority of its registered agent for service of process in New Mexico and consents that service of process in any action, suit or proceeding based upon any cause of action arising in New

Mexico during the time the foreign limited liability company was authorized to transact business in New Mexico also may be made on such foreign limited liability company by service upon the secretary of state; and

(5) an address to which a person may mail a copy of any process against the foreign limited liability company.

B. The application for cancellation shall be in the form specified by the commission and shall be executed for the foreign limited liability company by a person with authority to do so under the laws of the state or other jurisdiction of its organization, or, if the foreign limited liability company is in the hands of a receiver or trustee, by such receiver or trustee on behalf of the foreign limited liability company.

C. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited liability company with respect to cuses of action arising out of its having done business in New Mexico.

Section 53

Section 53. TRANSACTION OF BUSINESS WITHOUT REGISTRATION.--

A. A foreign limited liability company transacting business in New Mexico may not maintain an action, suit or proceeding in a court of New Mexico until it has registered in New Mexico.

B. The failure of a foreign limited liability company to register in New Mexico does not:

(1) impair the validity of any contract or act of the foreign limited liability company;

(2) affect the right of any other party to a contract to maintain any action, suit or proceeding on the contract; or

(3) prevent the foreign limited liability company from defending any action, suit or proceeding in any court of New Mexico.

C. A foreign limited liability company, by transacting business in New Mexico without registration, appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in New Mexico.

D. A foreign limited liability company that transacts business in New Mexico without a valid registration shall be liable to New Mexico in an amount equal to all fees that would have been imposed by the Limited Liability Company Act on that foreign limited liability company for the years or parts of years during which it transacted

business in New Mexico without registration, had it obtained such registration, filed all reports required by that act and paid all penalties imposed by that act. The attorney general may bring proceedings to recover all amounts due New Mexico under the provisions of this section.

E. A foreign limited liability company that transacts business in New Mexico without a valid registration shall be subject to a civil penalty not to exceed two hundred dollars ($200) per year or any part thereof during which business was transacted.

F. The civil penalty provided for in Subsection E of this section may be recovered in an action brought by the attorney general. Upon a finding by the court that a foreign limited liability company or any of its members or managers have transacted business in New Mexico in violation of the Limited Liability Company Act, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining further transaction of business by the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in New Mexico. The foreign limited liability company shall be enjoined from transacting business in New Mexico until all civil penalties, plus any interest and court costs that the court may assess, have been paid and until the foreign limited liability company has otherwise complied with the provisions of the Limited Liability Company Act.

G. A member or manager of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely because such company transacted business in New Mexico without registration.

Section 54

Section 54. TRANSACTIONS NOT CONSTITUTING TRANSACTING BUSINESS.--

A. The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of the Limited Liability Company Act:

(1) maintaining, defending or settling any proceeding;

(2) holding meetings of its members or carrying on any other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's own securities or interests or appointing and maintaining trustees or depositories with respect to those securities or interests;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside New Mexico before they become contracts;

(7) creating as borrower or lender or acquiring indebtedness or mortgages or other security interests in real or personal property;

(8) securing or collecting debts or enforcing rights in property securing debts;

(9) investing in or acquiring, in transactions outside New Mexico, royalties and other nonoperating mineral interests; executing division orders, contracts of sale and other instruments incidental to the ownership of such nonoperating mineral interests; and, in general, owning, without more, real or personal property;

(10) conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature; or

(11) transacting business in interstate commerce.

B. A foreign limited liability company shall not be considered to be transacting business in New Mexico solely because it:

(1) owns a controlling interest in a corporation or a foreign corporation that transacts business in New Mexico;

(2) is a limited partner of a limited partnership or foreign limited partnership that is transacting business in New Mexico; or

(3) is a member or manager of a limited liability company or foreign limited liability company that is transacting business in New Mexico.

C. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in New Mexico or to regulation under any other law of New Mexico.

Section 55

Section 55. SERVICE OF PROCESS.--Service of process in any action against a foreign limited liability company, whether or not registered in accordance with the provisions of the Limited Liability Company Act, shall be made in the manner prescribed by law and the New Mexico Rules of Civil Procedure.

Section 56

Section 56. ACTION BY ATTORNEY GENERAL.--The attorney general may maintain an action to recover civil penalties and restrain a foreign limited liability company from transacting business in New Mexico in violation of the Limited Liability Company Act.

Section 57

Section 57. SUITS BY AND AGAINST THE LIMITED LIABILITY COMPANY.--Suits may be brought by or against a limited liability company in its own name.

Section 58

Section 58. AUTHORITY TO SUE ON BEHALF OF LIMITED LIABILITY COMPANY.--Except as otherwise provided in the articles of organization or an operating agreement, a suit on behalf of the limited liability company may be brought in the name of the limited liability company by:

A. any member of the limited liability company who is authorized to sue by the affirmative vote of members having a majority of the voting power of all members whose interests are not adverse to the interests of the limited liability company, whether or not the articles of organization or an operating agreement vests management of the limited liability company in one or more managers; or

B. in the case of a limited liability company whose articles of organization or an operating agreement vest management in one or more managers, any manager who is authorized to do so by the affirmative vote, approval or consent required by the provisions of Section 17 of the Limited Liability Company Act; provided that in determining the required vote, approval or consent, the vote of any manager who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded.

Section 59

Section 59. MERGER OR CONSOLIDATION.--Unless otherwise provided by the articles of organization or an operating agreement, two or more limited liability companies, or a limited liability company and a foreign limited liability company, may merge or consolidate as provided in a merger or consolidation agreement.

Section 60

Section 60. APPROVAL OF MERGER OR CONSOLIDATION.--

A. A limited liability company that is a party to a proposed merger or consolidation shall approve the merger or consolidation agreement by the affirmative vote, approval or consent of its members required by the provisions of Section 17 of the

Limited Liability Company Act or, to the extent permitted by that section, a provision in its articles
of organization or an operating agreement.

B. A foreign limited liability company that is a party to a proposed merger or consolidation shall approve the merger or consolidation or the merger or consolidation agreement in the manner and by the vote required by the laws applicable to such foreign limited liability company.

C. A party to the merger or consolidation shall have such rights to abandon the merger or consolidation as are provided for in the merger or consolidation agreement.

Section 61

Section 61. ARTICLES OF MERGER OR CONSOLIDATION.--

A. The limited liability company or foreign limited liability company surviving or resulting from the merger or consolidation shall deliver to the commission, for filing, articles of merger or consolidation executed by each constituent limited liability company setting forth:

(1) the name and jurisdiction of organization of each limited liability company that is to merge or consolidate;

(2) that an agreement of merger or consolidation has been approved and executed by each limited liability company that is a party to the merger or consolidation;

(3) the name of the surviving or resulting limited liability company;

(4) the effective date of the merger or consolidation, which shall be a date or time certain if it is not to be effective upon the filing of the articles of merger or consolidation;

(5) that the agreement of merger or consolidation is on file at a place of business of the surviving or resulting limited liability company and the address of the place of business;

(6) that a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting limited liability company on request and without cost to any person holding an interest in any limited liability company that is to merge or consolidate; and

(7) a statement of any changes in the articles of organization of the company surviving the merger or, in the case of a new company resulting from a

consolidation, the statements required to be set forth in the articles of organization for a limited liability company organized pursuant to the Limited Liability Company Act.

B. A merger or consolidation shall be effective on the later of the date on which the articles of merger or consolidation are filed and the effective date set forth in the articles of merger or consolidation.

C. The articles of merger or consolidation shall be executed by each limited liability company that is a party to the merger or consolidation and shall be filed with the commission in the manner provided for in Section 9 of the Limited Liability Company Act.

D. Articles of merger or consolidation shall act as articles of dissolution for a limited liability company that is not the surviving or resulting entity in the merger or consolidation.

E. An agreement of merger or consolidation approved in accordance with the Limited Liability Company Act may effect an amendment of an existing operating agreement or may adopt a new operating agreement for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation. Any amendment to or adoption of an operating agreement pursuant to this subsection shall be effective at the effective time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or consolidation or of any of the matters referred to in this section by any other means provided for in the articles of organization, an operating agreement or another agreement or as otherwise permitted by law.

Section 62

Section 62. EFFECTS OF MERGER OR CONSOLIDATION.--A merger or consolidation has the following effects:

A. the limited liability companies that are parties to the merger or consolidation agreement shall be a single limited liability company that, in the case of a merger, shall be the limited liability company designated by the plan of merger as the surviving limited liability company and, in the case of a consolidation, shall be the new limited liability company provided for in the plan of consolidation;

B. the separate existence of each party to the merger or consolidation agreement, except the surviving or the new limited liability company, shall cease;

C. all property, real, personal and mixed, and all debts due on whatever account, including promises to make capital contributions, and all other choses in action, and all and every other interest of or belonging to or due to each of the constituent limited liability companies shall be vested in the surviving or the new limited liability company without further act or deed;

D. the title to all real estate and any interest in that real estate vested in any such constituent limited liability company shall not revert or be in any way impaired by reason of such merger or consolidation;

E. the surviving or new limited liability company shall be liable for all liabilities and obligations of each of the constituent limited liability companies so merged or consolidated, and any claim existing or action or proceeding pending by or against any such constituent company may be prosecuted as if such merger or consolidation had not taken place, or the surviving or new limited liability company may be substituted in the action;

F. neither the rights of creditors nor any liens on the property of any constituent limited liability company shall be impaired by the merger or consolidation; and

G. the membership or other interests in a constituent limited liability company that are to be converted or exchanged into interests, securities, obligations or other property under the terms of the merger or consolidation agreement are so converted, and the former holders are entitled only to the rights provided in the merger or consolidation agreement.

Section 63

Section 63. FILING, SERVICE AND COPYING FEES.--The commission shall charge and collect:

A. for filing the original articles of organization and issuing a certificate of organization, a fee of fifty dollars ($50.00);

B. for filing amended or restated articles of merger and issuing a certificate of amended or restated articles, a fee of fifty dollars ($50.00);

C. for filing articles of merger or consolidation and issuing a certificate of consolidation, a fee of one hundred dollars ($100);

D. for filing articles of dissolution or revocation of dissolution, a fee of twenty-five dollars ($25.00);

E. for issuing a certificate for any purpose not otherwise specified, a fee of twenty-five dollars ($25.00);

F. for furnishing written information on any limited liability company, a fee of twenty-five dollars ($25.00);

G. for providing from the commission's records, any document or instrument, a fee of one dollar ($1.00), plus one dollar ($1.00) per page and one dollar ($1.00) per page for certification of documents or instruments;

H. for accepting an application for reservation of a name, or for filing a notice of the transfer of any name reservation, a fee of twenty dollars ($20.00);

I. for filing a statement of change of address of registered office or registered agent, or both, a fee of twenty dollars ($20.00);

J. for issuing a registration to a foreign limited liability company, a fee of one hundred dollars ($100);

K. for filing an amendment of the registration of a foreign limited liability company, a fee of fifty dollars ($50.00); and

L. for filing an application for cancellation of registration of a foreign limited liability company and issuing a certificate of cancellation, a fee of twenty-five dollars ($25.00).

Section 64

Section 64. EXECUTION BY JUDICIAL ACT.--Any person who is adversely affected by the failure or refusal of any person to execute or file any articles or other document to be filed pursuant to the Limited Liability Company Act may petition the court in the county where the registered office of the limited liability company is located or, if no such address is on file with the commission, in Santa Fe county, to direct the execution and filing of the articles or other document. If the court finds that it is proper for the articles or other document to be executed and filed and that there has been failure or refusal to execute and file such articles or other documents, it shall order the commission to file the appropriate articles or other document.

Section 65

Section 65. RULES OF CONSTRUCTION.--

A. It is the policy of the Limited Liability Company Act to give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements of limited liability companies.

B. Unless displaced by particular provisions of the Limited Liability Company Act, the principles of law and equity supplement that act, including such principles applicable to corporations and their owners.

C. Rules that statutes in derogation of the common law are to be strictly construed shall have no application to the Limited Liability Company Act.

D. The Limited Liability Company Act shall not be construed so as to impair the obligations of any contract existing when that act goes into effect nor affect any action or proceedings begun or rights accrued before that act takes effect.

Section 66

Section 66. POWERS OF COMMISSION.--The commission has the power and authority reasonably necessary to enable it to administer the Limited Liability Company Act efficiently and to perform the duties therein imposed upon it.

Section 67

Section 67. APPEAL FROM COMMISSION.--

A. If the commission fails to approve any articles of organization, articles of amendment, articles of merger or consolidation or articles of dissolution or any other document required or permitted by the Limited Liability Company Act to be approved by the commission before it is filed in its office, it shall, within fifteen working days after the delivery thereof to it, give written notice of its disapproval to the person delivering the same, specifying the reasons therefor. From the disapproval, the person may appeal to the district court of Santa Fe county by filing with the clerk of the court a petition setting forth the articles or other document sought to be filed and a copy of the written disapproval thereof by the commission, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the commission or direct it to take action the court may deem proper.

B. Appeals from all final orders and judgments entered by the district court of Santa Fe county under this section in review of any ruling or decision of the commission may be taken as in other civil actions.

Section 68

Section 68. ISSUANCE OF CERTIFICATE OF GOOD STANDING AND COMPLIANCE.--The commission may issue a certificate of good standing and compliance for a limited liability company or foreign limited liability company registered to transact business in New Mexico. If the person requesting the issuance of any such certificate is the limited liability company which is the subject of the certificate, the commission may require that all fees due at the time of the request be paid before such certificate is issued.

Section 69

Section 69. CERTIFICATES AND CERTIFIED COPIES TO BE RECEIVED IN EVIDENCE.--All certificates issued by the commission in accordance with the provisions

of the Limited Liability Company Act and all copies of documents filed in its office in accordance with the provisions of the Limited Liability Company Act, when certified by it, shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated, and may be filed and recorded with the respective county clerks. A certificate by the commission under its seal as to the existence or nonexistence of the facts relating to limited liability companies or foreign limited liability companies shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

Section 70

Section 70. FORMS FURNISHED BY THE COMMISSION.--Forms for all documents to be filed in the office of the commission may be furnished by the commission on request therefor, but the use thereof, unless otherwise specifically prescribed by law, is not mandatory.

Section 71

Section 71. APPLICATION TO EXISTING LIMITED LIABILITY COMPANIES.--The provisions of the Limited Liability Company Act apply to all existing foreign limited liability companies which have obtained a certificate of authority to transact business in New Mexico issued pursuant to provisions of the Business Corporation Act. Any such limited liability company shall reapply for registration under the Limited Liability Company Act. The commission shall have authority to revoke upon reasonable prior written notice any certificate of authority to transact business in New Mexico which was issued pursuant to provisions of the Business Corporation Act prior to the effective date of the Limited Liability Company Act.

Section 72

Section 72. APPLICATION TO FOREIGN AND INTERSTATE COMMERCE.--The provisions of the Limited Liability Company Act apply to commerce with foreign nations and among the several states only insofar as permitted under the provisions of the constitution of the United States.

Section 73

Section 73. RESERVATION OF POWER.--The legislature reserves power to amend, repeal or modify all or any part of the Limited Liability Company Act at any time and such changes shall be binding upon all limited liability companies and foreign limited liability companies subject to the provisions of the Limited Liability Company Act.

Section 74

Section 74. COMMISSION'S RETENTION OF RECORDS.--The commission shall provide, pursuant to the provisions of the Public Records Act, for the retention, storage and destruction of any documents filed with the commission.

Section 75

Section 75. A new section of Chapter 38, Article 1 NMSA 1978 is enacted to read:

"SERVICE OF PROCESS ON LIMITED LIABILITY COMPANIES--DEATH OR REMOVAL OF REGISTERED AGENT.--

A. In case the agent of any limited liability company or foreign limited liability company registered to transact business in this state, designated by such company as the aent upon whom process against the company may be served, dies, resigns or leaves the state or the agent cannot with due diligence be found, it is lawful, while the circumstances continue, to serve process against the company upon the secretary of state, and the service shall be as effective to all intents and purposes as if made upon any manager of the company.

B. Within two days after service upon the secretary of state, the secretary shall notify the company of service of process by certified or registered mail directed to the company at its registered office and enclose a copy of the process or other paper served. It is the duty of the plaintiff in any action in which the process is issued to pay to the secretary of state the sum of twenty-five dollars ($25.00), which shall be taxed as part of the taxable costs in the suit if the plaintiff prevails therein.

C. The secretary of state shall keep a record of all summons that have been presented for service to the secretary of state along with a summary of all occurrences with regard to the service of summons. The address of a foreign limited liability company's registered agent, as set forth in its application for registration or most recent amendment thereto, shall constitute such company's registered office for purposes of this section."

Section 76

Section 76. A new section of Chapter 38, Article 1 NMSA 1978 is enacted to read:

"PROCESS AGAINST FOREIGN LIMITED LIABILITY COMPANIES.--

A. In all personal actions brought in any court of this state against any foreign limited liability company, process may be served upon any manager or statutory agent of the company, either personally or by leaving a copy of the process at his residence, or by leaving a copy at the registered office of the foreign limited liability company in this state.

B. If no person has been designated by a foreign limited liability company doing business in this state as its statutory agent upon whom service of process can be made, or if upon diligent search neither the agent so designated nor any of the managers of the company can be found in this state, then, upon the filing of an affidavit by the plaintiff to that effect, together with service upon the secretary of state of two copies of the process in the cause, the secretary of state shall accept service of process as the agent of the foreign limited liability company, but the service is not complete until a fee of twenty-five dollars ($25.00) is paid to the secretary of state by the plaintiff in the action. The plaintiff shall provide the name of the person upon whom the summons and complaint is to be served and the last known address.

C. Within two days after receipt of the process and fee, the secretary of state shall give notice by certified or registered mail, to the foreign limited liability company at its principal place of business outside this state of the service of the process. Where the secretary of state has no record of the principal place of business of the foreign limited liability company outside this state, he shall forward the copy of the process to the place designated as such company's principal office or as the office required to be maintained in the state or other jurisdiction of its organization in its application for
registration to transact business in this state, or the most recent amendment of such application, but if no such application for registration has been filed in this state, to the place designated as such company's principal office in an affidavit filed with the secretary of state by the plaintiff in the suit or by his attorney.

D. A foreign limited liability company served as provided in this section shall appear and answer within thirty days after the secretary of state gives the notice. The certificate of service shall not be issued by the secretary of state until the defendant is served with the summons and complaint.

E. The secretary of state shall keep a record of all process served on him as provided for in this section, and of the time of the service and of his action in respect to the service.

F. Any foreign limited liability company engaging in business in this state, either in its own name or in the name of an agent, without having first applied for registration or otherwise having become qualified to engage in business in this state shall be deemed to have consented to the provisions of this section."

Section 77

Section 77. Section 54-1-2 NMSA 1978 (being Laws 1947, Chapter 37, Section 2) is amended to read:

"54-1-2. DEFINITION OF TERMS.--In the Uniform Partnership Act:

A. "court" includes every court and judge having jurisdiction in the case;

B. "business" includes every trade, occupation or profession;

C. "person" includes individuals, partnerships, limited liability companies, corporations and other associations;

D. "bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent act;

E. "conveyance" includes every assignment, lease, mortgage or encumbrance; and

F. "real property" includes land and any interest or estate in land."

Section 78

Section 78. Section 54-2-2 NMSA 1978 (being Laws 1988, Chapter 90, Section 2) is amended to read:

"54-2-2. DEFINITIONS.--As used in the Uniform Limited Partnership Act:

A. "certificate of limited partnership" means the certificate referred to in Section 54-2-9 NMSA 1978 and the certificate as amended or restated;

B. "contribution" means any cash, property, services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services which a partner contributes to a limited partnership in his capacity as a partner;

C. "event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 54-2-24 NMSA 1978;

D. "foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners;

E. "general partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner;

F. "limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;

G. "limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners;

H. "partner" means a limited or general partner;

I. "partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business;

J. "partnership interest" means a partner's share of the profits and losses of a limited partnership and the
right to receive distributions of partnership assets; and

K. "person" means a natural person, partnership, domestic or foreign limited partnership, trust, estate, association, limited liability company, foreign limited liability company or corporation."

Section 79

Section 79. Section 58-13B-2 NMSA 1978 (being Laws 1986, Chapter 7, Section 2) is amended to read:

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

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

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

(1) a sales representative;

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

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

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

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

D. "depository institution" means:

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

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

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

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

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

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

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

(1) a depository institution;

(2) an insurance company;

(3) a separate account of an insurance company;

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

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

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

(b) if investment decisions are made by a plan fiduciary, as defined in the Employee Retirement Income Security Act of 1974, which is either a broker-dealer registered under the Securities Exchange Act of 1934, an investment

adviser registered or exempt from registration under the Investment Advisers Act of 1940, a depository institution or an insurance company;

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

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

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

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

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

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

L. "investment adviser" means any person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. Investment adviser does not include:

(1) an investment adviser representative;

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

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

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

(5) a publisher, employee or columnist of a newspaper, news magazine or business or financial publication, or an owner, operator, producer or employee of a cable, radio or television network, station or production facility if, in either

case, the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of each client; or

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

M. "investment adviser representative" means a natural person other than an investment adviser who, whether as an employee or in the form of a professional corporation is under the direct supervision of an investment adviser and engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities;

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

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

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

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

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

P. "person" means a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government in its private or public capacity, governmental subdivision or agency or any other legal or commercial entity;

Q. "price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if no amendment is filed, the prospectus or prospectus supplement filed under the Securities Act of 1933, which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price;

R. "promoter" includes:

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

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

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

S.

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

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

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

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

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

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

(7) the terms defined in this subsection do not include the creation of security interest or a loan of a security; a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property

dividend and each stockholder may elect to take the dividend in cash, property or stock; or an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in exchange and partly for cash. Provided, however, that the terms contained in this paragraph are within the meaning of this subsection for the purpose of Section 58-13B-30 NMSA 1978;

T. "sales representative" means an individual other than a broker-dealer, whether as an employee or in the form of a professional corporation, authorized to act and acting for a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is a sales representative only if that person otherwise comes within the definition;

U. "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Company Act of 1940", "Investment Advisers Act of 1940", "Employee Retirement Income Security Act of 1974", "National Housing Act" and "Commodity Exchange Act" mean the federal statutes of those names as amended before or after the effective date of the New Mexico Securities Act of 1986;

V. unless the context requires otherwise, "security" means a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; any limited partnership interest; any interest in a limited liability company; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; any interest in oil, gas or other mineral rights; any put, call, straddle or option entered into on a national securities exchange relating to foreign currency; any put, call, straddle or option on any security, certificate of deposit or group or index of securities, including any interest therein or based on the value thereof; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or warrant or right to subscribe to or purchase any of the foregoing. Security does not include landowner royalties in the production of oil, gas or other minerals created through the execution of a lease of the lessor's mineral interest;

W. "self-regulatory organization" means a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, a national securities association of brokers and dealers registered under Section 15A of the Securities Exchange Act of 1934, a clearing agency registered under Section 17A of the Securities Exchange Act of 1934 and the municipal securities rulemaking board established under Section 15B(b)(1) of the Securities Exchange Act of 1934;

X. "state" means a state, commonwealth, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico; and

Y. "underwriter" means any person who has purchased from an issuer with the intent to offer or sell a security or to distribute any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but the term does not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this subsection, the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer."

Section 80

Section 80. Section 58-13B-27 NMSA 1978 (being Laws 1986, Chapter 7, Section 27, as amended) is amended to read:

"58-13B-27. EXEMPT TRANSACTIONS.--The following transactions are exempted from Section 58-13B-20 NMSA 1978 and, unless otherwise noted, Section 58-13B-29 NMSA 1978:

A. an isolated non-issuer transaction, whether or not effected through a broker-dealer;

B. a non-issuer transaction in a security by a registered broker-dealer if:

(1) the issuer of the security has a class of securities required to be registered under Section 12 of the Securities Exchange Act of 1934;

(2) the issuer has filed reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 during the ninety-day period immediately preceding the date of the offer or sale or is an issuer of a security covered by Section 12(g)(2)(B) or (G) of that 1934 act;

(3) the broker-dealer has a reasonable basis for believing that the issuer is current in filing the reports required to be filed at regular intervals pursuant to the provisions of Section 13 or Section 15(d), as the case may be, of the Securities Exchange Act of 1934 or in the case of insurance companies exempted from Section 12(g) of the Securities Exchange Act of 1934 by Subparagraph 12(g)(2)(G) thereof, the annual statement referred to in Section 12(G)(2)(G)(i) of the Securities Exchange Act of 1934; and

(4) the broker-dealer has in its records, and makes reasonably available upon request to any person expressing an interest in a proposed transaction in the securities, the issuer's most recent annual report filed pursuant to Section 13 or 15(d), as the case may be, of the Securities Exchange Act of 1934 or the annual statement in the case of an insurance company exempted from Section 12(g) of the Securities Exchange Act of 1934 by Subparagraph 12(G)(2)(G) thereof, together with

any other reports required to be filed at regular intervals under the Securities Exchange Act of 1934 by the issuer after such annual report or annual statement; provided that the making available of such reports pursuant to this paragraph, unless otherwise represented, shall not constitute a representation by the broker-dealer that the information is true and correct but shall constitute a representation by the broker-dealer that the information is reasonably current; or

(5) the issuer has filed and maintained with the director, for not less than ninety days before the transaction, information in such form as the director by rule specifies, substantially comparable to the information which the issuer would be required to file under Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934 were the issuer to have a class of its securities registered under Section 12 of the Securities Exchange Act of 1934, and under either Subparagraph (1) or (2), the issuer has paid a fee of five hundred dollars ($500);

C. a non-issuer transaction in a security:

(1) of a class outstanding in the hands of the public for not less than one hundred eighty days before the transaction if a nationally recognized securities manual designated by the director by rule or order contains the names of the issuer's officers and directors, a statement of financial condition of the issuer as of a date within the last eighteen months and a statement of income or operations for either the last fiscal year before the date or the most recent year of operation; or

(2) if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest or dividends on the security; provided that the director may impose additional requirements as a condition of the exemption established in this paragraph as necessary for the protection of investors and shall promulgate rules specifying application of this exemption;

D. any non-issuer transaction effected by or through a registered broker-dealer registered in this state
pursuant to an unsolicited order or offer to buy; provided that the director by rule shall require that the broker-dealer have the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of that form be preserved by the broker-dealer for a specified period;

E. a transaction between the issuer or other person on whose behalf the offering of a security is made and an underwriter or a transaction among underwriters;

F. a transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement or by an agreement for the sale of real estate or personal property, if the entire mortgage, deed

of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

G. a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator;

H. a transaction executed by a bona fide secured party without a purpose of evading the New Mexico Securities Act of 1986;

I. an offer to sell or sale of a security to a financial or institutional investor or to a broker-dealer;

J. the issuance and offer and sale of securities by any corporation organized under the laws of this state, any offer or sale of limited partnership interests by a limited partnership organized or to be organized under the laws of this state or any offer or sale of interests in a limited liability company by a limited liability company organized or to be organized under the laws of the state if:

(1) in the case of a corporation, its principal office and a majority of its full-time employees are located in this state or, in the case of a limited partnership or a limited liability company, its principal place of business and eighty percent of its assets are located in this state;

(2) at least eighty percent of the proceeds from the offering shall be used by the issuer in operations of the issuer in this state;

(3) no commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state except to broker-dealers and sales representatives licensed pursuant to the New Mexico Securities Act of 1986;

(4) an offering document is delivered to each purchaser or prospective purchaser prior to the sale of the securities disclosing such information as the director by rule or order may require;

(5) the total offering, including interest on installment payments, does not exceed one million five hundred thousand dollars ($1,500,000); and

(6) the issuer claiming this exemption files notice with the director on a form prescribed by the director prior to the first offer and pays a fee of three hundred fifty dollars ($350). The director may require any issuer using this exemption to file periodic reports not more often than quarterly to keep reasonably current the information contained in the notice and to disclose the progress of the offering. The director may impose conditions by rule or order with respect to issuers, broker-dealers or affiliates who by reason of prior misconduct will not be eligible to utilize this exemption;

K. the issuance and offer and sale of securities by any corporation organized under the laws of this state or any offer or sale of limited partnership interests by a limited partnership organized or to be organized under the laws of this state or an offer or sale of interests in a limited liability company organized, or to be organized, under the laws of this state if:

(1) in the case of a corporation, the total number of security holders does not and will not in consequence of the sale exceed twenty-five or, in the case of a limited partnership, the number of limited partners does not and will not in consequence of the sale exceed twenty-five or in the case of a limited liability company, the number of members does not and will not in consequence of the sale exceed twenty-five;

(2) the issuer reasonably believes that all buyers are purchasing for investment;

(3) no public advertising or general solicitation is used in connection with the offer or sale;
and

(4) no commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state except to broker-dealers and sales representatives licensed pursuant to the New Mexico Securities Act of 1986.

The director by rule or order may impose additional requirements as a condition of the exemption established in this subsection as necessary for the protection of investors and to specify its application. Any notice filing that may be imposed pursuant to Subsection C of Section 58-13B-28 NMSA 1978 shall not be deemed a condition of this exemption;

L. any offer or sale of a preorganization certificate or subscription if:

(1) such sale or offer is made by an agent, the agent shall be licensed pursuant to the New Mexico Securities Act of 1986. No commission shall be paid to an agent not licensed pursuant to that act;

(2) no public advertising or general solicitation is used in connection with the offer or sale;

(3) the number of subscribers does not exceed ten; and

(4) either no payment is made by any subscriber or any payment made by a subscriber is put into escrow until the entire issue is subscribed;

M. an offer or sale of a preorganization certificate or subscription agreement issued in connection with the organization of a depository institution if that organization is under the supervision of an official or agency of any state or of the

United States which has and exercises the authority to regulate and supervise the depository institution. For the purpose of this subsection, supervision of an organization by an official or agency means that the official or agency by law has authority to:

(1) require disclosures to prospective investors similar to that required under Section 58-13B-23 NMSA 1978;

(2) impound proceeds from the sale of preorganization certificates or subscription agreements until organization of the depository institution is completed; and

(3) require a refund to investors if the depository institution does not obtain a grant of authority from the appropriate official or agency except that the official or agency with the authority to require a refund need not include such amounts as the official or agency has by law determined to be proper organizational expenditures;

N. a transaction pursuant to an offer to sell to existing security holders of the issuer, including persons who at the time of the transaction are holders of transferable warrants exercisable within not more than ninety days of their issuance, convertible securities or nontransferable warrants, if:

(1) no commission or other similar compensation, other than a standby commission, is paid or given, directly or indirectly, for soliciting a security holder in this state; or

(2) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

O. a transaction involving an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(1) a registration or offering statement or similar document as required under the Securities Act of 1933 has been filed but is not effective;

(2) a registration statement has been filed under the New Mexico Securities Act of 1986 but is not effective; and

(3) no stop order has been entered by the director, the securities and exchange commission or other state's securities agency, and no proceeding or examination that may culminate in that kind of order is pending;

P. a transaction involving an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(1) a registration statement has been filed under the New Mexico Securities Act of 1986 but is not effective; and

(2) no stop order has been entered by the director, other state securities agencies or the securities and exchange commission and no proceeding or examination that may culminate in that kind of order being issued by the director is pending;

Q. a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganization to which the issuer, or its parent and subsidiary, and the other person, or its parent or subsidiary, are parties, if:

(1) the securities to be distributed are registered under the Securities Act of 1933 and written notice of the transaction is given to the director prior to the consummation of the transaction; or

(2) if the securities to be distributed are not required to be registered under the Securities Act of 1933, and written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited is given to the director at least ten days before the consummation of the transaction and the director does not disallow by order the exemption within the next ten days;

R.

(1) a transaction involving the ffer to sell or sale of one or more promissory notes each of which is directly secured by a first lien on a single parcel of real estate, or a transaction involving the offer to sell or sale of participation interests in the notes if the notes and participation interests are originated by a depository institution and are offered and sold subject to the following conditions:

(a) the minimum aggregate sales price paid by each purchaser may not be less than two hundred fifty thousand dollars ($250,000);

(b) each purchaser must pay cash either at the time of the sale or within sixty days after the sale; and

(c) each purchaser may buy for that person's own account only;

(2) a transaction involving the offer to sell or sale of one or more promissory notes directly secured by a first lien on a single parcel of real estate or participation interests in the notes, if the notes and participation interests are originated by a mortgagee approved by the secretary of housing and urban development under Sections 203 and 211 of the National Housing Act and are offered or sold, subject to the conditions specified in Paragraph (1) of this subsection, to a depository institution or

insurance company, the federal home loan mortgage corporation, the federal national mortgage association or the government national mortgage association;

(3) a transaction between any of the persons described in Paragraph (2) of this subsection involving a nonassignable contract to buy or sell the securities described in Paragraph (1) of this subsection, which contract is to be completed within two years, if:

(a) the seller of the securities pursuant to the contract is one of the parties described in Paragraph (1) or (2) of this subsection who may originate securities;

(b) the purchaser of securities pursuant to any contract is any other institution described in Paragraph (2) of this subsection; and

(c) the three conditions described in Paragraph (1) of this subsection are fulfilled;

S. any transaction involving leases or interests in leases in oil, gas or other mineral rights between parties each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business. For purposes of this subsection, a party "engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business" means:

(1) any corporation, partnership, limited liability company or other business entity that is directly engaged in and derives at least eighty percent of its annual gross income from the exploration or production of oil, gas or other valuable minerals;

(2) any general partner or any employee who spends at least eighty percent of his work time in the daily management of a business entity that is directly engaged in and derives at least eighty percent of its gross annual income from the exploration or production of oil, gas or other valuable minerals; or

(3) any corporation, partnership, limited liability company or other business entity that is directly engaged in the business of exploration and production of oil, gas or other valuable minerals and derives at least five million dollars ($5,000,000) of annual gross income from such business; and

T. any transaction involving the sale or offer of interests in and under oil, gas or mining rights located in New Mexico or fees, titles or contracts relating thereto, or such sale or offer of such interests, wherever located, made by an entity principally operating in New Mexico where:

(1) the total number of sales by any one owner of interests, whether whole, fractional, segregated or undivided, in any oil, gas or mineral lease, fee or title or

contract relating thereto, shall not exceed twenty-five, provided that such sales shall be made only to persons meeting suitability standards established by rule or order of the director and that investors are provided with such disclosure documents and other information as the director may require by rule or order;

(2) no use is made of advertisement or public solicitation; and

(3) if such sale or offer is made by an agent for such owner or owners, such agent shall be licensed pursuant to the New Mexico Securities Act of 1986. No commission shall be paid to an agent not licensed pursuant to that act.

For the purposes of this subsection, "principally operating in New Mexico" means a corporation or limited liability company organized under the laws of this state, a corporation a majority in interest of whose shareholders are residents of this state, a partnership in which a majority in interest of the partners are residents of this state, a limited liability company in which a majority in interest of the members are residents of this state, a trust in which a majority in interest of the beneficiaries are residents of this state or a sole proprietorship in which the owner is a
resident of this state." HB 448

CHAPTER 281

RELATING TO NOTARIAL ACTS; ENACTING THE UNIFORM LAW ON NOTARIAL ACTS; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. DEFINITIONS.--As used in the Uniform Law on Notarial Acts:

A. "notarial act" means any act that a notary public of this state is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument;

B. "acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein;

C. "verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation;

D. "in a representative capacity" means:

(1) for and on behalf of a corporation, partnership, trust or other entity, as an authorized officer, agent, partner, trustee or other representative;

(2) as a public officer, personal representative, guardian or other representative, in the capacity recited in the instrument;

(3) as an attorney in fact for a principal; or

(4) in any other capacity as an authorized representative of another; and

E. "notarial officer" means a notary public or other officer authorized to perform notarial acts.

Section 2

Section 2. NOTARIAL ACTS.--

A. In taking an acknowledgment, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

B. In taking a verification upon oath or affirmation, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

C. In witnessing or attesting a signature the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.

D. In certifying or attesting a copy of a document or other item, the notarial officer shall determine that the proffered copy is a full, true and accurate transcription or reproduction of the one that was copied.

E. In making or noting a protest of a negotiable instrument the notarial officer shall determine the matters set forth in Section 55-3-505 NMSA 1978.

F. A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is:

(1) personally known to the notarial officer;

(2) identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or

(3) identified on the basis of identification documents.

Section 3

Section 3. NOTARIAL ACTS IN THIS STATE.--

A. A notarial act may be performed within this state by the following persons:

(1) a notary public of this state;

(2) a judge, clerk or deputy clerk of any court of this state; or

(3) a person authorized by the law of this state to administer oaths.

B. Notarial acts performed within this state under federal authority as provided in Section 5 of the Uniform Law on Notarial Acts have the same effect as if performed by a notarial officer of this state.

C. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

Section 4

Section 4. NOTARIAL ACTS IN OTHER JURISDICTIONS OF THE UNITED STATES.--

A. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if performed in another state, commonwealth, territory, district or possession of the United States by any of the following persons:

(1) a notary public of that jurisdiction;

(2) a judge, clerk or deputy clerk of a court of that jurisdiction; or

(3) any other person authorized by the law of that jurisdiction to perform notarial acts.

B. Notarial acts performed in other jurisdictions of the United States under federal authority as provided in Section 5 of the Uniform Law on Notarial Acts have the same effect as if performed by a notarial officer of this state.

C. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

D. The signature and indicated title of an officer listed in Paragraph (1) or (2) of Subsection A of this section conclusively establish the authority of a holder of that title to perform a notarial act.

Section 5

Section 5. NOTARIAL ACTS UNDER FEDERAL AUTHORITY.--

A. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this
state if performed anywhere by any of the following persons under authority granted by the law of the United States:

(1) a judge, clerk or deputy clerk of a court;

(2) a commissioned officer on active duty in the military service of the United States;

(3) an officer of the foreign service or consular officer of the United States; or

(4) any other person authorized by federal law to perform notarial acts.

B. The signature and titleof a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

C. The signature and indicated title of an officer listed in Paragraph (1), (2) or (3) of Subsection A of this section conclusively establish the authority of a holder of that title to perform a notarial act.

Section 6

Section 6. FOREIGN NOTARIAL ACTS.--

A. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

(1) a notary public or notary;

(2) a judge, clerk or deputy clerk of a court of record; or

(3) any other person authorized by the law of that jurisdiction to perform notarial acts.

B. An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

C. A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of that
nation stationed in the United States conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

D. An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

E. An official stamp or seal of an officer listed in Paragraph (1) or (2) of Subsection A of this section is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

F. If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

Section 7

Section 7. CERTIFICATE OF NOTARIAL ACTS.--

A. A notarial act shall be evidenced by a certificate signed and dated by a notarial officer. The certificate shall include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate shall also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it shall also include the officer's rank.

B. A certificate of a notarial act is sufficient if it meets the requirements of Subsection A of this section and it:

(1) is in the short form set forth in Section 8 of the Uniform Law on Notarial Acts;

(2) is in a form otherwise prescribed by the law of this state;

(3) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(4) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

C. By executing a certificate of a notarial act, the notarial officer certifies that he has made the determinations required by Section 2 of the Uniform Law on Notarial Acts.

Section 8

Section 8. CERTIFICATES OF NOTARIAL ACTS--SHORT FORMS.--The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by Subsection A of Section 7 of the Uniform Law on Notarial Acts:

A. for an acknowledgment in an individual capacity:

State of _____
(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s))__

_____
(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My commission expires:_____];

B. for an acknowledgment in a representative capacity:

State of _____
(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s))__
as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed.)

_____
(Signature of notarial officer)

(Seal, if any) Title (and Rank)

[My commission expires:_____];

C. for a verification upon oath or affirmation:

State of _____
(County) of _____

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).

_____
(Signature of notarial officer)

(Seal, if any) Title (and Rank)

[My commission expires:_____];

D. for witnessing or attesting a signature:

State of _____
(County) of _____

Signed or attested before me on (date) by (name(s) of person(s)) .

_____
(Signature of notarial officer)

(Seal, if any) Title (and Rank)

[My commission expires:_____];

and

E. for attestation of a copy of a document:

State of _____
(County) of _____

I certify that this is a true and correct copy of a document in the possession of_____.
Dated _____

_____
(Signature of notarial officer)

(Seal, if any) Title (and Rank)

[My commission expires:_____].

Section 9

Section 9. NOTARIAL ACTS AFFECTED BY THE UNIFORM LAW ON NOTARIAL ACTS.--The Uniform Law on Notarial Acts applies to notarial acts performed on or after its effective date.

Section 10

Section 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--The Uniform Law on Notarial Acts shall be applied and construed to effectuate its general purpose to make uniform the law with respect to its subject among states enacting it.

Section 11

Section 11. SHORT TITLE.--This act may be cited as the "Uniform Law on Notarial Acts".

Section 12

Section 12. REPEAL.--Sections 14-13-4 through 14-13-10 and 14-13-19 through 14-13-23 NMSA 1978 (being Laws 1901, Chapter 62, Sections 14 through 16, Laws 1945, Chapter 4, Section 1, Laws 1851-1852, Page 374, Laws 1889, Chapter 46, Sections 1 and 2, Laws 1955, Chapter 82, Sections 1 through 4 and Laws 1955, Chapter 82, Appendix, as amended) are repealed.

Section 13

Section 13. EFFECTIVE DATE.--The effective date of the provisions of the Uniform Law on Notarial Acts is July 1, 1993.HB 482

CHAPTER 282

RELATING TO UTILITIES; CHANGING THE NAME OF THE NEW MEXICO PUBLIC SERVICE COMMISSION; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 3-1-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-1-2, as amended) is amended to read:

"3-1-2. DEFINITIONS.--As used in the Municipal Code:

A. "acquire" or "acquisition" means purchase, construct, accept or any combination of purchasing, constructing or accepting;

B. "business" means any person, occupation, profession, trade, pursuit, corporation, institution, establishment, utility, article, commodity or device engaged in making a profit, but does not include an employee;

C. "census" means any enumeration of population of a municipality conducted under the direction of the government of the United States, the state of New Mexico or the municipality;

D. "county" means the county in which the municipality or land is situated;

E. "district court" means the district court of the district in which the municipality or land is situated;

F. "governing body" means the city council or city commission of a city, the board of trustees of a town or village, the council of incorporated counties and the board of county commissioners of H class counties;

G. "municipal" or "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties;

H. "municipal utility" means sewer facilities, water facilities, gas facilities, electric facilities, generating facilities or any interest in jointly owned generating facilities owned by a municipality and serving the public. A municipality that owns both electric facilities and any interest in jointly owned generating facilities may, by ordinance, designate such interest in jointly owned generating facilities as part of its electric facilities. Generating facilities shall be considered as part of a municipality's electric facilities unless the municipality designates, by ordinance, the generating facilities as a separate municipal utility, such designation being conclusive subject to any existing property rights or contract rights;

I. "public ground" means any real property owned or leased by a municipality;

J. "publish" or "publication" means printing in a newspaper that maintains an office in the municipality and is of general circulation within the municipality or, if

such newspaper is a nondaily paper that will not be circulated to the public in time to meet publication requirements or if there is no newspaper that maintains an office in the municipality and is of general circulation within the municipality, then "publish" or "publication" means posting in six public places within the municipality on the first day that publication is required in a newspaper that maintains an office in the municipality and is of general circulation within the municipality. One of the public places where posting shall be made is the office of the municipal clerk who shall maintain the posting during the length of time necessary to comply with the provisions relating to the number of times publication is required in a newspaper of general circulation within the municipality. The municipal clerk may, in addition to posting, publish one or more times in a newspaper of general circulation in the municipality;

K. "qualified elector" means any person whose affidavit of voter registration has been filed by the county clerk, who is registered to vote in a general election precinct established by the board of county commissioners that is wholly or partly within the municipal boundaries and who is a resident of the municipality. Persons who would otherwise be qualified electors if land on which they reside is annexed to a municipality shall be deemed to be qualified electors:

(1) upon the effective date of the municipal ordinance effectuating the terms of the annexation as certified by the board of arbitration pursuant to Section 3-7-10 NMSA 1978;

(2) upon thirty days after the filing of an order of annexation by the municipal boundary commission pursuant to Sections 3-7-15 and 3-7-16 NMSA 1978, if no appeal is filed or, if an appeal is filed, upon the filing of a nonappealable court order effectuating the annexation; or

(3) upon thirty days after the filing of an ordinance pursuant to Section 3-7-17 NMSA 1978, if no appeal is filed or, if an appeal is filed, upon the filing of a nonappealable court order effectuating the annexation;

L. "revenue producing project" means any municipally owned self-liquidating projects that furnish public services to a municipality and its citizens, including but not necessarily limited to public buildings; facilities and equipment for the collection or disposal of trash, refuse or garbage; swimming pools; golf courses and other recreational facilities; cemeteries or mausoleums or both; airports; off-street parking garages; and transportation centers, which may include but are not limited to office facilities and customary terminal facilities for airlines, trains, monorails, subways, intercity and intracity buses and taxicabs; but "revenue producing facilities" does not mean a municipal utility as defined in Subsection H of this section;

M. "street" means any thoroughfare that can accommodate pedestrian or vehicular traffic, is open to the public and is under the control of the municipality;

N. "warrant" means a warrant, check or other negotiable instrument issued by a municipality in payment for goods or services acquired by the municipality or for the payment of a debt incurred by the municipality;

O. "mayor" means the chief executive officer of municipalities having the mayor-council form of government. In municipalities having other forms of government, the presiding officer of the governing body and the official head of the government, without executive powers, may be designated mayor by the governing body. Wherever the Municipal Code requires an act to be performed by the mayor with the consent of the governing body, in municipalities not having the mayor-council form of government, the act shall be performed by the governing body;

P. "generating facility" means any facility located within or outside the state necessary or incidental to the generation or production of electric power and energy by any means and includes:

(1) any facility necessary or incidental to the acquisition of fuel of any kind for the production of electric power and energy, including the acquisition of fuel deposits, the extraction of fuel from natural deposits, the conversion of fuel for use in another form, the burning of fuel in place and the transportation and storage of such fuel; and

(2) any facility necessary or incidental to the transfer of the electric power and energy to the municipality, including without limitation step-down substations or other facilities used to reduce the voltage in a transmission line in order that electric power and energy may be distributed by the municipality to its retail customers;

Q. "jointly owned generating facility" means any generating facility in which a municipality owns any undivided or other interest, including without limitation any right to entitlement or capacity; and

R. "joint participant" means any municipality in New Mexico or any other state; any public entity incorporated under the laws of any other state having the power to enter into the type of transaction contemplated by the Municipal Electric Generation Act; the state of New Mexico; the United States; Indian tribes; and any public electric utility, investor-owned electric utility or electric cooperative subject to general or limited regulation by the New Mexico public utility commission or a similar commission of any other state."

Section 2

Section 2. Section 3-7-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-7-2) is amended to read:

"3-7-2. EXTENSION OF UTILITY SERVICE BY MUNICIPALITY OR OTHER UTILITY.--A municipal utility or a utility under the jurisdiction of the New Mexico public

utility commission and having a franchise from the municipality may extend service to territory annexed by the municipality. If the territory annexed to the municipality is being served by a utility under the jurisdiction of the New Mexico public utility commission and the municipality is being served by another utility under the jurisdiction of the New Mexico public utility commission, the New Mexico public utility commission shall determine which utility under its jurisdiction shall serve the territory annexed to the municipality. The municipality shall grant a franchise to the utility that is to serve the territory annexed to provide utility service in the territory annexed upon such terms as are fair, just and equitable to all parties concerned."

Section 3

Section 3. Section 3-19-11 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-18-11) is amended to read:

"3-19-11. LEGAL STATUS OF MASTER PLAN.--

A. After a master plan or any part thereof has been approved and within the area of the master plan or any part thereof so approved, the approval of the planning commission is necessary to construct, authorize, accept, widen, narrow, remove, extend, relocate, vacate, abandon, acquire or change the use of any:

(1) park, street or other public way, ground, place or space;

(2) public building or structure; or

(3) utility, whether publicly or privately owned.

B. The failure of the planning commission to act within sixty-five days after the submission of a proposal to it constitutes approval of the proposal unless the proponent agrees to an extension of time. If the planning commission disapproves a proposal, it must state its reasons to the governing body. The governing body may overrule the planning commission and approve the proposal by a two-thirds vote of all its members.

C. None of the provisions of Chapter 3, Article 19 NMSA 1978 shall apply to any existing building, structure, plant or other equipment owned or used by any public utility or the right to its continued use or its reasonable repair or alteration for the purpose for which it was used at the time the master plan or any part thereof affecting the property takes effect. After the adoption of the master plan or any part thereof affecting the property, all extensions, betterments or additions to buildings, structures, plants or other equipment of any public utility shall be made in conformity with the master plan or any part thereof affecting the property and upon the approval of the planning commission. After a public hearing, the state corporation commission or the New Mexico public utility commission or the regulatory agency having jurisdiction or their successors having jurisdiction, as the case may be, may order that the extensions,

betterments or additions to buildings, structures, plants or other equipment are reasonable and that the extensions, betterments or additions may be made even though they conflict with the adopted master plan or any part thereof affecting the property.

D. Any public agency or official, not under the jurisdiction of the governing body of the municipality, authorizing or financing a public way, ground, place, space, building, structure or utility shall submit the proposal to the planning commission. If the planning commission disapproves the proposal, the board of the public agency by a two-thirds vote of all its members or the official may overrule the planning commission and proceed with the proposal subject to the provisions of Subsection C of this section."

Section 4

Section 4. Section 3-23-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-22-3) is amended to read:

"3-23-3. MUNICIPAL UTILITY--APPROVAL OF NEW MEXICO PUBLIC UTILITY COMMISSION.--

A. If the acquisition of a utility is to be financed from funds received from the issuance and sale of revenue bonds, the price of the acquisition of the utility shall be approved by the New Mexico public utility commission, and the commission shall require:

(1) a determination by appraisal or otherwise of the true value of the utility to be purchased; or

(2) an engineer's estimate of the cost of the utility to be constructed.

B. No revenue bonds shall be issued for the acquisition of such a utility until the New Mexico public utility commission has approved the issue and its amount, date of issuance, maturity, rate of interest and general provisions."

Section 5

Section 5. Section 3-24-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-23-1, as amended) is amended to read:

"3-24-1. ELECTRIC UTILITY--MUNICIPALITY MAY ACQUIRE AND OPERATE.--

A. Any municipality may, by ordinance, acquire, operate and maintain an electric utility for the generation and distribution of electricity to persons residing within its service area. The service area of a municipality
includes:

(1) territory within the municipality;

(2) territory within five miles of the boundary of the municipality in the case of any municipality heretofore acquiring or operating any municipal electric utility or part thereof in the territory within five miles of the boundary of the municipality;

(3) the sale of electricity to the United States government, the state of New Mexico or any department or agency of these governments; and

(4) as further provided in Section 3-24-8 NMSA 1978.

B. No municipality may sell electric power and energy on a retail basis except as provided in Subsection A of this section.

C. The acquisition of any electric utility facility beyond the municipal boundary shall be financed only by the sale of revenue bonds.

D. Any municipality that owns a generating facility or an interest in a jointly owned generating facility may sell surplus electric power and energy on a wholesale basis either within or outside its service area. Any contract or agreement to sell surplus electric power and energy may be entered into on a public bid basis, a competitive basis or a negotiated basis, as the municipality may determine. Provided, however, that subject to the sale or other interchange of power and energy with a joint participant or a co-member of a power pool necessary or convenient to the economical operation of a generating facility or a jointly owned generating facility or contractual requirements of a power pool in which the municipality is a member, such surplus electric power and energy shall be subject to a preference right to purchase by:

(1) first,municipalities that own electric facilities on July 1, 1979;

(2) second, public electric utilities, investor-owned utilities and electric cooperatives subject to general or limited regulation by the New Mexico public utility commission and the United States of America or any of its departments or agencies; and

(3) any other person or entity."

Section 6

Section 6. Section 3-24-8 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-23-8, as amended) is amended to read:

"3-24-8. ELECTRIC UTILITY--LIMITATION ON RIGHT TO ACQUIRE SYSTEM BEYOND FIVE-MILE LIMIT.--

A. The acquisition of any public utility system by a municipality furnishing electric service more than five miles beyond its boundary is subject to the rights and liabilities of the public utility, and the obligations assumed by the municipality shall be paid from the gross revenue ascribable to the electric system so acquired.

B. No municipality shall acquire any public utility system for furnishing electricity more than five miles beyond its boundary in territory receiving similar utility service:

(1) from a public utility subject to the jurisdiction of the New Mexico public utility commission and the Public Utility Act without the consent of the public utility or as otherwise provided by law;

(2) within any municipality that already owns or operates its electric utility without the consent of the municipality or as otherwise provided by law; or

(3) within territory receiving similar utility service from a rural electric cooperative without the consent of the rural electric cooperative or as otherwise provided by law.

C. The provisions of this section shall not apply to either the acquisition by a municipality of a generating facility or any interest in a jointly owned generating facility or the sale of electric power and energy derived from any such facility as authorized by Section 3-24-1 NMSA 1978."

Section 7

Section 7. Section 3-24-9 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-23-9, as amended) is amended to read:

"3-24-9. ELECTRIC UTILITY--RATES, CHARGES AND SERVICE CONDITIONS BEYOND FIVE-MILE LIMIT--RATE, CHARGE AND SERVICE STANDARDS--FEES PAID BY MUNICIPALITY.--

A. Any municipality acquiring, operating or maintaining an electric utility system in that area more than five miles beyond its boundary shall:

(1) establish, maintain and collect rates or charges for service in that area that are just and reasonable; and

(2) furnish adequate, efficient and reasonable service in that area.

B. No municipality acquiring, operating or maintaining an electric utility system in that area more than five miles beyond its boundary shall, as to rates or services:

(1) make or grant any unreasonable preference or advantage to any customer or group of customers;

(2) subject any customer or group of customers to any unreasonable prejudice or disadvantage; or

(3) establish and maintain any unreasonable differences either as between or among areas being served or as between or among customer groups.

C. Prior to implementing general retail rate increases for customers of its electric utility system in that area more than five miles beyond its boundaries, a municipality shall, after reasonable notice by publication in one or more newspapers of general circulation in such area and to the board of county commissioners of each county in which such customers are situated and to the New Mexico public utility commission, provide an opportunity at one or more public forums for affected customers and the board of county commissioners to present their views, comments and data. The New Mexico public utility commission may also appear and present matters within its rate-making expertise. The municipality and board of county commissioners may agree to alternative or additional rate-making procedures for such rate increases.

D. No later than June 1 of each year, the property tax division of the taxation and revenue department shall determine the actual value of all property belonging to the municipality in any electric utility system in that area five miles beyond its boundary and certify to the local assessor in the county in which any property is located the value of such property. The municipality shall pay to the treasurer of that county a fee for extraterritorial operation in that
area five miles beyond its boundary, payable in installments and at the dates when taxes levied for ad valorem purposes are payable, equal to the taxes for ad valorem purposes and assessments that would be paid upon the property if privately owned, to be distributed by the county treasurer in the manner provided by law for the distribution of taxes for ad valorem purposes and assessments upon real and personal property."

Section 8

Section 8. Section 3-25-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-24-3, as amended) is amended to read:

"3-25-3. GAS OR GEOTHERMAL UTILITY--EXTENT OF FACILITIES--DISTRIBUTION TO CONSUMERS BEYOND THE MUNICIPAL BOUNDARY--WITHIN THE BOUNDARY OF ANOTHER MUNICIPALITY--APPROVAL OF OTHER MUNICIPALITY AND NEW MEXICO PUBLIC UTILITY COMMISSION.--

A. The natural gas or geothermal utility may include but is not limited to:

(1) in the municipality and within fifty miles of the municipal boundary, facilities appropriate to the transportation, pumping, storage or purification of natural gas or geothermal waters; and

(2) in the municipality and within five miles of the municipal boundary, facilities for the distribution of natural gas or geothermal heat.

The gas or geothermal utility shall include any land or real estate needed for the location of any such facilities.

B. No municipality shall acquire and operate gas or geothermal distribution facilities in whole or in part within the boundary of another municipality, as then existing, until the:

(1) New Mexico public utility commission issues an order authorizing the acquisition and operation of the gas or geothermal distribution facilities; and

(2) other municipality authorizes, by ordinance, the acquisition and operation of the natural gas or geothermal distribution facilities.

C. No formal franchise need be granted by the other municipality, and the ordinance granting the consent of the other municipality:

(1) shall be sufficient;

(2) may be adopted on a single reading;

(3) may become immediately effective;

(4) shall not be subject to a referendum; and

(5) shall be valid for such period of years as may be specified in the ordinance."

Section 9

Section 9. Section 3-28-1 NMSA 1978 (being Laws 1969, Chapter 186, Section 1, as amended) is amended to read:

"3-28-1. WATER OR NATURAL GAS ASSOCIATIONS--POWERS.--Any combination of two or more municipalities and the board of county commissioners of the county in which the municipalities are located shall have the power by joint or concurring resolution of the governing bodies to appoint three or more commissioners to organize an association for the purpose of acquiring a water or natural gas supply system. The board of county commissioners of any county in which any unincorporated

rural community is located that is situate five miles or more from the nearest municipality in which natural gas utility service is available shall have the power by resolution to appoint three or more commissioners from the rural community to organize an association for the purpose of acquiring a natural gas supply system to provide natural gas utility service as provided in Chapter 3, Article 28 NMSA 1978. If commissioners are appointed by the board of county commissioners from two or more rural communities in the county, the commissioners who have been appointed may jointly organize an association for the purpose of acquiring a natural gas supply system to provide natural gas utility service as provided in Chapter 3, Article 28 NMSA 1978. The association may, by resolution of its board of directors, purchase or otherwise acquire any water or natural gas supply system, as the case may be, including distribution and transmission pipelines or other water or natural gas works, as the case may be, whether already constructed or that may be constructed, and to further acquire all the rights, privileges and franchises of any person, persons or corporation owning the same or having any interest or right therein and to hold and operate the same in the same manner as the persons or corporation from whom the same may be acquired and distribute the water or natural gas, as the case may be, in the same manner or as may otherwise be determined by the board of directors from time to time. No association or corporation formed by commissioners appointed by the board of county commissioners shall distribute natural gas in any municipality unless the municipality is incorporated in an area served by the association or corporation after the association or corporation has been formed, nor shall it distribute natural gas outside the county. An association or corporation formed by commissioners appointed by the board of county commissioners may distribute natural gas for domestic or residential, commercial and irrigation purposes but shall not distribute natural gas for industrial purposes except with the consent of any public utility holding a certificate of public convenience and necessity from the New Mexico public utility commission authorizing the same kind of utility service at any location in the county. Any association formed pursuant to this section shall not provide gas service to any customers of a gas utility regulated by the New Mexico public utility commission within any area described in the utility's jurisdictional certificate; provided that an association may serve an area not served in fact, although in the certificated area, but in the case of any dispute, the burden of persuasion shall be upon the association. The corporation is empowered to enter into joint or several agreements for the acquisition of water supply or natural gas transmission and distribution systems, as the case may be, whether existing or to be constructed in the future, with any existing consumer or any other person, firm or corporation, either private or municipal, upon such terms as may be agreed. As used in this section, the term "rural community" means an area that contains not less than fifty inhabitants and has a population density of not less than one person per acre."

Section 10

Section 10. Section 3-28-19 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-27-17, as amended) is amended to read:

"3-28-19. EMINENT DOMAIN.--Associations organized under Chapter 3, Article 28 NMSA 1978 shall have the power of eminent domain as provided by law, except the power of eminent domain shall not be used to acquire any plant or system or extension thereof described in a certificate of public convenience and necessity, or any interest therein, owned or operated by an entity that is regulated by the New Mexico public utility commission or the federal energy regulatory commission or their successors."

Section 11

Section 11. Section 3-28-20 NMSA 1978 (being Laws 1981, Chapter 203, Section 7, as amended) is amended to read:

"3-28-20. ASSOCIATIONS NOT SUBJECT TO UTILITY LAWS.--No association organized under the provisions of Chapter 3, Article 28 NMSA 1978 is subject to the jurisdiction of the New Mexico public utility commission or the terms and provisions of the Public Utility Act, as amended."

Section 12

Section 12. Section 3-28-21 NMSA 1978 (being Laws 1981, Chapter 203, Section 8, as amended) is amended to read:

"3-28-21. NEW MEXICO PUBLIC UTILITY COMMISSION JURISDICTION.--Any association organized under the provisions of Chapter 3, Article 28 NMSA 1978 may elect by resolution adopted by its board of directors to become subject to the jurisdiction of the New Mexico public utility commission in matters of rates, security issues, jurisdictional area and industrial service and to all of the terms and provisions of the Public Utility Act, as amended. Povided, any association that so elects shall not be subject to any limits on its power of eminent domain as provided in Section 3-28-19 NMSA 1978 nor shall it be prohibited from providing gas service within an area described in any other gas utility's jurisdictional certificate as provided in Section 3-28-1 NMSA 1978."

Section 13

Section 13. Section 4-59-9.1 NMSA 1978 (being Laws 1992, Chapter 11, Section 2) is amended to read:

"4-59-9.1. PROCEDURE FOR ISSUING INDUSTRIAL REVENUE BONDS OR REFUNDING BONDS.--Prior to the issuance of industrial revenue bonds or refunding bonds for acquisition or improvement of a water utility or a joint water utility, New Mexico public utility commission approval, as required by the Public Utility Act, shall be obtained. H class counties shall obtain New Mexico public utility commission approval as required by Section 3-23-3 NMSA 1978."

Section 14

Section 14. Section 4-62-1 NMSA 1978 (being Laws 1992, Chapter 95, Section 1) is amended to read:

"4-62-1. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--

A. In addition to any other law authorizing a county to issue revenue bonds, a county may issue revenue bonds pursuant to Chapter 4, Article 62 NMSA 1978 for the purposes specified in this section. The term "pledged revenues", as used in Chapter 4, Article 62 NMSA 1978, means the revenues, net income or net revenues authorized to be pledged to the payment of particular revenue bonds as specifically provided in Subsections B through F of this section.

B. Gross receipts tax revenue bonds may be issued for any one or more of the following purposes:

(1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to one or more public buildings or purchasing or improving any ground relating thereto, including but not necessarily limited to acquiring and improving parking lots or any combination of the foregoing;

(2) acquiring or improving county or public parking lots, structures or facilities or any combination of the foregoing;

(3) purchasing, acquiring or rehabilitating firefighting equipment or any combination of the foregoing;

(4) acquiring, extending, enlarging, bettering, repairing, otherwise improving or maintaining storm sewers and other drainage improvements, sanitary sewers, sewage treatment plants or water utilities, including but not limited to the acquisition of rights of way and water and water rights or any combination of the foregoing;

(5) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges or any combination of the foregoing, or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges or any combination of the foregoing; provided that any of the foregoing improvements may include but is not limited to the acquisition of rights of way;

(6) purchasing, acquiring, constructing, making additions to, enlarging, bettering, extending or equipping any airport facilities or any combination of the foregoing, including without limitation the acquisition of land, easements or rights of way;

(7) purchasing or otherwise acquiring or clearing land or purchasing, otherwise acquiring and beautifying land for open space;

(8) acquiring, constructing, purchasing, equipping, furnishing, making additions to, renovating, rehabilitating, beautifying or otherwise improving public parks, public recreational buildings or other public recreational facilities or any combination of the foregoing; or

(9) acquiring, constructing, extending, enlarging, bettering, repairing or otherwise improving or maintaining solid waste disposal equipment, equipment for operation and maintenance of sanitary landfills, sanitary landfills, solid waste facilities or any combination of the foregoing.

A county may pledge irrevocably any or all of the revenue from the first one-eighth of one percent increment of the county gross receipts tax for payment of principal and interest due in connection with, and other expenses related to, gross receipts tax revenue bonds. If the county gross receipts tax revenue from the first one-eighth of one percent increment of the county gross receipts tax is pledged for payment of principal and interest as authorized by this subsection, the pledge shall require the revenues received from that increment of the county gross receipts tax to be deposited into a special bond fund for payment of the principal, interest and expenses. At the end of each fiscal year, any money remaining in the special bond fund after the annual obligations for the bonds are fully met may be transferred to any other fund of the county.

C. Fire protection revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating any independent fire district project or facilities, including, where applicable, purchasing, otherwise acquiring or improving the ground for the project, or any combination of such purposes. A county may pledge irrevocably any or all of the county fire protection excise tax revenue for payment of principal and interest due in connection with, and other expenses related to, fire protection revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "fire protection revenue bonds".

D. Environmental revenue bonds may be issued for the acquisition and construction of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities. A county may pledge irrevocably any or all of the county environmental services gross receipts tax revenue for payment of principal and interest due in connection with, and other expenses related to, environmental revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "environmental revenue bonds".

E. Gasoline tax revenue bonds may be issued for the acquisition of rights of way for and the construction, reconstruction, resurfacing, maintenance, repair or other improvement of county roads and bridges. A county may pledge irrevocably any

or all of the county gasoline tax revenue for payment of principal and interest due in connection with, and other expenses related to, county gasoline tax revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "gasoline tax revenue bonds".

F. Utility revenue bonds or joint utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving water facilities, sewer facilities, gas facilities or electric facilities or for any combination of the foregoing purposes. A county may pledge irrevocably any or all of the net revenues from the operation of the utility or joint utility for which the particular utility or joint utility bonds are issued to the payment of principal and interest due in connection with, and other expenses related to, utility or joint utility revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "utility revenue bonds" or "joint utility revenue bonds".

G. Project revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating any revenue-producing project, including, as applicable, purchasing, otherwise acquiring or improving the ground therefor, and including but not limited to acquiring and improving parking lots, or may be issued for any combination of the foregoing purposes. The county may pledge irrevocably any or all of the net revenues from the operation of the revenue-producing project for which the particular project revenue bonds are issued to the payment of the interest on and principal of the project revenue bonds. The net revenues of any revenue-producing project may not be pledged to the project revenue bonds issued for any other revenue-producing project that is clearly unrelated in nature; but nothing in this subsection prevents the pledge to any of the project revenue bonds of any revenues received from any existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular revenue-producing project. Any general determination by the governing body that any facilities or equipment are reasonably related to and shall constitute a part of a specified revenue-producing project shall be conclusive if set forth in the proceedings authorizing the project revenue bonds. As used in Chapter 4, Article 62 NMSA 1978:

(1) "project revenue bonds" means the bonds authorized in this subsection; and

(2) "project revenues" means the net revenues of revenue-producing projects that may be pledged to project revenue bonds pursuant to this subsection.

H. Except for the purpose of refunding previous revenue bond issues, no county may sell revenue bonds payable from pledged revenue after the expiration of two years from the date of the ordinance authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue.

I. No bonds may be issued by a county, other than an H class county, to acquire, equip, extend, enlarge, better, repair or construct any utility unless such utility is regulated by the New Mexico public utility commission under the Public Utility Act and the issuance of the bonds is approved by the commission. For purposes of Chapter 4, Article 62 NMSA 1978, a "utility" includes but is not limited to any water, wastewater, sewer, gas or electric utility or
joint utility serving the public. H class counties shall obtain New Mexico public utility commission approvals required by Section 3-23-3 NMSA 1978.

J. Any law that imposes or authorizes the imposition of a county gross receipts tax, a county environmental services gross receipts tax, a county fire protection excise tax or the gasoline tax, or that affects any of those taxes, shall not be repealed or amended in such a manner as to impair any outstanding revenue bonds that are issued pursuant to Chapter 4, Article 62 NMSA 1978 and that may be secured by a pledge of those taxes unless the outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

K. As used in this section:

(1) "county environmental services gross receipts tax revenue" means the revenue from the county environmental services gross receipts tax transferred to the county pursuant to Subsection E of Section 7-1-6.13 NMSA 1978;

(2) "county fire protection excise tax revenue" means the revenue from the county fire protection
excise tax transferred to the county pursuant to Subsection A of Section 7-1-6.13 NMSA 1978;

(3) "county gross receipts tax revenue" means the revenue attributable to the first one-eighth of one percent increment of the county gross receipts tax transferred to the county pursuant to Subsection B of Section 7-1-6.13 NMSA 1978 and any distribution related to the first one-eighth of one percent made pursuant to Section 7-1-6.16 NMSA 1978;

(4) "gasoline tax revenue" means the revenue from that portion of the gasoline tax distributed to the county pursuant to Sections 7-1-6.9 and 7-1-6.26 NMSA 1978; and

(5) "public building" includes but is not limited to fire stations, police buildings, jails, libraries, museums, auditoriums, convention halls, hospitals, buildings for administrative offices, courthouses and garages for housing, repairing and maintaining county vehicles and equipment."

Section 15

Section 15. Section 13-1-158 NMSA 1978 (being Laws 1984, Chapter 65, Section 131, as amended) is amended to read:

"13-1-158. PAYMENTS FOR PURCHASES.--

A. No warrant, check or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the central purchasing office or the using agency certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted under Section 13-1-98 NMSA 1978 by exclusion of the purchase from the Procurement Code.

B. Unless otherwise agreed upon by the parties or unless otherwise specified in the invitation for bids, request for proposals or other solicitation, within fifteen days from the date the state central purchasing office or state using agency receives written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site and received by the state, the state central purchasing office or state using agency sall issue a written certification of complete or partial acceptance or rejection of the services, construction or items of tangible personal property.

C. Upon certification by the state central purchasing office or the state using agency that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor within sixty days of the date of certification. After the sixtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one-half percent per month.

D. Late payment charges that differ from the provisions of Subsection C of this section may be assessed if specifically provided for by contract or pursuant to tariffs approved by the New Mexico public utility commission or the state corporation commission."

Section 16

Section 16. Section 27-6-8 NMSA 1978 (being Laws 1975, Chapter 300, Section 7) is amended to read:

"27-6-8. ADJUSTMENTS TO MEET RATE INCREASES.--

A. The income support division of the human services department shall annually review the rate schedules of gas and electric companies in this state provided by the New Mexico public utility commission and, if

necessary, shall recommend to the legislature adjustments in the amount of state utility supplements to reflect any increases or decreases in gas or electricity rates, or both.

B. The income support division shall conduct its first rate review during the month of December, 1975 and shall conduct a review during December annually thereafter."

Section 17

Section 17. Section 27-6-17 NMSA 1978 (being Laws 1991, Chapter 81, Section 1) is amended to read:

"27-6-17. UTILITY SERVICE--PROCEDURES TO FOLLOW PRIOR TO SERVICE BEING DISCONTINUED.--

A. Unless requested by the customer, no gas or electric utility shall discontinue service to any residential customer for nonpayment during the period from November 15 through March 15 unless the following procedures are followed:

(1) at least fifteen days prior to the date scheduled for utility service to be discontinued, unless the
New Mexico public utility commission provides for a shorter period, the utility shall mail or hand-deliver to the customer a notice printed in both English and Spanish and in simple language, which notice clearly explains that:

(a) utility service shall stop on a specific date;

(b) the customer may be eligible for financial assistance to pay for the utility service; and

(c) for assistance, the customer should contact the utility or the department;

(2) any utility subject to this section shall attempt to advise customers who contact the utility seeking financial assistance of the program administered under the Low Income Utility Assistance Act and of assistance programs the utility may administer on its own or in conjunction with others;

(3) the utilities subject to this section and the department shall provide application forms for utility service payment assistance at billing and agency offices; and

(4) before the service is actually discontinued, the utility shall attempt to make contact in person or by telephone to remind the customer of the pending date of discontinuance of service and that financial assistance for utility payments may be available.

B. Unless requested by the customer, no gas or electric utility shall discontinue service to any residential customer for nonpayment during the period from November 15 through March 15 until at least fifteen days after the date scheduled for discontinuance of service if the department has certified to the utility that a customer is eligible for utility payment assistance under the Low Income Utility Assistance Act and that payment for the utility service provided to the customer will be made within the fifteen-day period.

C. The department and the New Mexico public utility commission shall coordinate and adopt, as they deem appropriate, either separate or joint rules and regulations necessary to implement the provisions of this section; provided that nothing in this section authorizes the department to revise tariffs or rate filings subject to the jurisdiction of the New Mexico public utility commission."

Section 18

Section 18. Section 59A-12-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 211, as amended) is amended to read:

"59A-12-10. LICENSING PROHIBITED AS TO LENDING INSTITUTION, PUBLIC UTILITY OR CREDIT UNION--DEFINITIONS AND EXCEPTIONS.--

A. No lending institution, public utility, credit union or holding company subsidiary or affiliate of any of the foregoing may directly or indirectly be licensed to sell insurance or act as a broker for insurance in this state, except that a lending institution or a holding company, subsidiary or affiliate of a lending institution may be licensed:

(l) to sell credit life, health and accident insurance, lienholders collateral protection insurance and mortgage guaranty insurance in accordance with regulations promulgated by the superintendent; and

(2) to sell any insurance, where the lending institution is a state or national bank, in communities the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census,
in accordance with regulations promulgated by the superintendent.

B. The superintendent may promulgate regulations to effectuate the purposes of this section, which are to help maintain the separation between lending institutions, public utilities, credit unions or holding companies and the insurance business and to minimize the possibilities of unfair competitive practices by lending institutions, public utilities, credit unions and holding companies in the sale of insurance.

C. For the purpose of this section, the following definitions shall apply:

(1) "lending institution" means any institution whose primary business is accepting deposits and lending money from a place of business in the state,

including banks, savings and loan associations and credit unions, but does not include insurance companies;

(2) the terms "holding company", "subsidiary", "affiliate" and related terms shall be defined according to regulations promulgated by the superintendent, except that "bank holding company" shall mean and include the definition of such term in Section 2 of the federal Bank Holding Act of 1956, as amended;

(3) "public utility" means a private employer subject to the jurisdiction of the New Mexico public utility commission and engaged in the business of rendering electric, gas, water and steam heat services to the public;

(4) "credit life, health and accident insurance" means insurance on the life and health of a borrower from a lending institution to secure the repayment of the amount borrowed in accordance with regulations promulgated by the superintendent; and

(5) "lienholders collateral protection insurance" means insurance on the personal property of a borrower from a lending institution to secure the repayment of the amount borrowed in accordance with regulations promulgated by the superintendent.

D. Nothing contained in this section shall apply to any lending institution, public utility, credit union or holding company subsidiary or affiliate of the foregoing or any director, officer or employee thereof if, on May l, 1979, such lending institution, public utility, credit union or holding company subsidiary or affiliate of the foregoing or any director, officer or employee thereof was licensed to operate and was conducting an insurance agency business in conformity with all federal and state laws applicable thereto. Except as otherwise provided in applicable federal bankruptcy law, 11 USC Section 101 et seq., this authority to operate and conduct an insurance agency business continues only so long as there is continuous and ongoing operation of the insurance agency business. No entity subject to the provisions of this subsection shall be licensed to operate an insurance agency business if the insurance agency business is not operated continuously or if either the insurance agency business or other business of the entity is sold, goes into receivership or conservatorship or is taken over by a state or federal regulatory entity, agency or department by reason of insolvency or any other reason necessitating federal or state intervention.

E. No person licensed to sell insurance in this state shall be prohibited from serving as a director, officer or employee of a lending institution, public utility, credit union or holding company subsidiary or affiliate of the foregoing if he conducts his insurance activities free of ownership or control of the lending institution, public utility, credit union or holding company subsidiary or affiliate of the foregoing and the lending institution, public utility, credit union or holding company subsidiary or affiliate of the foregoing does not participate directly in the earnings from his insurance activities.

F. A lending institution may take a security interest in the expirations of an insurance agent and upon default may acquire such assets. During the period the lending institution holds the expirations of an insurance agent by default, the lending institution may have an officer or employee licensed to continue operations, but must dispose of any insurance agency operations within one year of acquisition unless this period is extended by the superintendent upon a showing of hardship."

Section 19

Section 19. Section 62-1-4 NMSA 1978 (being Laws 1909, Chapter 141, Section 4, as amended) is amended to read:

"62-1-4. EMINENT DOMAIN--SURVEYS--ENTRY ON PROPERTY--CROSSING RIGHT-OF-WAY OF ANOTHER CORPORATION.--

A. Corporations organized pursuant to Section 62-1-1 NMSA 1978 are authorized to enter upon any property belonging to the state or to persons, firms or corporations for the purpose of making surveys and from time to time to appropriate so much of such property, not exceeding a strip one hundred feet wide in any one place, as may be necessary for their purpose. The corporations have the right of access to such property to construct and place their lines, pipes, poles, cables, conduits, towers, stations, fixtures, appliances and other structures and to repair them. If a corporation cannot agree with the owners as to a right-of-way or the compensation for a right-of-way, the corporation may proceed to obtain the right-of-way in the manner provided by law for condemnation of such property. Where it is necessary to cross the right-of-way of another corporation, the crossing shall be effected either by mutual agreement or in the manner now provided by law for the crossing of one railroad by another railroad; provided that the construction of any electric transmission lines crossing the right-of-way of a railroad shall comply with the minimum standards of the national electric safety code. When it is necessary for a corporation to construct any transmission line and associated facilities for the transmission of electrical power requiring a width for right-of-way of greater than one hundred feet, unless that width is agreed to by the parties, the applicant for the right-of-way shall apply to the New Mexico public utility commission as provided in Section 62-9-3.2 NMSA 1978 for a determination of the width necessary for the right-of-way for the transmission line.

B. For the purposes of this section, "corporation" means individuals, firms, partnerships, companies, municipalities, rural electric cooperatives organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, lessees, trustees or receivers appointed by any court."

Section 20

Section 20. Section 62-1-6 NMSA 1978 (being Laws 1943, Chapter 100, Section 1, as amended) is amended to read:

"62-1-6. FOREIGN MUNICIPAL CORPORATION--OWNERSHIP--SUPERVISION.--

A. Any municipal corporation located in another state and within twenty-five miles of the boundary of the state of New Mexico that has heretofore acquired or hereafter acquires property and facilities for the production, transmission and distribution of electricity, a part of which property and facilities is located in New Mexico, has full rights to own the property and facilities in New Mexic and to enjoy and use the property and facilities in all respects as might a private owner situated in New Mexico. The New Mexico public utility commission shall have general and exclusive power and jurisdiction to regulate and supervise the rates charged and service regulations made by such municipal corporations for electricity supplied by them to consumers in New Mexico in the manner provided for regulation and supervision of rates and service regulations for private corporations under the provisions of the Public Utility Act to the same extent that it has now or hereafter may have jurisdiction over private utility corporations, and to do all things necessary and convenient in the exercise of that power and jurisdiction. The municipal corporation shall be subject to the laws of the state of New Mexico now existing or hereafter amended or enacted as to foreign corporations, shall designate a statutory agent resident in New Mexico upon whom process against the municipal corporation may be served and may sue and be sued in this state as a foreign corporation.

B. The state and its political subdivisions, notwithstanding any provisions contained in Chapter 62, Article 1 NMSA 1978, shall assess for taxation the property of any such foreign municipal corporation and shall levy taxes against its property and facilities in New Mexico in the same manner and to the same extent as electric properties owned by private corporations are now or may hereafter be taxed in this state.

C. The provisions of this section shall not operate to prevent a municipal corporation located in another
state and further than twenty-five miles from the boundary of the state of New Mexico from owning any interest in a jointly owned generating facility."

Section 21

Section 21. Section 62-3-3 NMSA 1978 (being Laws 1967, Chapter 96, Section 3, as amended) is amended to read:

"62-3-3. DEFINITIONS, WORDS AND PHRASES.--Unless otherwise specified, when used in the Public Utility Act, as amended:

A. "affiliated interest" means:

(1) every person who owns or holds, directly or indirectly, ten percent or more of the voting securities of a public utility;

(2) every person who owns or holds, directly or indirectly, ten percent or more of the voting securities of a person described in Paragraph (1) of this subsection or this paragraph; and

(3) every person ten percent or more of whose voting securities is owned, directly or indirectly, by a public utility;

B. "commission" means the New Mexico public utility commission;

C. "commissioners" means any member of the commission;

D. "municipality" means any municipal corporation organized under the laws of the state and H class counties;

E. "person" means individuals, firms, partnerships, companies, rural electric cooperatives organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, as amended, corporations and lessees, trustees or receivers appointed by any court. It shall not mean any municipality as defined in this section unless the municipality has elected to come within the terms of the Public Utility Act, as amended, as provided in Section 62-6-5 NMSA 1978. In the absence of such voluntary election by any municipality to come within the provisions of the Public Utility Act, as amended, the municipality shall be expressly excluded from the operation of that act and from the operation of all of its provisions, and no such municipality shall for any purpose be considered a public utility;

F. "securities" means stock, stock certificates, bonds, notes, debentures, mortgages or deeds of trust or other evidences of indebtedness issued, executed or assumed by any utility;

G. "public utility" or "utility" means every person not engaged solely in interstate business and, except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that now does or hereafter may own, operate, lease or control:

(1) any plant, property or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses;

(2) any plant, property or facility for the manufacture, storage, distribution, sale or furnishing to or for the public of natural or manufactured gas or mixed or liquefied petroleum gas, for light, heat or power or for other uses; but the term "public utility" or "utility" shall not include any plant, property or facility used for or in connection with the business of the manufacture, storage, distribution, sale or furnishing of liquefied petroleum gas in enclosed containers or tank truck for use by others than consumers who receive their supply through any pipeline system operating under municipal authority or franchise, and distributing to the public;

(3) any plant, property or facility for the supplying, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, domestic or other uses; provided, however, nothing contained in this paragraph shall be construed to apply to irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(4) any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam for heat or power or other uses; or

(5) any plant, property or facility for the supplying and furnishing to or for the public of sanitary sewers for transmission and disposal of sewage produced by manufacturing, municipal, domestic or other uses;

H. "rate" means every rate, tariff, charge or other compensation for utility service rendered or to be rendered by any utility and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, tariff, charge or other compensation and any schedule or tariff or part of a schedule or tariff thereof;

I. "service" or "service regulation" means every rule, regulation, practice, act or requirement in any way relating to the service or facility of a utility;

J. "Class I transaction" means the sale, lease or provision of real property, water rights or other goods or services by an affiliated interest to any public utility with which it is affiliated or by a public utility to its affiliated interest;

K. "Class II transaction" means:

(1) the formation after the effective date of this 1982 act of a corporate subsidiary by a public utility or a public utility holding company by a public utility or its affiliated interest;

(2) the direct acquisition of the voting securities or other direct ownership interests of a person by a public utility if such acquisition would make the utility the owner of ten percent or more of the voting securities or other direct ownership interests of that person;

(3) the agreement by a public utility to purchase securities or other ownership interest of a person other than a nonprofit corporation, contribute additional equity to, acquire additional equity interest in or pay or guarantee any bonds, notes, debentures, deeds of trust or other evidence of indebtedness of any such person; provided, however, that a public utility may honor all agreements entered into by such utility prior to the effective date of this 1982 act; or

(4) the divestiture by a public utility of any affiliated interest that is a corporate subsidiary of the public utility;

L. "corporate subsidiary" means any person ten percent or more of whose voting securities or other ownership interests are directly owned by a public utility; and

M. "public utility holding company" means an affiliated interest that controls a public utility through the direct or indirect ownership of voting securities of such public utility."

Section 22

Section 22. Section 62-3-5 NMSA 1978 (being Laws 1989, Chapter 223, Section 5) is amended to read:
"62-3-5. COLLECTION OF FEES BY PUBLIC UTILITIES.--Any public utility that owns or operates a public water supply system upon whom a fee is imposed pursuant to Section 74-1-7 or 74-1-8 NMSA 1978 shall be entitled immediately to collect the fee from its ratepayers, without a request for a change in rates. The utility shall notify the New Mexico public utility commission in writing of the imposition of the fee and, if practicable, shall show the fee as a separate line item on its bill."

Section 23

Section 23. Section 62-5-1 NMSA 1978 (being Laws 1941, Chapter 84, Section 3) is amended to read:

"62-5-1. NEW MEXICO PUBLIC UTILITY COMMISSION ESTABLISHED.--A commission to be known as the "New Mexico public utility commission", consisting of three commissioners who are competent persons and qualified electors of this state, is established."

Section 24

Section 24. Section 62-5-2 NMSA 1978 (being Laws 1977, Chapter 255, Section 121) is amended to read:

"62-5-2. NEW MEXICO PUBLIC UTILITY COMMISSION ADMINISTRATIVELY ATTACHED TO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT.--The commission is administratively
attached, as defined in the Executive Reorganization Act, to the energy, minerals and natural resources department."

Section 25

Section 25. Section 62-5-3 NMSA 1978 (being Laws 1941, Chapter 84, Section 4, as amended) is amended to read:

"62-5-3. NEW MEXICO PUBLIC UTILITY COMMISSIONERS--APPOINTMENT--TERMS.--

A. The members of the commission are appointed by the governor with the advice and consent of the senate. If the senate is not in session when an appointment is made by the governor, the appointment is subject to the approval of the senate when next convened. Commissioners are appointed for staggered terms of six years that expire on January 15 of the appropriate year.

B. Vacancies or unexpired terms are filled in the same manner as original appointments, but the appointee shall serve only the unexpired term. The commissioner with the longest continuous service upon the commission is the chairman.

C. A commissioner who seeks nomination or election to any civil office in the state while he is a member of the commission vacates his office as commissioner, and the governor shall appoint a successor."

Section 26

Section 26. Section 62-5-4 NMSA 1978 (being Laws 1941, Chapter 84, Section 5) is amended to read:

"62-5-4. NAME OF COMMISSION--OATH OF OFFICE--SEAL OF OFFICE.--The commission shall be known as the "New Mexico public utility commission" and shall have a seal with the words "New Mexico public utility commission" and with such emblem as the commission prescribes. The members of the commission are state officers, and, before entering upon the discharge of their duties, they shall take the oath of office prescribed for other state officers."

Section 27

Section 27. Section 62-5-5 NMSA 1978 (being Laws 1941, Chapter 84, Section 6) is amended to read:

"62-5-5. PERSON INELIGIBLE TO THE OFFICE OF COMMISSIONER.--No person owning any securities in or interested in the business of any public utility, as defined in Chapter 62, Article 3 NMSA 1978, either directly or indirectly, is eligible to the office of commissioner."

Section 28

Section 28. Section 62-6-3 NMSA 1978 (being Laws 1941, Chapter 84, Section 16) is amended to read:

"62-6-3. COMMISSIONERS AND EMPLOYEES SHALL NOT RENDER SERVICE TO PUBLIC UTILITIES.--No commissioner or clerk or employee of the

commission shall, during his continuance in office, personally or through any partner or agent render any professional service or make or perform any contracts for or with any corporation, firm, company, association or persons owning or operating any public utility, as defined in Chapter 62, Article 3 NMSA 1978, in this state, except contracts made by commissioners and employees as consumers of utility products or of facilities or equipment for the use of utlity products."

Section 29

Section 29. Section 62-6-4.1 NMSA 1978 (being Laws 1985, Chapter 8, Section 1, as amended) is amended to read:

"62-6-4.1. CONTRACT CARRIAGE.--

A. The intent and purpose of this section is to encourage lower costs of natural gas for New Mexico consumers by providing competition in natural gas markets through contract carriage. Lower fuel costs are an integral part of New Mexico's economic development efforts because they preserve existing jobs, facilitate expansion of the state's
businesses and provide incentives for new industry to locate in New Mexico.

B. The commission shall, by rule or order, authorize and require the nondiscriminatory and nonpreferential transportation of natural gas by any person subject to the jurisdiction of the commission for a seller or purchaser of natural gas to the extent of available capacity and subject to Subsections C and D of this section.

C. The commission may, in its discretion, impose such terms and conditions on the transportation of natural gas as may be necessary to safeguard deliverability and operational efficiency and to prevent undue hardship and anticompetitive conduct by a public utility.

D. The rates and charges for the transportation of natural gas under this section shall be just, reasonable, nondiscriminatory and subject to approval by the commission.

E. For purposes of this section, "transportation" means exchange, backhaul, displacement or any other means of transporting and includes gathering.

F. A public utility shall be prohibited from the marketing and brokering of natural gas for delivery within New Mexico under this section. This prohibition shall not exclude a public utility from transporting natural gas for an affiliated corporation. Any contract to transport natural gas for an affiliate shall be an arms-length agreement containing no terms that are unavailable to other-end users, gas brokers or marketers.

G. The commission, upon a finding that a public utility is in violation of this section, may impose upon the utility a civil penalty not to exceed an amount three times

the damages established by the complainant in the commission proceeding and issue such orders, including but not limited to a cease and desist order, to assure the nondiscriminatory and nonpreferential transportation of natural gas."

Section 30

Section 30. Section 62-6-5 NMSA 1978 (being Laws 1941, Chapter 84, Section 17A) is amended to read:

"62-6-5. LOCAL OPTION.--Notwithstanding any of the provisions in Section 62-6-4 NMSA 1978, any municipality desiring to avail itself of all the benefits of the Public Utility Act and of the regulatory services of the commission may elect to come within the provisions of that act and to have the utilities owned and operated by it, either directly or through a municipally owned corporation, regulated and supervised under the provisions of that act. When a municipality so elects, in the manner provided in this section, it shall be subject to all the provisions of the Public Utility Act. The election shall be held as follows:

A. at any time after the effective date of the Public Utility Act, the legal voters of any municipality may petition in writing the governing body of the municipality by filing a petition in the office of the municipal clerk to hold an election for the purpose of determining whether the municipality shall be subject to the provisions of that act. If the aggregate of the names signed to the petition equals or exceeds twenty-five percent of the number of legal votes cast in the municipality for governor at the last preceding general election, the governing body of the municipality shall call an election to be held within sixty days of the filing of the petition. Provided, however, that if a general municipal election is to be held for any other purpose within six months of the filing of the petition, the election provided for in this section shall be held at the same time as and through the election machinery used at that election;

B. the election shall be held in the same manner as and with the same registration books as for other
municipal elections. The ballots to be submitted to the voters at the election shall present the following questions:

"For regulation of municipally owned
utilities by the New Mexico public
utility commission....._____
Against regulation of municipally owned
utilities by the New Mexico public
utility commission....._____".

The votes at the election shall be counted, returned and canvassed as provided for in general municipal elections. If the majority of all the votes are in favor of regulation of municipally owned utilities, the governing body of the municipality shall declare, by order entered upon the records of the municipality, that it is subject to all the provisions

of the Public Utility Act. If the majority of all the votes are against such regulation, the result of the election shall be declared and entered in the same manner; and

C. no elections for the same purpose shall be held within two years of each other."

Section 31

Section 31. Section 62-6-26 NMSA 1978 (being Laws 1989, Chapter 5, Section 1) is amended to read:

"62-6-26. ECONOMIC DEVELOPMENT RATES FOR GAS AND ELECTRIC UTILITIES--AUTHORIZATION.--

A. The commission may approve or otherwise allow to become effective, as provided in Subsection B of this section, applications from utilities or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings by cooperative utilities pursuant to Subsection F of Section 62-8-7 NMSA 1978, as appropriate, for special rates or tariffs in order to prevent the loss of customers, to encourage customers to expand present facilities and operations in New Mexico and to attract new customers where necessary or appropriate to promote economic development in New Mexico. Any such special rates or tariffs shall be designed so as to recover at least the incremental cost of providing service to such customers.

B. The commission may approve or otherwise allow to become effective applications from utilities or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 and filings by cooperative utilities pursuant to Subsection F of Section 62-8-7 NMSA 1978 for economic development rates and rates designed to retain load for gas and electric utility customers. For purposes of this section and Section 62-8-6 NMSA 1978, economic development rates and rates designed to retain load are rates set at a level lower than the corresponding service rate for which a customer would otherwise qualify.

C. Economic development rates shall be approved or otherwise allowed to become effective for an electric utility or persons subject to regulation pursuant to Subsection B of Section 62-6-4 NMSA 1978 or filings by cooperative utilities pursuant to Subsection F of Section 62-8-7 NMSA 1978 only when the utility or the substantially full requirements supplier of the utility has excess capacity. For purposes of this section, "excess capacity" means the amount of electric generating and purchased power capacity available to the utility or such supplier that is greater than the utility's or such supplier's peak load plus a fixed percentage reserve margin set by the commission."

Section 32

Section 32. Section 62-6-26.1 NMSA 1978 (being Laws 1992, Chapter 58, Section 10) is amended to read:

"62-6-26.1. RATES FOR CLEAN FUELS USED AS VEHICULAR FUELS--AUTHORIZATION.--The commission may approve or otherwise allow to become effective applications from public utilities, subject to the commission's jurisdiction under the Public Utility Act, for clean fuel rates, tariffs or other programs in order to encourage, develop or promote the development and use of natural gas and other clean fuels used as vehicular fuels. For the purposes of this section, clean fuel rates or tariffs are rates or tariffs set at a lower level than the corresponding service rate or tariff for which a customer would otherwise qualify."

Section 33

Section 33. Section 62-8-6 NMSA 1978 (being Laws 1941, Chapter 84, Section 42, as amended) is amended to read:

"62-8-6. DISCRIMINATION.--No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. No public utility shall establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service. Nothing shall prohibit, however, the commission from approving economic development rates and rates designed to retain load."

Section 34

Section 34. Section 62-8-10 NMSA 1978 (being Laws 1977, Chapter 175, Section 1) is amended to read:

"62-8-10. UTILITY SERVICE--SERIOUSLY ILL INDIVIDUALS.--Utility service shall not be discontinued to any residence where a seriously ill person is residing, if the person responsible for the utility service charges does not have the financial resources to pay the charges and if a practitioner of the healing arts, as defined in Paragraph (2) of Subsection B of Section 59A-22-32 NMSA 1978, certifies that discontinuance of service might endanger that person's life and the certificate is delivered to a manager or officer of the utility providing the service at least two days prior to the due date of a billing for utility services. The commission shall provide by rule and regulation the procedure necessary to carry out this section."

Section 35

Section 35. Section 62-9-2 NMSA 1978 (being Laws 1967, Chapter 96, Section 7) is amended to read:

"62-9-2. APPLICATIONS BY UTILITIES BROUGHT UNDER THE PUBLIC UTILITY ACT.--

A. Within sixty days after the effective date of this 1967 act, each utility brought within the jurisdiction of the commission by virtue of this 1967 act shall file with the commission an application, in such form as may be prescribed by the commission, for a certificate of public convenience and necessity covering its present plant, lines and system. Upon proof of the existence and operation of the plant, lines and system upon the effective date of this 1967 act, the commission shall grant the certificate to the utility.

B. In the event the certificate granted a utility under Subsection A of this section overlaps or conflicts with a valid certificate heretofore issued by the commission and exercised within the time required under Section 62-9-4 NMSA 1978, both certificates shall be valid and both utilities shall be permitted to continue service subject to the other provisions of the Public Utility Act, as amended."

Section 36

Section 36. Section 62-9-2.1 NMSA 1978 (being Laws 1987, Chapter 52, Section 4) is amended to read:

"62-9-2.1. APPLICATIONS BY SEWER UTILITIES BROUGHT UNDER THE PUBLIC UTILITY ACT.--Within six months after the effective date of these 1987 amendments to the Public Utility Act, each sewer utility brought within the jurisdiction of the commission by virtue of these 1987 amendments to the Public Utility Act shall file with the commission an application, in such form as may be prescribed by the commission, for a certificate of public convenience and necessity covering its present plant, lines and system. Upon proof of the existence and operation thereof upon the effective date of these 1987 amendments to the Public Utility Act, the commission shall grant to the utility such certificate. The commission shall enter upon a hearing to determine whether the rate or rates of such a sewer utility in effect on the effective date of these amendments to the Public Utility Act are just and reasonable pursuant to Subsection D of Section 62-8-7 NMSA 1978 upon the filing with the commission of protests signed by ten percent or more of the ratepayers receiving sewer service from such a sewer utility. For purposes of this section, each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer. The protest shall be signed by the person in whose name service is carried. The protests shall be filed no later than sixty days after the filing with the commission of an application by the sewer utility for a certificate of public convenience and necessity as prescribed by this section. Each sewer utility filing an application for a certificate of public convenience and necessity under this section shall be required at the time of filing to give written notice to its ratepayers of the filing of its application and the ratepayers' rights to protest its raes under this section."

Section 37

Section 37. Section 62-9-3.2 NMSA 1978 (being Laws 1980, Chapter 20, Section 18) is amended to read:

"62-9-3.2. APPLICATION FOR DETERMINATION OF RIGHT-OF-WAY WIDTH.--

A. Unless otherwise agreed to by the parties, no person shall begin the construction of any transmission line requiring a width for right-of-way of greater than one hundred feet without first obtaining from the commission a determination of the necessary right-of-way width to construct and maintain the transmission line. For the purposes of this subsection, "construction" does not include acquisition of rights-of-way, preparation of surveys or ordering of equipment.

B. For the purposes of this section, "transmission line" means any electric transmission line and associated facilities requiring a width for right-of-way of greater than one hundred feet.

C. If the person is regulated by the commission, application for the right-of-way width determination may be submitted and disposition made in connection with application for a certificate of public convenience and necessity in accordance with the provisions of the Public Utility Act. Application may be submitted as provided in Subsection D of this section for persons not regulated by the commission.

D. If the person is not regulated by the commission or has already procured a certificate of public necessity and convenience, application for the right-of-way width determination shall be made in writing, setting forth the facts involved and filed with the commission.

E. The applicant shall cause notice of the time and place of hearing on the application for the right-of-way determination to be given to any owner of property proposed to be taken and, if applicable, to the person in actual occupancy of the property. Notice shall be given by mailing a copy by ordinary first class mail at least twenty days before the time set for hearing. Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

F. The commission shall, after public hearing, act upon the application."

Section 38

Section 38. Section 62-11-1 NMSA 1978 (being Laws 1941, Chapter 84, Section 66, as amended) is amended to read:

"62-11-1. RIGHT OF APPEAL.--Any party to any proceeding before the commission may file a notice of appeal in the supreme court asking for a review of the commission's final orders. If an application for rehearing has been filed, a notice of appeal must be filed within thirty days after the application for rehearing has been refused or deemed refused because of the commission's failure to act within the time specified in Section 62-10-16 NMSA 1978. If an application for rehearing has not been filed, a notice of appeal must be filed within thirty days after the entry of the

commission's final order. Every notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken. Any person whose rights may be directly affected by the appeal may appear and become a party, or the supreme court may, upon proper notice, order any person to be joined as a party."

Section 39

Section 39. Section 62-13-1 NMSA 1978 (being Laws 1941, Chapter 84, Section 80) is amended to read:

"62-13-1. SHORT TITLE.--Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978 may be cited as the "Public Utility Act"."

Section 40

Section 40. Section 62-13-2 NMSA 1978 (being Laws 1957, Chapter 25, Section 2, as amended) is amended to read:

"62-13-2. FEES.--The commission shall collect the following fees, which shall be remitted to the state treasurer not later than the day following receipt:

A. for filing any rate schedule, service rule or regulation or sample form, or amendment thereto, one dollar ($1.00);

B. for filing each application, petition or complaint, twenty-five dollars ($25.00);

C. for copies of papers, testimony and records, the reasonable cost of such copies as the commission may provide from time to time by rule; and

D. for certifying any copy of any paper, testimony or record, two dollars ($2.00)."

Section 41

Section 41. Section 62-14-8 NMSA 1978 (being Laws 1973, Chapter 252, Section 8) is amended to read:

"62-14-8. PENALTIES.--In addition to any other liability imposed by law, any person who willfully fails to
comply with Chapter 62, Article 14 NMSA 1978 and whose failure proximately contributes to the damage of any pipeline or underground utility line shall be subject to a civil penalty not to exceed five hundred dollars ($500) for each offense. All actions to recover the penalties provided for in this section shall be brought by either the attorney general or the appropriate district attorney upon complaint of the state corporation commission, the New Mexico public utility commission or the construction industries

division of the regulation and licensing department. All such actions shall be brought in the district court in and for the county in which the cause, or some part thereof, arose or in which the person complained of has their principal place of business or residence. All penalties recovered in any such action shall be paid into the state general fund."

Section 42

Section 42. Section 70-6-2 NMSA 1978 (being Laws 1963, Chapter 139, Section 2, as amended) is amended to read:

"70-6-2. DEFINITIONS.--As used in Chapter 70, Article 6 NMSA 1978:

A. "underground storage" means storage of natural gas in a subsurface stratum or formation of the earth;

B. "natural gas" means natural gas either while in its original state after withdrawal from the earth or after it has been processed by removal of component parts not essential to its use for light and fuel;

C. "native gas" means gas that has not been previously withdrawn from the earth;

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

E. "commission" means the oil conservation commission;

F. "natural gas company" means any person, firm or corporation engaged in the distribution, sale or furnishing of natural gas to or for the public and subject to regulation by the New Mexico public utility commission under the Public Utility Act or any person, firm or corporation engaged in the business of transporting natural gas and subject to regulation by the federal energy regulatory commission under the Natural Gas Act; and

G. "public body" means the state or any department, board, commission, bureau, institution, public
agency, county or political subdivision thereof, including bodies corporate, bodies politic, municipal corporations, school districts, conservancy districts and quasi-municipal corporations of all kinds."

Section 43

Section 43. Section 73-21-55 NMSA 1978 (being Laws 1985, Chapter 166, Section 3) is amended to read:

"73-21-55. DISTRICTS NOT SUBJECT TO UTILITY LAWS--OPTION TO SUBMIT TO REGULATION.--

A. No district organized under the provisions of the Water and Sanitation District Act is subject to the jurisdiction of the New Mexico public utility commission or the terms and provisions of the Public Utility Act, as amended, except as provided in Subsections B and C of this section.

B. Any district organized under the provisions of the Water and Sanitation District Act may elect by resolution adopted by its board of directors to become subject to the jurisdiction of the New Mexico public utility commission and to the terms and provisions of the Public Utility Act, as amended; provided, however, that in no event shall Sections 62-9-1 through 62-9-7 NMSA 1978 apply to any district making such an election.

C. If the board of directors has not elected to become subject to the jurisdiction of the New Mexico public utility commission under Subsection B of this section, it shall nevertheless file with the commission any rates, tolls and charges proposed by the board, which shall be subject to approval by the New Mexico public utility commission if twenty-five of the taxpayer-electors or five percent of the taxpayer-electors of the district, whichever is less, file a petition protesting the rates, tolls or charges with the commission within thirty days after the board proposes the rates. Upon the filing of such a petition, the commission shall hold a hearing pursuant to rules that it shall promulgate to implement this subsection."

Section 44

Section 44. Section 62-4-1 NMSA 1978 (being Laws 1977, Chapter 191, Section 1) is amended to read:

"62-4-1. JOINT HEARINGS AND ORDERS.--The public utility commission, in the discharge of its duties under the Public Utility Act is authorized to make joint investigations, hold joint hearings within or without the state and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States, whether in the holding of such investigations or hearings, or in the making of such order, the commission may function under agreements or compacts between states to regulate interstate commerce. The commission, in the discharge of its duties under the Public Utility Act, is further authorized to negotiate and enter into agreements or compacts with agencies of other states, pursuant to any consent of congress, for cooperative efforts in certificating the construction, operation and maintenance of major utility facilities in accord with the purposes of the Public Utility Act and for the enforcement of the respective state laws regarding same."

Section 45

Section 45. Section 62-5-8 NMSA 1978 (being Laws 1941, Chapter 84, Section 10 as amended) is amended to read:

"62-5-8. OFFICERS, AGENTS AND ASSISTANTS.--The commission may appoint and employ such officers, agents, assistants and other employees as may be necessary to carry out the provisions of the Public Utility Act or to perform the duties and exercise the powers conferred by law upon the commission. In addition to the services of the attorney general as provided hereinafter, the New Mexico public utility commission shall have authority to employ competent attorneys to handle the legal matters of the commission and give advice and counsel in regard to any matter connected with the duties of the commission and in the discretion of the commission to represent the commission in any legal proceeding, including the enforcement of any and all laws and regulations concerned with the Public Utility Act and the commission shall be empowered and authorized to fix the compensation to be paid to the attorneys employed under the authority of this section; provided that said attorneys shall be compensated from the budget of the New Mexico public utility commission as appropriated by the legislature."

Section 46

Section 46. Section 62-6-2 NMSA 1978 (being Laws 1941, Chapter 84, Section 15, as amended) is amended to read:

"62-6-2. REPORTS TO GOVERNOR.--On or before the first day of October of each year, the public utility commission, through the chairman thereof, shall make to the governor for transmission to the legislature, a report on its acts and doings for the year ending on the 30th day of June next preceding, setting forth such facts as will disclose the actual workings of the public utilities as hereinabove defined, of this state, and make such suggestions as to said commission may seem appropriate, and for the best interests of the state, including the protection of consumers and investors, and the encouragement and development of industry within the state." HB 500

CHAPTER 283

RELATING TO CRIMINAL PROCEDURE; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 31-18-17 NMSA 1978 (being Laws 1977, Chapter 216 Section 6, as amended) is amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC SENTENCE.--

A. For the purposes of this section, "prior felony conviction" means:

(1) a conviction for a prior felony committed within New Mexico whether within the Criminal Code or not; or

(2) any prior felony for which the person was convicted other than an offense triable by court martial if:

(a) the conviction was rendered by a court of another state, the United States, a territory of the United States or the commonwealth of Puerto Rico;

(b) the offense was punishable, at the time of conviction, by death or a maximum term of imprisonment of more than one year; or

(c) the offense would have been classified as a felony in this state at the time of conviction.

B. Any person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred one prior felony conviction which was part of a separate transaction or occurrence or conditional discharge under Section 31-20-7 NMSA 1978 is a habitual offender and his basic sentence shall be increased by one year, and the sentence imposed by this subsection shall not be suspended or deferred.

C. Any person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred two prior felony convictions which were parts of separate transactions or occurrences or conditional discharge under Section 31-20-7 NMSA 1978 is a habitual offender and his basic sentence shall be increased by four years, and the sentence imposed by this subsection shall not be suspended or deferred.

D. Any person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred three or more prior felony convictions which were parts of separate transactions or occurrences or conditional discharge under Section 31-20-7 NMSA 1978 is a habitual offender and his basic sentence shall be increased by eight years, and the sentence imposed by this subsection shall not be suspended or deferred."

Section 2

Section 2. A new Section 31-20-7 NMSA 1978 is enacted to read:

"31-20-7. CONDITIONAL DISCHARGE ORDER.--

A. When a person who has not been previously convicted of a felony offense is found guilty of a crime for which a deferred or suspended sentence is

authorized, the court may, without entering an adjudication of guilt, enter a conditional discharge order and place the person on probation on terms and conditions authorized by Sections 31-20-5 and31-20-6 NMSA 1978.

B. If the person violates any of the conditions of probation, the court may enter an adjudication of guilt and proceed as otherwise provided by law." HB 545

CHAPTER 284

RELATING TO PUBLIC SAFETY; REQUIRING LIABILITY INSURANCE AND CERTIFICATE OF INSPECTION FOR CARNIVAL RIDES; ENACTING THE CARNIVAL RIDE INSURANCE ACT; PROVIDING A PENALTY; MAKING AN APPROPRIATION.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Carnival Ride Insurance Act".

Section 2

Section 2. DEFINITIONS.--As used in the Carnival Ride Insurance Act:

A. "carnival ride" means any mechanical device that carries or conveys passengers along, around or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, thrills or excitement but does not include playground equipment or a single-passenger, coin-operated device secured by a stationary foundation;

B. "department" means the regulation and licensing department;

C. "operator" means a person actually engaged in or directly controlling the operation of a carnival ride; and

D. "owner" means a person, including the state or any political subdivision of the state, who owns or leases a carnival ride.

Section 3

Section 3. LIABILITY INSURANCE FOR LIABILITY REQUIRED--CERTIFICATE OF INSPECTION REQUIRED--CARNIVAL RIDE INSURANCE FUND CREATED.--

A. No person shall operate a carnival ride without a policy of insurance in an amount not less than one million dollars ($1,000,000) against liability for injury to persons arising out of the operation of the carnival ride.

B. Either a copy of the policy furnished to the insured or a certificate, stating that the insurance required by this section is in effect, shall be filed with the department and a local government entity.

C. The policy shall contain a schedule listing by name and serial number each carnival ride insured by the policy. In the event of additions or deletions of carnival rides during the policy terms, such changes shall be shown on a change endorsement, a copy of which shall be submitted to the department and the local government entity.

D. In the event of policy cancellation by either the insured owner or operator or the insurance company, the insured shall furnish notice of such cancellation to the department and the local government entity not later than ten days prior to cancellation.

E. No person shall operate a carnival ride without filing a certificate of inspection with the department and a local government entity. The certificate of inspection shall state that an inspection has been made on the carnival ride within twelve months of the filing. The owner or operator shall annually have each carnival ride inspected and annually file the certificate of inspection. If the certificate states that there are deficiencies with any carnival ride, the owner or operator shall submit, with the certificate of inspection, an affidavit stating that all deficiencies were corrected.

F. The insured shall pay a fifty dollar ($50.00) filing fee with the department.

G. The "carnival ride insurance fund" is created in the state treasury. The fund shall consist of all filing fees received by the department pursuant to the Carnival Ride Insurance Act. Money in the carnival ride insurance fund is appropriated to the department for the purpose of carrying out the provisions of the Carnival Ride Insurance Act. The fund shall not be expended for any purpose other than carrying out the provisions of the Carnival Ride Insurance Act.

Section 4

Section 4. PENALTY.--

A. The department or its authorized representative may issue a written order for the temporary cessation of operation of a carnival ride if it has been determined that the owner or operator has not acquired a policy of insurance or has not maintained inspections of his carnival rides. The operation of the ride shall not resume until the requisite insurance is in effect, inspections have been made and the requisite certificates have been filed with the department and the local government entity.

B. The department may appear in its own name in the district court of Santa Fe county or any other county having jurisdiction to prevent violations or to enforce the provisions of the Carnival Ride Insurance Act, the orders, rules and regulations, codes and minimum standards made pursuant to this act by injunction, mandamus or any other proper legal proceeding without bond, including an order not to move the carnival ride.

C. The local law enforcement agency shall have the authority to enforce the provisions of the Carnival Ride Insurance Act. Any person who does not maintain liability insurance on a carnival ride, operates a carnival ride or authorizes the operation of a carnival ride that does not have insurance, does not annually have his carnival rides inspected or does not file the proper certificates as set forth in the Carnival Ride Insurance Act is guilty of a misdemeanor and upon conviction the court shall impose a fine of up to one thousand dollars ($1,000) a day for the operation of each ride.

Section 5

Section 5. LIABILITY--LIMITATIONS.--No provision of the Carnival Ride Insurance Act shall be construed to place any liability on the state or on the department with respect to any claim by any person, firm or corporation relating to a carnival ride or to any injury or damages arising from a carnival ride.

Section 6

Section 6. EXEMPTIONS.--The provisions of the Carnival Ride Insurance Act shall not apply to nonprofit organizations that own and operate a carnival ride ten days or less each year. HB 596

CHAPTER 285

RELATING TO CONSERVANCY DISTRICTS; PROVIDING REQUIREMENTS FOR CONSERVANCY DISTRICT ELECTIONS; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 73-18-25 NMSA 1978 (being Laws 1955, Chapter 281, Section 1) is amended to read:

"73-18-25. CONSERVANCY DISTRICTS TO WHICH ACT APPLIES.--Sections 73-18-25 through 73-18-43 NMSA 1978 apply to conservancy districts organized under the laws of New Mexico having a contract with the United States under the reclamation laws of the United States, as provided under Chapter 73, Article 18 NMSA 1978 and to

those districts that have an area of land of all classes within the exterior boundaries of the district of more than one hundred thousand acres and less than one hundred forty thousand acres."

Section 2

Section 2. Section 73-18-26 NMSA 1978 (being Laws 1955, Chapter 281, Section 2) is amended to read:

"73-18-26. DIVISION OF DISTRICT INTO ELECTION PRECINCTS.--In all counties in this state in which there exists a conservancy district within the classification as provided in Section 73-18-25 NMSA 1978, or a major portion by area of such a conservancy district, the board of county commissioners of the county shall, on the first Monday in August 1955, by resolution to be made a part of the minutes of the board of county commissioners, divide the conservancy district into election precincts. If there is a municipality within the district, the municipality shall constitute one election precinct, and the conservancy district shall be divided into three election precincts, each of which election precincts shall have approximately equal acreage of irrigable land. Immediately after the action by the board of county commissioners, the clerk of the board of county commissioners shall transmit to the clerk of the conservancy district within the county, or the major portion of which is within that county, a certified copy of the resolution dividing the conservancy district into election precincts. The board of county commissioners shall redivide the district in the same manner in each sixth year after 1955. Immediately after the resolution is adopted, the clerk of the board of county commissioners shall file a certified copy of the resolution of the board of county commissioners in the office of the county clerk of the county."

Section 3

Section 3. Section 73-18-30 NMSA 1978 (being Laws 1955, Chapter 281, Section 6) is amended to read:

"73-18-30. QUALIFICATIONS OF ELECTORS.--

A. During the month of September preceding a district election, the secretary of the district shall mail to each owner of irrigable land within the district at the address of the landowner, as shown by the district records, a statement signed by the secretary or assistant secretary and authenticated by the seal of the district, showing the number of acres of irrigable land owned by the landowner in each voting precinct of the district. A separate statement shall be furnished of land in each election precinct. In the event of the failure of any landowner to receive the statement, the landowner may secure the statement by request at the district office, not later than noon on the Friday preceding the election.

B. The board of directors of the conservancy district shall, by resolution, adopt a plan with necessary rules and regulations by which nonresident owners of class

"A" lands or other owners of class "A" lands, who are unable to personally attend the election, may vote for directors other than the municipal director and the director-at-large."

Section 4

Section 4. Section 73-18-32 NMSA 1978 (being Laws 1955, Chapter 281, Section 8) is amended to read:

"73-18-32. VOTING RIGHTS.--

A. In district precinct elections, landowners owning one acre of irrigable land shall be entitled to one vote for each acre of irrigable land or major fraction thereof owned by the landowner up to one hundred sixty acres. Landowners owning less than one acre of irrigable land have no vote. A landowner may vote in all voting precincts in which he has irrigable land, entitling him to vote as provided in Sections 73-18-30 and 73-18-31 NMSA 1978.

B. For director-at-large, all persons who are over the age of eighteen and who have been the owners of real estate within the district for more than one month preceding the election shall be entitled to one vote.

C. All persons who are over the age of eighteen and who have been the owners of real estate within any
municipality within the district for more than one month preceding the election shall be entitled to one vote for director representing the municipal election precinct.

D. To qualify voters to vote for directors-at-large and for director representing the municipal voting precinct, the ownership of real estate by the spouse shall be considered also ownership by the other spouse."

Section 5

Section 5. Section 73-18-33 NMSA 1978 (being Laws 1955, Chapter 281, Section 9) is amended to read:

"73-18-33. QUALIFICATIONS OF DIRECTORS.--The director-at-large shall be the owner of class "A" land within the district and shall be a resident of the district. The director for the municipal election precinct shall be a resident and shall be the owner of real estate within the district boundaries of the municipality. A director representing a district election precinct outside the municipality shall be a resident of the district and the owner of irrigable land within the voting precinct for which he is a director."

Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 606

CHAPTER 286

RELATING TO EDUCATION; EXTENDING THE DELAYED REPEAL OF THE TWENTY-FIRST CENTURY EDUCATION ACT.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1

Section 1. Laws 1990 (1st S.S.), Chapter 9, Section 13 is amended to read:

"Section 13. DELAYED REPEAL.--Sections 1 through 9 of this act are repealed effective July 1, 1998." HB 654

CHAPTER 287

RELATING TO PATERNITY; PROVIDING FOR THE ESTABLISHMENT OF PATERNITY THROUGH AFFIDAVIT.

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

Section 1

Section 1. Section 24-14-13 NMSA 1978 (being Laws 1961, Chapter 44, Section 13, as amended) is amended to read:

"24-14-13. BIRTH REGISTRATION.--

A. A certificate of birth for each live birth which occurs in this state shall be filed with the vital statistics bureau of the public health division of the department or as otherwise directed by the state registrar within ten days after the birth and shall be registered if it has been completed and filed in accordance with this section. When a birth, however, occurs on a moving conveyance, a birth certificate shall be registered in this state and the place where the child is first removed shall be considered the place of birth.

B. When a birth occurs in an institution, the person in charge of the institution or his designated representative shall obtain the personal data, prepare the certificate, secure the signatures required and file it as directed in this section. The physician or other person in attendance shall certify the medical information required by the certificate within ten working days after the birth in accordance with policies established by the institution where the birth occurred. The person in charge of the institution or his designee shall complete and sign the certificate.

C. When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) the physician in attendance at or immediately after the birth;

(2) any other person in attendance at or immediately after the birth or in the absence of this person; or

(3) the father, the mother or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

D. If the mother was married at the time of either conception or birth, the name of the husband shall be entered on the certificate as the father of the child, unless paternity has been determined pursuant to Subsection F or G of this section or by a court, in which case the name of the father as determined by the court shall be entered.

E. If the mother was not married at the time of either conception or birth, but the father has signed an acknowledgment of paternity, as provided by this section, the father's name, date of birth and social security number shall be entered on the acknowledgement of paternity. The name of the father shall not be entered on the certificate of birth without the written consent of the mother and the person to be named as the father, unless a determination of paternity has been made by a court, in which case the name of the father as determined by the court shall be entered.

F. At or before the birth of a child to an unmarried woman, the person in charge of the institution, a designated representative, the attending physician or midwife shall:

(1) provide an opportunity for the child's mother and natural father to complete an acknowledgement of paternity. The completed affidavit shall be filed with the vital statistics bureau of the public health division of the department. The acknowledgement shall contain or have attached to it:

(a) a sworn statement by the mother consenting to the assertion of paternity;

(b) a sworn statement by the father that he is the natural father of the child;

(c) written information, furnished by the human services department, explaining the implications of signing, including legal parental rights and responsibilities; and

(d) the social security numbers of both parents;

(2) provide written information, furnished by the human services department, to the mother and father or putative father, regarding the benefits of having the child's paternity established and of the availability of paternity establishment services and child support enforcement services.

G. If a married mother claims that her husband is not the father of the child, the husband agrees that he is not the father and the putative father agrees that he is the father, an acknowledgement of paternity may be signed by the respective parties and duly notarized. Upon filing this affidavit with the state registrar, the name of the nonhusband shall be entered on the certificate of birth as the father.

H. Pursuant to an interagency agreement for proper reimbursement, the vital statistics bureau of the public health division of the department shall make available to the human services department the birth certificate, the mother's and father's social security numbers and paternity acknowledgements. The human services department shall use these records only in conjunction with its duties as the state IV-D agency responsible for the child support program under Title IV-D of the federal Social Security Act."

Section 2

Section 2. Section 24-14-17 NMSA 1978 (being Laws 1961, Chapter 44, Section 17, as amended) is amended to read:

"24-14-17. NEW BIRTH CERTIFICATES FOLLOWING ADOPTION, LEGITIMATION AND PATERNITY DETERMINATION.--

A. The state registrar shall establish a new certificate of birth for a person born in this state when he receives the following:

(1) a report of adoption as provided in this section, a report of adoption prepared and filed in accordance with the laws of another state or country or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents or the adopted person; or

(2) a request that a new certificate of birth be established and evidence as required by regulation proving that the person has been legitimated or that a court has determined the paternity of the person.

B. When a new certificate of birth is established, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity determination or legitimation shall not be subject to inspection except upon order of a court or in

accordance with the provisions of Section 24-14-13 NMSA 1978 or in the case of a single adoptive parent.

C. Upon receipt of notice of annulment of adoption, the original certificate of birth shall be restored to its place in the files, and the new certificate and evidence shall not be subject to inspection except upon order of a court.

D. If no certificate of birth is on file for the person for whom a new certificate is to be established under this section, a delayed certificate of birth shall be filed with the state registrar as provided in Section24-14-15 NMSA 1978 before a new certificate of birth is established.

E. For each adoption decreed by a court in this state, the court shall require the preparation of a report of adoption on a form prescribed and furnished by the state registrar. The report shall include such facts as are necessary to locate and identify the certificate of birth of the person adopted, shall provide information necessary to establish a new certificate of birth of the person adopted and shall identify the order of adoption and be certified by the clerk of the court."

Section 3

Section 3. Section 40-11-5 NMSA 1978 (being Laws 1986, Chapter 47, Section 5, as amended) is amended to read:

"40-11-5. PRESUMPTION OF PATERNITY.--

A. A man is presumed to be the natural father of a child if:

(1) he and the child's natural mother are or have been married to each other and the child is born during the marriage or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity or dissolution of marriage or after a decree of separation is entered by a court;

(2) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(a) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within three hundred days after its termination by death, annulment, declaration of invalidity or divorce; or

(b) if the attempted marriage is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;

(3) after the child's birth, he and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent

compliance with law, although the attempted marriage is or could be declared invalid, and:

(a) he has acknowledged his paternity of the child in writing filed with the vital statistics bureau of the public health division of the department of health;

(b) with his consent, he is named as the child's father on the child's birth certificate; or

(c) he is obligated to support the child under a written voluntary promise or by court order;

(4) while the child is under the age of majority, he openly holds out the child as his natural child and has established a personal, financial or custodial relationship with the child; or

(5) he acknowledges his paternity of the child pursuant to Section 24-14-13 NMSA 1978 or in writing filed with the vital statistics bureau of the public health division of the department of health, which shall promptly inform the mother of the filing of the acknowledgement, and, within a reasonable time after being informed of the filing, she does not dispute the acknowledgement. In order to enforce the rights of custody or visitation, a man presumed to be the father as a result of filing a written acknowledgment shall seek an appropriate judicial order in an action filed for that purpose.

B. If two or more men are presumed under this section to be the child's father, an acknowledgement by one of them may be effective only with the written consent of the other or pursuant to Subsection C of this section.

C. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more men are presumed under this section to be the father of the same child, paternity shall be established as provided in the Uniform Parentage Act. If the presumption has been rebutted with respect to one man, paternity of the child by another man may be determined in the same action, if he has been made a party.

D. A man is presumed to be the natural father of a child if, pursuant to blood or genetic tests properly performed by a qualified individual and evaluated by an expert, including deoxyribonucleic acid (DNA) probe technique tests under the Uniform Parentage Act, the probability of his being the father is ninety-nine percent or higher."

Section 4

Section 4. Section 40-11-9 NMSA 1978 (being Laws 1986, Chapter 47, Section 9) is amended to read:

"40-11-9. PARTIES.--The child may be made a party to the action. If the child is a party and a minor, he shall be represented by his general guardian or a guardian ad litem appointed by the court, or both. The custodian may act as guardian under this section. The court may align the parties."

Section 5

Section 5. Section 40-11-11 NMSA 1978 (being Laws 1986, Chapter 47, Section 11) is amended to read:

"40-11-11. PRE-TRIAL RECOMMENDATIONS.--

A. On the basis of the information produced at the pretrial hearing, the judge, hearing officer or master conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties. Based upon the evaluation, the judge, hearing officer or master may enter an order for temporary support consistent with the child support guidelines as provided in Section 40-4-11.1 NMSA 1978.

B. If the parties accept a recommendation made in accordance with Subsection A of this section, judgment shall be entered accordingly.

C. If a party refuses to accept a recommendation made in accordance with Subsection A of this section and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable.
Thereafter, the judge or master shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial and a party's acceptance or rejection of the recommendation shall be treated as any other offer of settlement with respect to its admissibility as evidence in subsequent proceedings.

D. The child's guardian may accept or refuse to accept a recommendation under this section.

E. The informal hearing may be terminated and the action set for trial if the judge or master conducting the hearing finds it unlikely that all parties would accept a recommendation he might make under Subsection A or C of this section."

Section 6

Section 6. Section 40-11-12 NMSA 1978 (being Laws 1986, Chapter 47, Section 12, as amended) is amended to read:

"40-11-12. BLOOD TESTS.--

A. The court may, and upon request of a party shall, require the child, mother or alleged father to submit to blood or genetic tests, including deoxyribonucleic acid (DNA) probe technique tests.

B. The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types or qualified as experts in the administration of genetic tests, including deoxyribonucleic acid (DNA) probe technique tests.

C. In all cases, the court shall determine the number and qualifications of the experts.

D. If a putative father refuses to comply with an order for testing pursuant to this section, the court may enter a judgment of parentage against him.

E. If the mother refuses to comply with an order for testing pursuant to this section, the court may dismiss the case without prejudice."

Section 7

Section 7. Section 40-11-15 NMSA 1978 (being Laws 1986, Chapter 47, Section 15, as amended) is amended to read:

"40-11-15. JUDGMENT OR ORDER.--

A. The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

B. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued.

C. The judgment or order may contain any other provision directed against or on behalf of the appropriate party to the proceeding concerning the duty of past and future support, the custody and guardianship of the child, visitation with the child, the furnishing of bond or other security for the payment of the judgment or any other matter within the jurisdiction of the court. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy, birth and confinement. The court shall order child support retroactive to the date of the child's birth pursuant to the provisions of Sections 40-4-11 through 40-4-11.3 NMSA 1978.

D. Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support; provided, however, a lump sum payment shall not thereafter deprive a state agency of its right to reimbursement from an appropriate party should the child become a recipient of public assistance.

E. In determining the amount to be paid by a parent for support of the child or children, a court, child support hearing officer or master shall make such determination in accordance with the provisions of the child support guidelines of Section 40-4-11.1 NMSA 1978."HB 656

CHAPTER 288

RELATING TO HORSE RACING; PROVIDING FOR UNCLAIMED WINNING PARI-MUTUEL TICKETS; AMENDING A SECTION OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 60-1-10 NMSA 1978 (being Laws 1933, Chapter 55, Section 6, as amended) is amended to read:

"60-1-10. PARI-MUTUEL METHOD LEGALIZED--MAXIMUM COMMISSIONS--HORSEMEN'S COMMISSION--GAMBLING STATUTES NOT REPEALED--COMMISSION DISTRIBUTION.--

A. Within the enclosure where any horse races are conducted, either as live on-track horse races or as horse races simulcast pursuant to Section 60-1-25 NMSA 1978, and where the licensee has been licensed to use the pari-mutuel method or system of wagering on races, the pari-mutuel system is lawful, but only within the enclosure where races are conducted.

B. The sale to patrons present on the grounds of pari-mutuel tickets or certificates on the races or the use of the pari-mutuel system shall not be construed to be betting, gambling or pool selling and is authorized under the conditions provided by law.

C. There shall be for each class A licensee a commission of nineteen percent of the gross amount wagered on win, place and show through the pari-mutuel system, of which eighteen and three-fourths percent shall be retained by a class A licensee and one-fourth of one percent shall be allocated to the general fund. A commission in an amount determined by the licensee of not less than eighteen and six-eighths percent and not greater than twenty-five percent of the gross amount wagered on win, place and show through the pari-mutuel system shall be retained by a class B licensee. Each class B licensee shall advise the state racing commission not less than thirty days in advance of each horse racing meeting of the percentage the licensee shall retain as commission. From that commission, each class A and class B licensee shall allocate five-eighths of one percent to the New Mexico horse breeders' association weekly for distribution pursuant to the provisions of Subsection C of Section 60-1-17 NMSA 1978.

D. Except as otherwise provided in this subsection, a commission shall be retained by the licensee at the election of each class A licensee of not less than twenty-one percent and not greater than twenty-five percent of the gross amount wagered on exotic wagering and at the election of each class B licensee, and with the approval of the state racing commission, of not less than twenty-one percent and not greater than thirty percent of the gross amount wagered on exotic wagering. For the purpose of this subsection, "exotic wagering" means all wagering other than win, place and show, through the pari-mutuel system. Each licensee shall advise the state racing commission not less than thirty days in advance of each horse racing meeting of the amount of the commission of the gross amount wagered on exotic wagering to be retained by the licensee. From that commission, the licensee shall allocate one and three-eighths percent to the New Mexico horse breeders' association weekly for distribution pursuant to the provisions of Subsection C of Section 60-1-17 NMSA 1978.

E. The odd cents of all redistributions to the wagerer over the next lowest multiple of ten from the gross amount wagered through the pari-mutuel system shall be retained by the licensee, with fifty percent of the total being allocated to enhance the race purses of established stake races that include only horses registered as New Mexico bred with the New Mexico horse breeders' association, to be distributed by the New Mexico horse breeders' association pursuant to Paragraph (3) of Subsection C of Section 60-1-17 NMSA 1978 subject to the approval of the state racing commission.

F. All money resulting from the failure of patrons who purchased winning pari-mutuel tickets during the meeting to redeem their winning tickets before the end of the sixty-day period immediately succeeding the closing day of the meeting and all money resulting from the failure of patrons who purchased pari-mutuel tickets that were entitled to refund but were not refunded during the same sixty-day period shall be apportioned as follows:

(1) thirty-three and thirty-three hundredths percent shall be retained by the licensee;

(2) thirty-three and thirty-four hundredths percent shall be distributed to the New Mexico horse breeders' association to enhance each track's established overnight purses for races that include only horses registered as New Mexico bred with the New Mexico horse breeders' association pursuant to Paragraph (3) of Subsection C of Section 60-1-17 NMSA 1978, subject to the approval of the state racing commission; and

(3) thirty-three and thirty-three hundredths percent shall be allocated to horseman's race purses.

G. To promote and improve te quality of horse racing and simulcasting and the participation of interested persons in horse racing in New Mexico, one-half of one percent of the gross amount wagered on simulcast horse races at each licensed racetrack in New Mexico that receives simulcast horse races shall be allocated by each

licensee for distribution to the New Mexico horsemen's association, provided that at least one-quarter of one percent of the gross amount wagered on simulcast races that is so allocated is used solely for medical benefits for the members of the New Mexico horsemen's association, and provided further that the remaining one-quarter of one percent of the gross amount wagered on simulcast races that is so allocated shall be used to enhance purses at each such licensed racetrack. The state racing commission shall by regulation provide for the timing and manner of the distribution required by this subsection and shall audit, or arrange for an independent audit of, the disbursement required by this subsection.

H. Fifty percent of the net retainage of each licensee shall be allocated to race purses. For purposes of this section, "net retainage" of the licensee means the commission retained by the licensee on all forms of wagers minus:

(1) the taxes delineated in Sections 60-1-8 and 60-1-15 NMSA 1978;

(2) money allocated to the New Mexico horse breeders' association by this section and Section 60-1-17 NMSA 1978;

(3) money allocated to the New Mexico horsemen's association by this section;

(4) a deduction for expenses incurred to engage in intrastate simulcasting pursuant to Section
60-1-25 NMSA 1978, provided that:

(a) the deduction for each licensee shall be a portion of five percent of the gross amount wagered at all the sites receiving the same simulcast horse races;

(b) the deduction portion for each licensee shall be an amount allocated to the licensee by agreement voluntarily reached among all the licensees sending or receiving the same simulcast horse races; and

(c) the deduction portion for each licensee shall be an amount allocated to the licensee by the state racing commission if all the licensees sending or receiving the same simulcast horse races fail to reach a voluntary agreement under Subparagraph (b) of this paragraph; and

(5) a deduction for fees and commissions incurred to receive interstate simulcasts pursuant to Section 60-1-25 NMSA 1978.

I. Existing statutes of this state against horse racing on Sundays or on bookmaking, pool selling or other methods of wagering on the racing of horses are not repealed but are hereby expressly continued in effect, with the exception that the

operation of the pari-mutuel method or system in connection with the racing of horses, when used as provided by law, is lawful.

J. In the event any money paid or allocated to the New Mexico horse breeders' association or the New Mexico Appaloosa racing association pursuant to the Horse Racing Act cannot be paid to or allocated or administered by such associations, then the state racing commission, or such other organization as may be designated, retained or absolutely controlled by the state racing commission, shall receive all such money and shall pay, allocate and administer all such money pursuant to the provisions of Section 60-1-17 NMSA 1978. If the state racing commission or its controlled designee is required to pay, allocate or administer money on behalf of the New Mexico horse breeders' association or the New Mexico Appaloosa racing association pursuant to this subsection, then the maximum percentage of funds set forth in Paragraph (3) of Subsection C of Section 60-1-17 NMSA 1978 shall be paid by the state racing commission to the New Mexico horse breeders' association or the New Mexico Appaloosa racing association as a fee to obtain the certification of the registry of the dam and stud of the New Mexico bred horse.

K. In the event any money paid or allocated to the New Mexico horsemen's association pursuant to the Horse Racing Act cannot be paid to or allocated or administered by the association, then the state racing commission, or such other organization as may be designated, retained or absolutely controlled by the state racing commission, shall receive all such money and shall pay, allocate and administer all such money to achieve the purposes of the provisions of this section."

Section 2

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. HB 709

CHAPTER 289

RELATING TO PUBLIC WORKS; PROVIDING FOR PROCUREMENT OF PUBLIC SERVICES; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 13-1-117.2 NMSA 1978 (being Laws 1989, Chapter 69, Section 10, as amended) is amended to read:

"13-1-117.2. PROCUREMENT OF PROFESSIONAL SERVICES--LOCAL PUBLIC BODIES--PROFESSIONAL TECHNICAL ADVISORY ASSISTANCE.--

A. Any local public body which does not have on staff a licensed professional engineer, surveyor, architect or landscape architect shall have appointed to it or have the appointment waived by the appropriate New Mexico professional society listed in Subsection D of this section, an individual to serve as a professional technical advisor. The professional technical advisor shall be a senior member of an architectural, engineering, surveying or landscape architectural business with experience appropriate to the type of local public works project proposed and shall be a resident licensed architect, professional engineer, surveyor or landscape architect in the state who possesses at least ten years of experience in responsible charge as defined in the Architectural Act, the Engineering and Surveying Practice Act or the Landscape Architects Act, respectively.

B. The professional technical advisor to a local public body shall serve as an agent of the local public body and shall be indemnified and held harmless. He may be reimbursed as provided in the Per Diem and Mileage Act for per diem and mileage in connection with his service as a professional technical advisor and shall receive no other compensation, perquisite or allowance.

C. The duties and responsibilities of the professional technical advisor shall include but may not be limited to the following activities:

(1) advise the local public body in the development of requests for proposals for engineering, surveying, architectural or landscape architectural services procured by the local public body;

(2) advise the local public body in giving public notice of requests for proposals;

(3) advise in the evaluation and selection of professional businesses to perform services for the local public body, based upon demonstrated competence and qualification for the type of professional services required; and

(4) assist in contract negotiations.

D. Professional technical advisors shall be obtained through the professional technical advisory board, a consortium of the consulting engineers council of New Mexico and the professional engineers in private practice division of the New Mexico society of professional engineers; the New Mexico professional surveyors; the New Mexico society of architects; or the New Mexico chapter of the American society of landscape architects.

E. No individual or firm whose principal, officer, director or employee serves as a professional technical advisor to a local public body shall be permitted to submit a proposal to the local public body during the period in which the individual, principal, officer, director or employee serves as a professional technical advisor to the local public body; however, nothing in this section shall prohibit an individual or firm

from submitting a proposal to any municipality in which the individual or a principal, officer, director or employee is not serving as a professional technical advisor." HB 712

CHAPTER 290

RELATING TO LAND GRANTS; LIMITING CERTAIN ACTIONS PERTAINING TO PRIVATE LANDS WITHIN THE MANZANO LAND GRANT; ENACTING A NEW SECTION OF THE NMSA 1978.

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

Section 1

Section 1. A new Section 49-7-4.3 NMSA 1978 is enacted to read:

"49-7-4.3. COMMISSIONERS--LIMITATIONS WITH RESPECT TO CERTAIN LANDS.--

A. The authority of the commissioners of the Manzano land grant shall be restricted to the common lands of the grant.

B. The commissioners shall not levy assessments of any kind against any land situated within the exterior boundaries of the Manzano land grant and held in private ownership, whether for common purposes of the grant or otherwise." HB 713

CHAPTER 291

RELATING TO THE ENVIRONMENT; AMENDING AND ENACTING SECTIONS OF THE WATER QUALITY ACT; PROVIDING CIVIL AND CRIMINAL PENALTIES; AMENDING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 74-6-1 NMSA 1978 (being Laws 1967, Chapter 190, Section 1) is amended to read:

"74-6-1. SHORT TITLE.--Chapter 74, Article 6 NMSA 1978 may be cited as the "Water Quality Act"."

Section 2

Section 2. Section 74-6-2 NMSA 1978 (being Laws 1967, Chapter 190, Section 2, as amended) is amended to read:

"74-6-2. DEFINITIONS.--As used in the Water Quality Act:

A. "water contaminant" means any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954;

B. "water pollution" means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property;

C. "wastes" means sewage, industrial wastes or any other liquid, gaseous or solid substance which may pollute any waters of the state;

D. "sewer system" means pipelines, conduits, pumping stations, force mains or any other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

E. "treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes;

F. "sewerage system" means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

G. "water" means all water, including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water;

H. "person" means an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees;

I. "commission" means the water quality control commission;

J. "constituent agency" means, as the context may require, any or all of the following agencies of the state:

(1) the department of environment;

(2) the state engineer and the interstate stream commission;

(3) the department of game and fish;

(4) the oil conservation commission;

(5) the state park and recreation division of the energy, minerals and natural resources department;

(6) the New Mexico department of agriculture;

(7) the soil and water conservation commission; and

(8) the bureau of mines and mineral resources at the New Mexico institute of mining and technology;

K. "new source" means:

(1) any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance applicable to the source; or

(2) any existing source when modified to treat substantial additional volumes or when there is a substantial change in the character of water contaminants treated;

L. "source" means a building, structure, facility or installation from which there is or may be a discharge of water contaminants directly or indirectly into water;

M. "septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank for maintenance or disposal purposes;

N. "sludge" means solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility that is associated with the treatment of these wastes. "Sludge" does not mean treated effluent from a wastewater treatment plant;

O. "substantial adverse environmental impact" means that an act or omission of the violator causes harm or damage:

(1) to human beings; or

(2) that amounts to more than ten thousand dollars ($10,000) damage or mitigation costs to flora, including agriculture crops; fish or other aquatic life; waterfowl or other birds; livestock or wildlife or damage to their habitats; or ground water or surface water or to the lands of the state;

P. "federal act" means the federal Water Pollution Control Act, its subsequent amendment and successor provisions; and

Q. "standards of performance" means any standard, effluent limitation or effluent standard adopted pursuant to the federal act or the Water Quality Act."

Section 3

Section 3. Section 74-6-3 NMSA 1978 (being Laws 1967, Chapter 190, Section 3, as amended) is amended to read:

"74-6-3. WATER QUALITY CONTROL COMMISSION CREATED.--

A. There is created the "water quality control commission" consisting of:

(1) the secretary of environment or a member of his staff designated by him;

(2) the director of the department of game and fish or a member of his staff designated by him;

(3) the state engineer or a member of his staff designated by him;

(4) the chairman of the oil conservation commission or a member of his staff designated by him;

(5) the director of the state park and recreation division of the energy, minerals and natural resources department or a member of his staff designated by him;

(6) the director of the New Mexico department of agriculture or a member of his staff designated by him;

(7) the chairman of the soil and water conservation commission or a member of his staff designated by him;

(8) the director of the bureau of mines and mineral resources at the New Mexico institute of mining and technology or a member of his staff designated by him; and

(9) three representatives of the public to be appointed by the governor for a term of four years and who shall be compensated from the budgeted funds of the department of environment in accordance with the provisions of the Per Diem and Mileage Act.

B. No member of the commission shall receive or shall have received, during the previous two years, a significant portion of his income directly or indirectly from permit holders or applicants for a permit and shall, upon the acceptance of his appointment and prior to the performance of any of his duties, file a statement of

disclosure with the secretary of state disclosing any amount of money or other valuable consideration, and its source, the value of which is in excess of ten percent of his gross personal income in each of the preceding two years, that he received directly or indirectly from permit holders or applicants for permits required under the Water Quality Act.

C. The commission shall elect a chairman and other necessary officers and shall keep a record of its proceedings.

D. A majority of the commission constitutes a quorum for the transaction of business but no action of the commission is valid unless concurred in by six or more members present at a meeting.

E. The commission is the state water pollution control agency for this state for all purposes of the federal act and the wellhead protection and sole source aquifer programs of the federal Safe Drinking Water Act and may take all action necessary and appropriate to secure to this state, its political subdivisions or interstate agencies the benefits of that act and those programs.

F. The commission is administratively attached, as defined in the Executive Reorganization Act, to the department of environment."

Section 4

Section 4. Section 74-6-4 NMSA 1978 (being Laws 1967, Chapter 190, Section 4, as amended) is amended to read:

"74-6-4. DUTIES AND POWERS OF COMMISSION.--The commission:

A. may accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes for which provided;

B. shall adopt a comprehensive water quality management program and develop a continuing planning process;

C. shall adopt water quality standards for surface and ground waters of the state subject to the Water Quality Act. The standards shall include narrative standards and as appropriate, the designated uses of the waters and the water quality criteria necessary to protect such uses. The standards shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act. In making standards, the commission shall give weight it deems appropriate to all facts and circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes;

D. shall adopt, promulgate and publish regulations to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters, and to govern the disposal of septage and sludge and the use of sludge for various beneficial purposes. The regulations governing the disposal of septage and sludge may include the use of tracking and permitting systems or other reasonable means necessary to assure that septage and sludge are designated for disposal in, and arrive at, disposal facilities, other than facilities on the premises where the septage and sludge is generated, for which a permit or other authorization has been issued pursuant to the federal act or the Water Quality Act. Regulations shall not specify the method to be used to prevent or abate water pollution but may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable, a standard permitting no discharge of pollutants. In making regulations, the commission shall give weight it deems appropriate to all relevant facts and circumstances, including:

(1) character and degree of injury to or interference with health, welfare, environment and property;

(2) the public interest, including the social and economic value of the sources of water contaminants;

(3) technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved;

(4) successive uses, including but not limited to, domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;

(5) feasibility of a user or a subsequent user treating the water before a subsequent use;

(6) property rights and accustomed uses; and

(7) federal water quality requirements;

E. shall assign responsibility for administering its regulations to constituent agencies so as to assure adequate coverage and prevent duplication of effort. To this end, the commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies. The commission shall also hear and decide disputes between constituent agencies as to jurisdiction concerning any matters within the purpose of the Water Quality Act. In assigning responsibilities to constituent agencies, the commission

shall give priority to the primary interests of the constituent agencies. The department of environment shall provide technical services, including certification of permits pursuant to the federal act;

F. may enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes consistent with the Water Quality Act and receive and allocate to constituent agencies funds made available to the commission;

G. may grant an individual variance from any regulation of the commission, whenever it is found that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The commission may only grant a variance conditioned upon a person effecting a particular abatement of water pollution within a reasonable period of time. Any variance shall be granted for the period of time specified by the commission. The commission shall adopt regulations specifying the procedure under which variances may be sought, which regulations shall provide for the holding of a public hearing before any variance may be granted;

H. may adopt regulations to require the filing with it or a constituent agency of proposed plans and specifications for the construction and operation of new sewer systems, treatment works or sewerage systems or extensions, modifications of or additions to new or existing sewer systems, treatment works or sewerage systems. Filing with and approval by the federal housing administration of plans for an extension to an existing or construction of a new sewerage system intended to serve a subdivision solely residential in nature shall be deemed compliance with all provisions of this subsection;

I. may adopt regulations requiring notice to it or a constituent agency of intent to introduce or allow the introduction of water contaminants into waters of the state;

J. may adopt regulations establishing pretreatment standards that prohibit or control the introduction into publicly owned sewerage systems of water contaminants that are not susceptible to treatment by the treatment works or that would interfere with the operation of the treatment works;

K. shall not require a permit respecting the use of water in irrigated agriculture, except in the case of the employment of a specific practice in connection with such irrigation that documentation or actual case history has shown to be hazardous to public health or the environment; and

L. shall coordinate application procedures and funding cycles for loans an grants from the federal government and from other sources, public or private, with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act."

Section 5

Section 5. Section 74-6-5 NMSA 1978 (being Laws 1973, Chapter 326, Section 4, as amended) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) violation of any condition of the permit;

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

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

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

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

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

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

O. If a timely petition for hearing is made, the commission shall hold a hearing within ninety days after receipt of the petition. The commission shall notify the petitioner and the applicant or permittee if other than the petitioner by certified mail of

the date, time and place of the hearing. If the commission deems the action that is the subject of the petition to be affected with substantial public interest, it shall ensure that the public receives notice of the date, time and place of the hearing and shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. A person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing. In the hearing, the burden of proof shall be upon the petitioner. The commission may designate a hearing officer to take evidence in the hearing. Based upon the evidence presented at the hearing, the commission shall sustain, modify or reverse the action of the constituent agency.

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

Section 6

Section 6. Section 74-6-6 NMSA 1978 (being Laws 1967, Chapter 190, Section 5, as amended) is amended to read:

"74-6-6. ADOPTION OF REGULATIONS AND STANDARDS--NOTICE AND HEARING.--

A. No regulation or water quality standard or amendment or repeal thereof shall be adopted until after a public hearing.

B. Any person may petition in writing to have the commission adopt, amend or repeal a regulation or water quality standard. The commission shall determine whether to hold a hearing within ninety days of submission of the petition. The denial of such a petition shall not be subject to judicial review.

C. Hearings on regulations or water quality standards of statewide application shall be held in Santa Fe. Hearings on regulations or standards that are not of statewide application may be held within the area that is substantially affected by the regulation or standard. At least thirty days prior to the hearing date, notice of the hearing shall be published in the New Mexico register and a newspaper of general circulation in the area affected and mailed to all persons who have made a written request to the commission for advance notice of hearings and who have provided the commission with a mailing address. The notice shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views. The notice shall also state where interested persons may secure copies of any proposed regulation or water quality standard.

D. At the hearing, the commission shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. The commission may designate a hearing

officer to take evidence in the hearing. Any person heard or represented at the hearing shall be given written notice of the action of the commission.

E. No regulation or water quality standard or amendment or repeal thereof adopted by the commission shall become effective until thirty days after its filing in accordance with the provisions of the State Rules Act."

Section 7

Section 7. Section 74-6-7 NMSA 1978 (being Laws 1967, Chapter 190, Section 6, as amended) is amended to read:

"74-6-7. ADMINISTRATIVE ACTION--JUDICIAL REVIEW.--

A. Except as otherwise provided in the Water Quality Act, a person who is adversely affected by a regulation adopted by the commission or by a compliance order approved by the commission or who participated in a permitting action or appeal of a certification before the commission and who is adversely affected by such action may appeal to the court of appeals for further relief. All such appeals shall be upon the record made before the commission and shall be taken to the court of appeals within thirty days after the regulation, compliance order, permitting action or certification that is being appealed occurred. If an appeal of a regulation is made, then the date of the commission's action shall be the date of the filing of the regulation under the State Rules Act.

B. Upon appeal, the court of appeals shall set aside the commission's action only if it is found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law.

C. After a hearing and a showing of good cause by the appellant, a stay of the action being appealed may be granted pending the outome of the judicial review. The stay of the action may be granted by the commission or by the court of appeals if the commission denies a stay within ninety days after receipt of the application."

Section 8

Section 8. Section 74-6-9 NMSA 1978 (being Laws 1967, Chapter 190, Section 8, as amended) is amended to read:

"74-6-9. POWERS OF CONSTITUENT AGENCIES.--Each constituent agency may:

A. receive and expend funds appropriated, donated or allocated to the constituent agency for purposes consistent with the Water Quality Act;

B. develop facts and make studies and investigations and require the production of documents necessary to carry out the responsibilities assigned to the constituent agency. The result of any investigation shall be reduced to writing and a copy furnished to the commission and to the owner or occupant of the premises investigated;

C. report to the commission and to other constituent agencies water pollution conditions that are believed to require action where the circumstances are such that the responsibility appears to be outside the responsibility assigned to the agency making the report;

D. make every reasonable effort to obtain voluntary cooperation in the prevention or abatement of water pollution;

E. upon presentation of proper credentials, enter at reasonable times upon or through any premises in which a water contaminant source is located or in which are located any records required to be maintained by regulations of the federal government or the commission; provided that entry into any private residence without the permission of the owner shall be only by order of the district court for the county in which the residence is located and that, in connection with any entry provided for in this subsection, the constituent agency may:

(1) have access to and reproduce for their use any copy of the records;

(2) inspect any treatment works, monitoring equipment or methods required to be installed by regulations of the federal government or the commission; and

(3) sample any effluents, water contaminant or receiving waters;

F. on the same basis as any other person, recommend and propose regulations and standards for promulgation by the commission; and

G. on the same basis as any other person, present data, views or arguments and examine witnesses and otherwise participate at all hearings conducted by the commission or any other administrative agency with responsibility in the areas of environmental management, public health or consumer protection, but shall not be given any special status over any other party; provided that the participation by a constituent agency in a hearing shall not require the recusal or disqualification of the commissioner representing that constituent agency."

Section 9

Section 9. Section 74-6-10 NMSA 1978 (being Laws 1967, Chapter 190, Section 9, as amended) is amended to read:

"74-6-10. PENALTIES ENFORCEMENT--COMPLIANCE ORDERS--PENALTIES--ASSURANCE OF DISCONTINUANCE.--

A. Whenever, on the basis of any information, a constituent agency determines that a person violated or is violating a requirement, regulation or water quality standard adopted pursuant to the Water Quality Act or a condition of a permit issued pursuant to that act, the constituent agency may:

(1) issue a compliance order requiring compliance immediately or within a specified time period or issue a compliance order assessing a civil penalty, or both; or

(2) commence a civil action in district court for appropriate relief, including injunctive relief.

B. A compliance order issued pursuant to Paragraph (1) of Subsection A of this section may include a suspension or termination of the permit allegedly violated.

C. A compliance order shall state with reasonable specificity the nature of the violation. Any penalty assessed in the compliance order shall not exceed:

(1) fifteen thousand dollars ($15,000) per day of noncompliance with the provisions in Section 74-6-5
NMSA 1978, including a regulation adopted or a permit issued pursuant to that section; or

(2) ten thousand dollars ($10,000) per day for each violation of a provision of the Water Quality Act other than the provisions in Section 74-6-5 NMSA 1978 or of a regulation or water quality standard adopted pursuant to the Water Quality Act.

D. In assessing a penalty authorized by this section, the constituent agency shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors.

E. For purposes of this section, a single operational event that leads to simultaneous violations of more than one standard shall be treated as a single violation.

F. If a person fails to take corrective actions within the time specified in a compliance order, the constituent agency may:

(1) assess a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day of continued noncompliance with the compliance order; and

(2) suspend or terminate the permit violated by the person.

G. Any compliance order issued by a constituent agency pursuant to this section shall become final unless, no later than thirty days after the compliance order is served, any person named in the compliance order submits a written request to the commission for a public hearing. The commission shall conduct a public hearing within ninety days after receipt of a request.

H. The commission may appoint an independent hearing officer to preside over any public hearing held pursuant to Subsection F of this section. The hearing officer shall:

(1) make and preserve a complete record of the proceedings; and

(2) forward to the commission a report that includes recommendations, if recommendations are requested by the commission.

I. The commission shall consider the findings of the independent hearing officer and, based on the evidence presented at the hearing, the commission shall make a final decision regarding the compliance order.

J. In connection with any proceeding under this section, the commission may:

(1) adopt rules for discovery procedures; and

(2) issue subpoenas for the attendance and testimony of witnesses and for relevant papers, books and documents.

K. Penalties collected pursuant to this section shall be deposited in the general fund.

L. As an additional means of enforcing the Water Quality Act or any regulation or standard of the commission, the commission may accept an assurance of discontinuance of any act or practice deemed in violation of the Water Quality Act or any regulation or standard adopted pursuant to that act, from any person engaging in, or who has engaged in, such act or practice, signed and acknowledged by the chairman of the commission and the party affected. Any such assurance shall specify a time limit during which the discontinuance is to be accomplished."

Section 10

Section 10. Section 74-6-11 NMSA 1978 (being Laws 1967, Chapter 190, Section 10, as amended) is amended to read:

"74-6-11. EMERGENCY--POWERS OF DELEGATED CONSTITUENT AGENCIES--PENALTIES.--

A. If a constituent agency determines upon receipt of evidence that a pollution source or combination of sources over which it has been delegated authority by the commission poses an imminent and substantial danger to public health, it may bring suit in the district court for the county in which such a source is located to:

(1) restrain immediately any person causing or contributing to the alleged condition from further causing or contributing to the condition; or

(2) take such other action as deemed necessary and appropriate.

B. If it is not practicable to assure prompt protection of public health solely by commencement of a civil action as set forth in Subsection A of this section, the constituent agency may issue such orders as it deems necessary to protect public health. Any order issued by the constituent agency shall be effective for not more than seventy-two hours unless the constituent agency brings an action in district court within the seventy-two hour period. If the constituent agency brings an action within seventy-two hours of issuance of the order, the order shall be effective for one hundred sixty-eight hours or for a longer period of time authorized by the court.

C. Any person who willfully violates or fails or refuses to comply with an order issued by a constituent agency under Subsection B of this section shall, upon conviction, be punished by a fine of not more than five thousand dollars ($5,000) for each day during which the violation, failure or refusal occurs."

Section 11

Section 11. Section 74-6-12 NMSA 1978 (being Laws 1967, Chapter 190, Section 11, as amended) is amended to read:

"74-6-12. LIMITATIONS.--

A. The Water Quality Act does not grant to the commission or to any other entity the power to take away or modify the property rights in water, nor is it the intention of the Water Quality Act to take away or modify such rights.

B. The Water Quality Act does not apply to any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act, the Ground Water Protection Act or the Solid Waste Act except to abate water pollution or to control the disposal or use of septage and sludge.

C. The Water Quality Act does not authorize the commission to adopt any regulation with respect to any condition or quality of water if the water pollution and its effects are confined entirely within the boundaries of property within which the water pollution occurs when the water does not combine with other waters.

D. The Water Quality Act does not grant to the commission any jurisdiction or authority affecting the relation between employers and employees with respect to or arising out of any condition of water quality.

E. The Water Quality Act does not supersede or limit the applicability of any law relating to industrial health, safety or sanitation.

F. Except as required by federal law, in the adoption of regulations and water quality standards and in any action for enforcement of the Water Quality Act and regulations adopted pursuant to that act, reasonable degradation of water quality resulting from beneficial use shall be allowed. Such degradation shall not result in impairment of water quality to the extent that water quality standards are exceeded.

G. The Water Quality Act does not apply to any activity or condition subject to the authority of the oil conservation commission under the Oil and Gas Act, Section 70-2-12 NMSA 1978, and other laws conferring power on the oil conservation commission to prevent or abate water pollution."

Section 12

Section 12. A new section of the Water Quality Act is enacted to read:

"DISCLOSURE STATEMENTS.--

A. The commission by regulation may require every applicant for a permit to dispose or use septage or sludge, or within a source category designated by the commission, to file with the appropriate constituent agency a disclosure statement. The disclosure statement shall be submitted on a form developed by the commission and the department of public safety. The commission in cooperation with the department of public safety shall determine te information to be contained in the disclosure statement. The disclosure statement shall be submitted to the constituent agency at the same time that the applicant files an application for a permit pursuant to Section 74-6-5 NMSA 1978. The commission shall adopt regulations designating additional categories of sources subject to the disclosure requirements of this section as it deems appropriate and necessary to carry out the purposes of this section.

B. Upon a request by the constituent agency, the department of public safety shall prepare and transmit to the constituent agency an investigative report on the applicant within ninety days after the department of public safety receives an administratively complete disclosure statement prepared by the applicant for a permit. The investigative report shall be based in part upon the disclosure statement. The

ninety-day deadline for preparing the investigative report may be extended by the constituent agency for a reasonable period of time for good cause. The department of public safety in preparing the investigative report may request and receive criminal history information from any other law enforcement agency or organization. The constituent agency may also request information regarding a person who will be or could reasonably be expected to be involved in management activities of the permitted facility or a person who has a controlling interest in a permitted facility. The information received from a law enforcement agency shall be kept confidential by the department of public safety to the extent that confidentiality is imposed by the law enforcement agency as a condition for providing the information to the constituent agency or the commission.

C. All persons required to file a disclosure statement shall provide any assistance or information requested by the constituent agency or the department of public safety and shall cooperate in any inquiry or investigation conducted by the department of public safety. If a person required to file a disclosure statement refuses to comply with a formal request to answer an inquiry or produce information, evidence or testimony, the application of the applicant or the permit of the permittee shall be denied or terminated by the constituent agency.

D. If the information required to be included in the disclosure statement changes or if additional information should be added after the filing of the disclosure statement, the person required to file the disclosure statement shall provide the information to the constituent agency in writing within thirty days after the change or addition. Failure to provide the information within thirty days shall constitute the basis for the termination of a permit or denial of an application for a permit. Prior to terminating a permit or denying an application for a permit, the constituent agency shall notify the permittee or applicant of the constituent agency's intent to terminate a permit or deny an application and the constituent agency shall give the permittee or applicant fourteen days from the date of notice to satisfactorily explain why the information was not provided within the thirty-day period. The constituent agency shall consider the explanation of the permittee or applicant when determining whether to terminate the permit or deny the application for a permit.

E. No person shall be required to submit the disclosure statement required by this section if:

(1) the application is for a facility owned and operated by the state, a political subdivision of the state or an agency of the federal government or for the permitted disposal or use of septage or sludge on the premises where the sludge or septage is generated;

(2) the person has submitted a disclosure statement pursuant to this section within the previous year and no changes have occurred that would require disclosure under Subsection D of this section; or

(3) the person is a corporation or an officer, director or shareholder of that corporation and that corporation:

(a) has on file and in effect with the federal securities and exchange commission a registration statement required by Section 5, Chapter 38, Title 1 of the Securities Act of 1933, as amended;

(b) submits to the constituent agency with the application for a permit evidence of the registration described in Subparagraph (a) of this subsection and a copy of the corporation's most recent annual form 10-k or an equivalent report; and

(c) submits to the constituent agency on the anniversary date of the issuance of the permit evidence of registration described in Subparagraph (a) of this subsection and a copy of the corporation's most recent annual form 10-k or an equivalent report.

F. Permit decisions made pursuant to this section shall be subject to the procedures established in Section
74-6-5 NMSA 1978, including notice and appeals."

Section 13

Section 13. A new section of the Water Quality Act is enacted to read:

"CONFIDENTIAL INFORMATION--PENALTIES.--

A. Records, reports or information obtained by the commission or a constituent agency pursuant to the Water Quality Act shall be generally available to the public. All ambient water quality data and all effluent data obtained by the commission or a constituent agency shall be available to the public. Records, reports or information or particular parts of the records, reports or information shall be held confidential, if a person can demonstrate to the commission
or constituent agency that the records, reports or information or particular parts of the records, reports or information, if made public, would divulge confidential business records or methods or processes entitled to protection as trade secrets. Except that the record, report or information may be disclosed:

(1) to officers, employees or authorized representatives of the commission or a constituent agency concerned with carrying out the purposes and provisions of the Water Quality Act;

(2) to officers, employees or authorized representatives of the United States government; or

(3) when relevant in any proceeding pursuant to the Water Quality Act or the federal act.

B. The commission shall promulgate regulations to implement the provisions of this section, including regulations specifying business records entitled to protection as confidential.

C. An officer, employee or authorized representative of the commission or a constituent agency who knowingly or willfully publishes, divulges, discloses or makes known any information that is required to be considered confidential pursuant to this section shall be fined not more than one thousand dollars ($1,000) or imprisonment of not more than one year, or both."

Section 14

Section 14. A new section of the Water Quality Act is enacted to read:

"CIVIL PENALTIES.--

A. Any person who does not comply with the provisions of Section 74-6-5 NMSA 1978, including any regulation adopted pursuant to that section, or any permit issued pursuant to that section, shall be assessed civil penalties up to the amount of fifteen thousand dollars ($15,000) per day of noncompliance for each violation.

B. Any person who violates any provision of the Water Quality Act other than Section 74-6-5 NMSA 1978 or any person who violates any regulation, water quality standard or compliance order adopted pursuant to that act shall be assessed civil penalties up to the amount of ten thousand dollars ($10,000) per day for each violation."

Section 15

Section 15. A new section of the Water Quality Act is enacted to read:

"CRIMINAL PENALTIES.--

A. No person shall:

(1) discharge any water contaminant without a permit for the discharge, if a permit is required, or in violation of any condition of a permit for the discharge from the federal environmental protection agency, the commission or a constituent agency designated by the commission;

(2) make any false material statement, representation, certification or omission of material fact in an application, record, report, plan or other document filed, submitted or required to be maintained under the Water Quality Act;

(3) falsify, tamper with or render inaccurate any monitoring device, method or record required to be maintained under the Water Quality Act;

(4) fail to monitor, sample or report as required by a permit issued pursuant to a state or federal law or regulation; or

(5) introduce into a sewerage system or into a publicly owned treatment works any water contaminant or hazardous substance, other than in compliance with all applicable federal, state or local requirements or permits, that the person knew or reasonably should have known could cause personal injury or property damage, which causes the treatment works to violate an effluent limitation or condition in a permit issued to the treatment works pursuant to the Water Quality Act or applicable federal water quality statutes.

B. Any person who knowingly violates or knowingly causes or allows another person to violate Subsection A of this section is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

C. Any person who is convicted of a second or subsequent violation of Subsection A of this section is guilty of a third degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

D. Any person who knowingly violates Subsection A of this section or knowingly causes another person to violate Subsection A of this section and thereby causes a substantial adverse environmental impact is guilty of a third degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

E. Any person who knowingly violates Subsection A of this section and knows at the time of the violation that he is creating a substantial danger of death or serious bodily injury to any other person is guilty of a second degree felony and shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

F. A single operational event that leads to simultaneous violations of more than one water contaminant parameter shall be treated as a single violation."

Section 16

Section 16. A new section of the Water Quality Act is enacted to read:

"EFFECT AND ENFORCEMENT OF WATER QUALITY ACT DURING TRANSITION.--

A. All rules, regulations, water quality standards and administrative determinations of the commission and any constituent agency pertaining to the Water Quality Act that existed prior to the effective date of this 1993 act shall remain in full

force and effect after that date until repealed or amended, unless in conflict with, prohibited by or inconsistent with the provisions of the Water Quality Act.

B. All enforcement actions taken before the effective date of this 1993 act shall be valid if based upon a violation of the Water Quality Act, including any regulation or water quality standard that was in effect at the time of the violation."

Section 17

Section 17. Section 74-6-14 NMSA 1978 (being Laws 1987, Chapter 333, Section 15) is amended to read:

"74-6-14. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The water quality control commission is terminated on July 1, 1999 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 74, Article 6 NMSA 1978 until July 1, 2000. Effective July 1, 2000, Sections 74-6-3 and 74-6-4 (being Laws 1967, Chapter 190, Sections 3 and 4, as amended) are repealed."

Section 18

Section 18. TEMPORARY PROVISION--RECOMPILATION.--Section 74-1-8.2 NMSA 1978 (being Laws 1982, Chapter 73, Section 28, as amended) is recompiled as a new section of the Water Quality Act.

Section 19

Section 19. Section 30-8-2 NMSA 1978 (being Laws 1963, Chapter 303, Section 8-2) is amended to read:

"30-8-2. POLUTING WATER.--Polluting water consists of knowingly and unlawfully introducing any object or substance into any body of public water causing it to be offensive or dangerous for human or animal consumption or use. Polluting water constitutes a public nuisance.

For the purpose of this section, "body of water" means any public river or its tributary, stream, lake, pond, reservoir, acequia, canal, ditch, spring, well or declared or known ground waters.

Whoever commits polluting water for which the act or penalty is not otherwise prescribed by law is guilty of a misdemeanor." HB 788

CHAPTER 292

RELATING TO THE ENVIRONMENT; PROVIDING FOR THE NATURAL RESOURCES TRUSTEE; CREATING THE OFFICE OF NATURAL RESOURCES

TRUSTEE; PRESCRIBING POWERS AND DUTIES; CREATING THE NATURAL RESOURCES TRUSTEE FUND; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Natural Resources Trustee Act".

Section 2

Section 2. NATURAL RESOURCES TRUSTEE--OFFICE OF NATURAL RESOURCES TRUSTEE.--

A. The "natural resources trustee" is created. He is appointed by and serves at the pleasure of the governor pursuant to the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the federal Water Pollution Control Act and any other applicable federal law. The natural resources trustee shall act on behalf of the public as trustee of natural resources within the state or belonging to, managed by, controlled by or appertaining to the state, including protecting and representing the state's interest under applicable federal laws regarding injury to, destruction of or loss of natural resources in the state.

B. The "office of natural resources trustee" is created. The office shall be administratively attached to the department of environment. The administrative head of the office of natural resources trustee is the natural resources trustee. For purposes of this subsection, the term "administratively attached" means the same as specified in Section 9-1-7 NMSA 1978.

Section 3

Section 3. NATURAL RESOURCES TRUSTEE POWERS AND DUTIES.--

A. The natural resources trustee shall take all actions necessary to carry out the responsibilities of the natural resources trustee as provided in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the federal Water Pollution Control Act and any other applicable federal law, including the responsibility to:

(1) act on behalf of the public to protect New Mexico's natural resources by recovering damages for injury to, destruction of or loss of those resources;

(2) investigate injury to, destruction of or loss of natural resources;

(3) determine the amount and cause of injury to, destruction of or loss of natural resources;

(4) determine the liability of any person for injury to, destruction of or loss of natural resources;

(5) assess and collect damages for injury to, destruction of or loss of natural resources, including bringing legal actions and collecting the costs of assessing and collecting the damages; and

(6) expend monies for the purposes set forth in the Natural Resources Trustee Act.

B. The natural resources trustee may:

(1) hire staff, in accordance with the Personnel Act, to carry out the provisions of the Natural Resources Trustee Act;

(2) contract with economists, consultants and other experts; and

(3) accept gifts and grants to carry out the provisions of the Natural Resources Trustee Act. Gifts and grants accepted by the natural resources trustee shall be deposited in the natural resources trustee fund.

C. The attorney general shall provide legal counsel and representation to the natural resources trustee and the office of the natural resources trustee.

Section 4

Section 4. NATURAL RESOURCES DAMAGE--LIABILITY--AWARDS FOR DAMAGES.--

Awards for damage to natural resources in the state shall consist of those amounts calculated in accordance with federal law, including:

A. the cost of restoration, replacement or acquisition of equivalent resources, plus compensation for the loss of use or enjoyment of the natural resources; and

B. compensation for the state's expenses in investigating, assessing and collecting damages and enforcing the state's rights.

Section 5

Section 5. NATURAL RESOURCES TRUSTEE FUND.--

A. The "natural resources trustee fund" is created in the state treasury. Money appropriated to the fund or accruing to it through gifts, grants, fees, penalties, bequests or any other source shall be delivered to the state treasurer and deposited in the fund. Money recovered for the state by or on behalf of the natural resources trustee shall be deposited in the natural resources trustee fund. The fund shall be administered by the natural resources trustee. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the natural resources trustee or his designated representative. Money in the fund shall not revert to the general fund at the end of a fiscal year.

B. Money in the fund shall be appropriated by the legislature annually to carry out the provisions of the Natural Resources Trustee Act by:

(1) restoring, replacing or acquiring natural resources in an area where natural resources have been injured, destroyed or lost, provided that money deposited in the fund because of injury to, destruction of or loss of natural resources in an area shall be disbursed to restore, replace or acquire natural resources in that same area; and

(2) providing for necessary personnel and other costs of the natural resources trustee, the attorney general and the office of natural resources trustee, including the cost of investigation, assessment, collection or enforcement.

C. Money in the fund shall be invested as other state funds are invested, and interest and earnings from the fund shall not revert to the general fund except as provided in this subsection. Interest and earnings from the natural resources trustee fund shall be used first to reimburse the general fund for the initial appropriation of two hundred fifty-eight thousand dollars ($258,000) to the office of natural resources trustee and seventy-four thousand two hundred fifty dollars ($74,250) to the attorney general. Next, interest and earnings from the fund shall be available to be appropriated by the legislature to pay for necessary personnel and other costs of the natural resources trustee, the attorney general and the office of natural resources trustee. Thereafter, all interest and earnings from the fund shall be deposited in the game protection fund for the purposes of preserving or improving non-game wildlife and their habitats.

Section 6

Section 6. APPROPRIATION.--

A. Two hundred fifty-eight thousand dollars ($258,000) is appropriated from the general fund to the office of natural resources trustee for expenditure in the eighty-first and eighty-second fiscal years for the purpose of carrying out the provisions of the Natural Resources Trustee Act, including the hiring of two full-time equivalent positions in the office of natural resources trustee. Any unexpended or unencumbered

balance remaining at the end of the eighty-second fiscal year shall not revert to the general fund.

B. Seventy-four thousand two hundred fifty dollars ($74,250) is appropriated from the general fund to the attorney general for expenditure in the eighty-first and eighty-second fiscal years for the purpose of carrying out the provisions of the Natural Resources Trustee Act, including the hiring of one full-time equivalent position in the office of the attorney general. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall not revert to the general fund.

Section 7

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. HB 821

CHAPTER 293

RELATING TO ACEQUIAS; CREATING THE ACEQUIA COMMISSION.

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

Section 1

Section 1. ACEQUIA COMMISSION--CREATED--MEMBERSHIP--TERMS.--

A. There is created the "acequia commission", which is administratively attached to the local government division of the department of finance and administration.

B. The acequia commission shall be appointed by the governor and shall consist of eleven members who reside in the irrigated areas of the state containing acequias. Members shall own land irrigated from an acequia or community ditch organized pursuant to a ditch or acequia statute. Each member appointed by the governor shall serve a term of four years.

C. The initial appointments to the acequia commission shall include the ten persons serving as members of the governor's acequia commission, organized pursuant to executive order 88-06, and one member of the public who has a background in business. Of the initial appointees, four members shall be appointed by lot for two-year terms, four members shall be appointed by lot for three-year terms and three members shall be appointed by lot for four-year terms.

D. The acequia commission shall meet at the call of the chairman not less than quarterly and not more than once a month. The chairman shall be elected from among the members of the commission.

Section 2

Section 2. POWERS AND DUTIES.--The acequia commission shall:

A. provide advice and assist the governor, legislature, office of the state engineer and interstate stream commission and the United States army corps of engineers in establishing acequia and community ditch rehabilitation priorities and other acequia and community ditch matters;

B. serve as a facilitator for communication between acequia and community ditch associations and state and federal agencies; and

C. review and comment on any plan or legislation affecting acequias or community ditches to the governor, the legislature, the secretary of agriculture and the interstate stream commission.

Section 3

Section 3. LEGAL COUNSEL.--The office of the attorney general shall represent and be the legal advisor to the acequia commission.

Section 4

Section 4. PER DIEM.--The members of the acequia commission shall be paid in accordance with the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance. HB 850

CHAPTER 294

RELATING TO MOTOR CARRIERS; CLARIFYING THE AUTHORITY OF MOTOR TRANSPORTATION DIVISION OFFICERS TO ENFORCE CERTAIN LAWS; AMENDING SECTIONS OF THE MOTOR TRANSPORTATION ACT.

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

Section 1

Section 1. Section 65-1-2 NMSA 1978 (being Laws 1978, Chapter 19, Section 1, as amended) is amended to read:

"65-1-2. DEFINITIONS.--As used in the Motor Transportation Act:

A. "combination" means any connected assemblage of a motor vehicle and one or more semitrailers, trailers or semitrailers converted to trailers by means of a converter gear;

B. "combination gross vehicle weight" means the sum total of the gross vehicle weights of all units of a combination;

C. "commercial motor carrier vehicle" means any motor vehicle with a gross vehicle weight of twelve thousand pounds or more used or reserved for use in the transportation of persons or property for hire, compensation or profit or in the furtherance of a commercial enterprise or any vehicle designed, used or maintained primarily for the transportation of property or for drawing other vehicles so designed, used or maintained;

D. "converter gear" means any assemblage of one or more axles with a fifth wheel mounted thereon designed for use in a combination to support the front end of a semitrailer, but not permanently attached thereto. A "converter gear" shall not be considered a vehicle as that term is used in Chapter 66 NMSA 1978, but weight attributable thereto shall be included in declared gross weight;

E. "declared gross weight" means maximum gross vehicle weight or combination gross vehicle weight at which a vehicle or combination will be operated during the registration period as declared by the registrant for registration and fee purposes. The vehicle or combination shall have only one "declared gross" weight for all operating considerations;

F. "department", without modification, means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

G. "director" means the secretary;

H. "division" or "motor transportation division" means the department;

I. "evidence of registration" means any documentation issued by the department identifying a motor carrier vehicle as being registered with New Mexico or documentation issued by another state pursuant to the terms of a multistate agreement on registration of vehicles to which this state is a party identifying a motor carrier vehicle as being registered with that state; provided that evidence of payment of the weight distance tax and permits obtained under either the Special Fuels Supplier Tax Act or Trip Tax Act are not "evidence of registration";

J. "field enforcement" or "in the field" means patrolling of the highway, stopping of commercial motor carrier vehicles or establishing ports of entry and roadblocks for the purpose of checking motor carriers and includes similar activities;

K. "fleet" means one or more motor carrier vehicles, either commercial or noncommercial but not mixed, that are operated in this and at least one other jurisdiction;

L. "freight trailer" means any trailer, semitrailer or pole trailer drawn by a truck tractor or road tractor and any trailer, semitrailer or pole trailer drawn by a truck that has a gross vehicle weight of more than twenty-six thousand pounds, but the term does not include house trailers, trailers of less than one-ton carrying capacity used to transport animals or fertilizer trailers of less than three thousand five hundred pounds empty weight;

M. "gross vehicle weight" means the weight of a vehicle without load plus the weight of any load thereon;

N. "motor carrier" means any person or firm that owns, controls, operates or manages any motor vehicle with gross vehicle weight of twelve thousand pounds or more that is used to transport persons or property on the public highways of this state;

O. "motor vehicle" means any vehicle or device that is propelled by an internal combustion engine or electric motor power that is used or may be used on the public highways for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

P. "one-way rental fleet" means two or more vehicles each having a gross vehicle weight of under twenty-six thousand one pounds and rented to the public without a driver;

Q. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision, or an agency, department or instrumentality thereof; "person" also includes an officer or employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

R. "preceding year" means a period of twelve consecutive months fixed by the department, which period is within the sixteen months immediately preceding the commencement of the registration or license year for which proportional registration is sought. The department, in fixing that period, shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangement for the proportional registration of vehicles;

S. "properly registered" means bearing the lawfully issued and currently valid evidence of registration of this or another jurisdiction, regardless of the owner's residence, except in those cases where the evidence has been procured by misrepresentation or fraud;

T. "public highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be

temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction;

U. "secretary" means the secretary of taxation and revenue and, except for the purposes of Sections 65-1-10 and 65-1-33 NMSA 1978, also includes the deputy secretary and any division director delegated by the secretary;

V. "state" or "jurisdiction" means a state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, a foreign country or a state or province of a foreign country; and

W. "utility trailer" means any trailer, semitrailer or pole trailer and includes house trailers that exceed neither eight feet in width nor forty feet in length, but does not include freight trailers, trailers of less than one-ton carrying capacity used to transport animals or fertilizer trailers of less than three thousand five hundred pounds empty weight."

Section 2

Section 2. Section 65-1-7 NMSA 1978 (being Laws 1967, Chapter 97, Section 9, as amended) is amended to read:

"65-1-7. ENFORCEMENT EMPLOYEES OF DEPARTMENT--POWERS.--The enforcement employees designated by the department have all the powers of peace officers in all cities, towns, villages and counties in New Mexico with respect to the Motor Transportation Act, regulations under that act and any other law or regulation regarding commercial motor carrier vehicles, the operation of commercial motor carrier vehicles or the operators, passengers or cargoes of commercial motor carrier vehicles that the department is empowered to administer or enforce. In addition, the enforcement employees designated by the department have all the powers of peace officers in all cities, towns, villages and counties with respect to the Controlled Substances Act, the Drug Precursor Act, Sections 7-1-74, 7-1-75, 30-22-1 through 30-22-5, 30-22-10, 30-22-21 through 30-22-26, 30-24-1 and 30-24-2 NMSA 1978 when violations of these provisions are committed in connection with the operation or control of commercial motor vehicles or in a designated enforcement employee's presence."

Section 3

Section 3. Section 65-1-10 NMSA 1978 (being Laws 1967, Chapter 97, Section 12, as amended) is amended to read:

"65-1-10. REGULATIONS.--

A. The secretary is empowered and directed to issue and file as required by law all regulations, rulings, instructions or orders necessary to implement and enforce a provision of the Motor Transportation Act, including all rules and regulations

necessary by reason of an alteration of the Motor Transportation Act. In order to accomplish its
purpose, this provision is to be liberally construed.

B. Directives issued by the secretary shall be in a form substantially as follows:

(1) regulations are written statements of general application, interpreting and exemplifying the statutes to which they relate;

(2) rulings are written statements of limited application to one or a small number of persons, interpreting the statutes to which they relate, ordinarily issued in response to a request for clarification of the consequences of a specified set of circumstances;

(3) orders are written statements of the secretary or the secretary's delegate to implement a decision after a hearing; and

(4) instructions are other written statements or directives of the secretary or the secretary's delegate not dealing with the merits of any tax, duty or other statutory requirement but otherwise in aid of the accomplishment of the duties of the secretary.

C. To be effective, a ruling or regulation issued by the secretary shall be reviewed by the attorney general or other legal counsel of the department prior to being filed as required by law, and the review shall be noted on the ruling or regulation.

D. To be effective, a regulation shall first be issued as a proposed regulation and filed for public inspection in the office of the secretary. Distribution shall be made to interested persons, and their comments shall be invited. After the proposed regulation has been on file for at least sixty days and a public hearing on the proposed action has been held by the secretary or a hearing officer designated by the secretary, the secretary may issue it as a final regulation by filing as required by law.

E. In addition to filing copies of regulations with the state records center as required by law, the secretary shall maintain in the secretary's office a duplicate official set of current and superseded regulations, a set of current and superseded rulings and such additional sets as appear necessary. The duplicate or additional sets shall be available for inspection by the public, but superseded regulations need be maintained for no longer than ten years from the date of supersession.

F. The secretary shall develop and maintain a file of names and addresses of individuals and professional and industry groups having an interest in the promulgation of new, revised or proposed regulations and shall at convenient times distribute to these persons all such regulations and all pertinent rulings, making such necessary charges as will defray the expense incurred in their physical preparation and

mailing. Such charges are appropriated to the department to defray the costs of preparing and distributing regulations and rulings.

G. Any regulation, ruling, instruction or order issued by the secretary or any order or instruction issued by a hearing officer or other delegate of the secretary is presumed to be a proper implementation of the provisions of the Motor Transportation Act and other laws administered by the department by agreement with other state or federal departments, commissions or agencies.

H. The extent to which a regulation, ruling or order has retroactive effect shall be stated. If no such statement is made, the regulation, ruling or order applies prospectively only."

Section 4

Section 4. Section 65-1-12 NMSA 1978 (being Laws 1978, Chapter 18, Section 1, as amended) is amended to read:

"65-1-12. MOTOR CARRIERS REQUIRED TO REGISTER WITH THE DEPARTMENT.--

A. All motor carriers desiring and eligible for annual registration provisions relating to proportional registration or full reciprocity shall register their vehicles with the department. The department shall register all motor carriers who satisfy all New Mexico requirements relating to motor carriers, but after September 30, 1984 may refuse to register any vehicle subject to the federal heavy vehicle use tax imposed by Section 4481 of the United States Internal Revenue Code of 1986 without proof of payment of such tax in the form prescribed by the secretary of the treasury of the United States. Registration of motor carrier vehicles with the department shall remain in force during the calendar registration year as specified in Section 65-1-13 NMSA 1978 unless suspended or canceled by the department for noncomliance with any New Mexico motor vehicle or motor carrier requirements.

B. In addition to the provisions of Subsection A of this section, motor carriers operating vehicles subject to the weight distance tax pursuant to the Weight Distance Tax Act or vehicles subject to special fuel user permit requirements pursuant to the Special Fuels Supplier Tax Act shall apply for a tax identification card."

Section 5

Section 5. TEMPORARY PROVISION--REGULATIONS.--All regulations issued prior to July 1, 1993 with respect to the Motor Transportation Act shall continue in force until repealed, amended or superseded by regulations of the secretary of taxation and revenue.

Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 853

CHAPTER 295

RELATING TO UNIFORM LICENSING; CLARIFYING BOARD AUTHORITY; AMENDING SECTIONS OF THE UNIFORM LICENSING ACT.

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

Section 1

Section 1. Section 61-1-2 NMSA 1978 (being Laws 1957, Chapter 247, Section 2, as amended) is amended to read:

"61-1-2. DEFINITIONS.--As used in the Uniform Licensing Act:

A. "board" means:

(1) the construction industries commission, the construction industries division and the electrical bureau, mechanical bureau and general construction bureau of the construction industries division of the regulation and licensing department;

(2) the manufactured housing committee and manufactured housing division of the regulation and licensing department;

(3) a board, commission or agency that administers a profession or occupation licensed pursuant to Chapter 61 NMSA 1978; and

(4) any other state agency to which the Uniform Licensing Act is applied by law;

B. "applicant" means a person who has applied for a license;

C. "license" means a certificate, permit or other authorization to engage in each of the professions and occupations regulated by the boards enumerated in Subsection A of this section;

D. "revoke a license" means to prohibit the conduct authorized by the license; and

E. "suspend a license" means to prohibit, for a stated period of time, the conduct authorized by the license. "Suspend a license" also means to allow for a stated period of time the conduct authorized by the license subject to conditions that are reasonably related to the grounds for suspension."

Section 2

Section 2. Section 61-1-3 NMSA 1978 (being Laws 1957, Chapter 247, Section 3, as amended) is amended to read:

"61-1-3. OPPORTUNITY FOR LICENSEE OR APPLICANT TO HAVE HEARING.--Every licensee or applicant shall be afforded notice and an opportunity to be heard, before the board has authority to take any action which would result in:

A. denial of permission to take an examination for licensing for which application has been properly made as required by board rule;

B. denial of a license after examination for any cause other than failure to pass an examination;

C. denial of a license for which application has been properly made as required by board rule on the basis of reciprocity or endorsement or acceptance of a national certificate of qualification;

D. withholding the renewal of a license for any cause other than:

(1) failure to pay the required renewal fee;

(2) failure to meet continuing education requirements; or

(3) issuance of a temporary license extension if authorized by statute;

E. suspension of a license;

F. revocation of a license;

G. restrictions or limitations on the scope of a practice;

H. the requirement that the applicant complete a program of remedial education or treatment;

I. monitoring of the practice by a supervisor approved by the board;

J. the censure or reprimand of the licensee or applicant;

K. compliance with conditions of probation or suspension for a specific period of time;

L. payment of a fine for a violation not to exceed one thousand dollars ($1,000) for each violation, unless a greater amount is provided by law;

M. corrective action, as specified by the board; or

N. a refund to the consumer of fees that were billed to and collected from the consumer by the licensee."

Section 3

Section 3. Section 61-1-4 NMSA 1978 (being Laws 1957, Chapter 247, Section 4, as amended) is amended to read:

"61-1-4. NOTICE OF CONTEMPLATED BOARD ACTION--REQUEST FOR HEARING--NOTICE OF HEARING.--

A. For the purpose of investigating complaints against licensees, the board may issue investigative subpoenas prior to the issuance of a notice of contemplated action as provided in this section.

B. When a board contemplates taking any action of a type specified in Subsection A, B or C of Section 61-1-3 NMSA 1978, it shall serve upon the applicant a written notice containing a statement:

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

(2) indicating in what respects the applicant has failed to satisfy the board;

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

(4) calling the applicant's attention to his rights under Section 61-1-8 NMSA 1978.

C. In any board proceeding to take any action of a type specified in Subsection A, B or C of Section 61-1-3 NMSA 1978, the burden of satisfying the board of the applicant's qualifications shall be upon the applicant.

D. When a board contemplates taking any action of a type specified in Subsections D through N of Section 61-1-3 NMSA 1978, it shall serve upon the licensee a written notice containing a statement:

(1) that the board has sufficient evidence that, if not rebutted or explained, will justify the board in taking the contemplated action;

(2) indicating the general nature of the evidence;

(3) that unless the licensee within twenty days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the board and containing a request for a hearing, the board will take the contemplated action; and

(4) calling the licensee's attention to his rights under Section 61-1-8 NMSA 1978.

E. If the licensee or applicant does not mail a request for a hearing within the time and in the manner required by this section, the board may take the action contemplated in the notice, and such action shall be final and not subject to judicial review.

F. If the licensee or applicant does mail a request for a hearing as required by this section, the board shall, within twenty days of receipt of the request, notify the licensee or applicant of the time and place of hearing, the name of the person who shall conduct the hearing for the board and the statutes and regulations authorizing the board to take the contemplated action, which hearing shall be held not more than sixty nor less than fifteen days from the date of service of the notice.

G. Licensees shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees, or if they prevail at the hearing and an action specified in Section 61-1-3 NMSA 1978 is not taken by the board."

Section 4

Section 4. Section 61-1-3.1 NMSA 1978 (being Laws 1981, Chapter 349, Section 3, as amended) is amended to read:

"61-1-3.1. LIMITATIONS.--

A. No action that would have any of the effects specified in Subsections D through N of Section 61-1-3 NMSA 1978 shall be initiated by a board later than two years after the discovery of the conduct that would be the basis for the action except as provided in Subsections C and D of this section.

B. The time limitation contained in Subsection A of this section shall be tolled by any civil or criminal litigation in which the licensee or applicant is a party arising from substantially the same facts, conduct or transactions that would be the basis for the board's action.

C. The New Mexico state board of psychologist examiners shall not initiate an action that would result in any of the actions specified in Subsections D through N of

Section 61-1-3 NMSA 1978 later than five years after the conduct of the psychologist or psychologist associate that is the basis for the action. However, if the conduct that is the basis for the action involves a minor or a person adjudicated incompetent, the action shall be initiated, in the case of a minor, no later than one year after the minor's eighteenth birthday or five years after the conduct, whichever is last and, in the case of a person adjudicated incompetent, one year after the adjudication of incompetence is terminated or five years after the conduct, whichever is last.

D. The New Mexico state board of public accountancy shall not initiate an action under the Public Accountancy Act that would result in any of the actions specified in Subsections D through N of Section 61-1-3 NMSA 1978 later than two years following the discovery of a violation of that act."

Section 5

Section 5. Section 61-1-7 NMSA 1978 (being Laws 1957, Chapter 247, Section 7, as amended) is amended to read:

"61-1-7. HEARING OFFICERS--HEARINGS--PUBLIC--EXCEPTION--EXCUSAL--PROTECTION OF WITNESS AND INFORMATION.--

A. All hearings under the Uniform Licensing Act shall be conducted either by the board or, at the election of the board, by a hearing officer who may be a member or employee of the board or any other person designated by the board in its discretion. A hearing officer shall, within thirty days after any hearing, submit to the board a report setting forth his findings of fact.

B. All hearings under the Uniform Licensing Act shall be open to the public, provided that in cases in which any constitutional right of privacy of an applicant or licensee may be irreparably damaged, a board or hearing officer may hold a closed hearing if the board or hearing officer so desires and states the reasons for this decision in the record. The applicant or licensee may, for good cause shown, request a board or hearing officer to hold either a public or a closed hearing.

C. Each party may peremptorily excuse one board member or a hearing officer by filing with the board a notice of peremptory excusal at least twenty days prior to the date of the hearing, but this privilege of peremptory excusal may not be exercised in any case in which its exercise would result in less than a quorum of the board being able to hearor decide the matter. Any party may request that the board excuse a board member or a hearing officer for good cause by filing with the board a motion of excusal for cause at least twenty days prior to the date of the hearing. In any case in which a combination of peremptory excusals and excusals for good cause would result in less than a quorum of the board being able to hear or decide the matter, the peremptory excusals that would result in removing the member or members of the board necessary for a quorum shall not be effective.

D. In any case in which excusals for cause result in less than a quorum of the board being able to hear or decide the matter, the governor shall, upon request by the board, appoint as many temporary board members as are necessary for a quorum to hear or decide the matter. These temporary members shall have all of the qualifications required for permanent members of the board.

E. In any case in which excusals result in less than a quorum of the board being able to hear or decide the matter, the board, including any board members who have been excused, may designate a hearing officer to conduct the entire hearing.

F. Each board shall have power where a proceeding has been dismissed, either on the merits or otherwise, to relieve the applicant or licensee from any possible odium that may attach by reason of the proceeding, by such public exoneration as it shall see fit to make, if requested by the applicant or licensee to do so.

G. There shall be no liability on the part of and no action for damages against a person who provides information to a board in good faith and without malice in the reasonable belief that such information is accurate. A licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to a board shall be subject to disciplinary action."

Section 6

Section 6. Section 61-1-13 NMSA 1978 (being Laws 1957, Chapter 247, Section 13, as amended) is amended to read:

"61-1-13. DECISION.--

A. After a hearing has been completed, the members of the board shall proceed to consider the case and as soon as practicable shall render their decision, provided that the decision shall be rendered by a quorum of the board. In cases in which the hearing is conducted by a hearing officer, all members who were not present throughout the hearing shall familiarize themselves with the record, including the hearing officer's report, before participating in the decision. In cases in which the hearing is conducted by the board, all members who were not present throughout the hearing shall thoroughly familiarize themselves with the entire record, including all evidence taken at the hearing, before participating in the decision.

B. A decision based on the hearing shall be made by a quorum of the board and signed by the person designated by the board within sixty days after the completion of the preparation of the record or submission of a hearing officer's report, whichever is later. In any case, the decision must be rendered and signed within ninety days after the hearing."

Section 7

Section 7. Section 61-1-17 NMSA 1978 (being Laws 1957, Chapter 247, Section 17) is amended to read:

"61-1-17. PETITION FOR REVIEW--WAIVER OF RIGHT.--Any person entitled to a hearing under the Uniform Licensing Act, who is aggrieved by an adverse decision of a board issued after hearing, may obtain a review of the decision in the district court of Santa Fe county or in the district court of the county in which the hearing was held or, upon agreement of the parties to the appeal, in any other district court of the state. In order to obtain such review, the person shall, within twenty days after the date of service of the decision as required by Section 61-1-14 NMSA 1978, file with the court a petition for review, a copy of which shall be served on the office of the attorney general and on the board secretary, stating all exceptions taken to the decision and indicating the court in which the appeal is to be heard. The court shall not consider any exceptions not stated in the petition. Failure to file a petition for review in the manner and within the time stated shall operate as a waiver of the right to judicial review and shall result in the decision of the board becoming final; except that for good cause shown, within the time stated, the judge of the district court may issue an order granting one extension of time not to exceed sixty days."HB 858

CHAPTER 296

RELATING TO ADOPTION; ENACTING THE ADULT ADOPTION ACT; PROVIDING PROCEDURES FOR ADULT ADOPTIONS.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Adult Adoption Act".

Section 2

Section 2. As used in the Adult Adoption Act:

A. "adoptee" means any adult who is the subject of an adoption petition;

B. "adult" means any individual who is eighteen years of age or older;

C. "court" means the district court;

D. "parent" means the biological or adoptive parent;

E. "person" means an individual;

F. "petitioner" means any person who signs a petition to adopt under the Adult Adoption Act; and

G. "resident" means a person who, immediately prior to filing an adoption petition, has lived in the state for at least six months or a person who has become domiciled in the state by establishing legal residence with the intention of maintaining the residence indefinitely.

Section 3

Section 3. JURISDICTION.--The court shall have original jurisdiction over proceedings arising under the Adult Adoption Act.

Section 4

Section 4. VENUE.--

A. A petition for adoption may be filed in any county where:

(1) a petitioner resides; or

(2) the adoptee resides.

B. A court that has jurisdiction under the Adult Adoption Act may decline to exercise jurisdiction any time
before entering a decree if the court finds that under the circumstances of the case it is an inconvenient forum to make a determination. In that case, the court shall transfer the proceedings on any conditions that are just.

Section 5

Section 5. WHO MAY BE ADOPTED--WHO MAY ADOPT.--

A. Any adult may be adopted.

B. Residents who are one of the following may adopt:

(1) any adult who has been approved by the court as a suitable adoptive parent pursuant to the provisions of the Adult Adoption Act; or

(2) a married adult, without the spouse of the married adult joining in the adoption if:

(a) the non-joining spouse is a parent of the adoptee;

(b) the adult who is adopting and the non-joining spouse are legally separated; or

(c) the failure of the non-joining spouse to join in the adoption is excused for reasonable circumstances as determined by the court.

Section 6

Section 6. CONSENT TO THE ADOPTION.--

A. Consent to the adoption shall be required of the adoptee or a person legally authorized to consent on behalf of the adoptee if the adoptee is incapacitated and unable to consent to the adoption.

B. A consent shall be in writing, signed by the adoptee and shall state the following:

(1) the date, place and time of execution;

(2) the date and place of birth of the adoptee and any names by which the adoptee has been known;

(3) the name of the petitioner;

(4) that the adoptee has been advised of the legal consequences of the adoption by independent legal counsel or a judge;

(5) that consent to an adoption cannot be withdrawn;

(6) that the adoptee is voluntarily and unequivocally consenting to the adoption; and

(7) that the adoptee has received or been offered a copy of the consent.

C. In cases when the consent is in English and English is not the first language of the consenting person, the person taking the consent shall certify in writing that the document has been read and explained to the person whose consent is being taken in that person's first language, by whom the document was read and explained and that the meaning and implications of the document are fully understood by the person giving the consent.

D. A consent to adoption shall be signed before and approved by a judge who has jurisdiction over adoption proceedings, within or without this state, and who is in the jurisdiction in which the adoptee or the petitioner resides.

E. The consent shall be filed with the court in which the petition for adoption has been filed before adjudication of the petition.

F. In its discretion, the court may order counseling.

G. A consent to adoption shall not be withdrawn prior to the entry of a decree of adoption unless the court finds, after notice and an opportunity to be heard is given to the petitioner and the adoptee, that the consent was obtained by fraud. In no event shall a consent or relinquishment be withdrawn after the entry of a decree of adoption.

Section 7

Section 7. PETITION--CONTENT.--A petition for adoption shall be filed and verified by the petitioner and shall allege:

A. the full name, age and place and duration of residence of the petitioner and, if married, the place and date of marriage; the date and place of any prior marriage, separation or divorce; and the name of any present or prior spouse;

B. the date and place of birth of the adoptee;

C. the birth name of the adoptee, any other names by which the adoptee has been known and the adoptee's proposed new name;

D. where the adoptee is residing at the time of the filing of the petition;

E. that the petitioner desires to establish a parent and child relationship between himself and the adoptee;

F. the relationship, if any, of the petitioner to the adoptee;

G. whether the adoptee is foreign born, and if so, copies of the adoptee's passport and United States visa shall be attached as exhibits to the petition;

H. the length and nature of the relationship between the petitioner and the adoptee and the degree of kinship, if any;

I. the reason the adoption is sought;

J. the names and addresses of any living parents or children of the adoptee;

K. a statement as to why the adoption would be in the best interests of the petitioner, the adoptee and the public; and

L. whether the petitioner or the petitioner'sspouse has previously adopted any other adult person and, if so, the name of the person and the date and place of the adoption.

Section 8

Section 8. PETITION--CAPTION.--The caption of a petition for adoption shall be styled "In the Matter of the Adoption Petition of (Petitioner's Name)".

Section 9

Section 9. NOTICE OF PETITION--SERVICE--WAIVER.--

A. A copy of the petition for adoption shall be served by the petitioner on the following individuals, unless receipt of a copy of the petition has been previously waived in writing:

(1) the adoptee;

(2) the parents of the adoptee;

(3) the legally appointed conservator or guardian of the adoptee;

(4) the spouse of any petitioner who has not joined in the petition;

(5) the spouse of the adoptee;

(6) the surviving parent of a deceased parent of the adoptee; and

(7) any other person designated by the court.

B. The notice shall state that the person served shall respond to the petition within twenty days if the person intends to contest the adoption and shall also state that failure to respond in a timely manner will be treated as a default.

C. Provision of notice for the adoptee and the legally appointed conservator or guardian of the adoptee shall be made pursuant to the Rules of Civil Procedure for the District Courts.

D. As to any other person for whom notice is required under Subsection A of this section, service by certified mail, return receipt requested, is sufficient. If the service cannot be completed after two attempts, the court shall issue an order providing for service by publication.

E. The notice required by this section may be waived in writing by the person entitled to notice.

F. Proof of service of the notice on all persons for whom notice is required shall be filed with the court prior to any hearing that affects the rights of those persons.

Section 10

Section 10. RESPONSE TO PETITION.--

A. Any person who responds to a notice of petition for adoption shall file a verified response to the petition within the time limits set forth in Section 12 of the Adult Adoption Act.

B. The verified response shall be made pursuant to the Rules of Civil Procedure for the District Courts and, in addition, shall allege the relationship, if any, of the respondent to the adoptee.

Section 11

Section 11. APPOINTMENT OF ATTORNEY FOR INCOMPETENT ADOPTEE.--Upon motion of any party, or upon the court's own motion, the court may appoint an attorney for an adoptee whom the court finds to be incompetent. Payment for the appointed attorney shall be assessed against the parties in the court's discretion.

Section 12

Section 12. ADJUDICATION--DISPOSITION--DECREE OF ADOPTION.--

A. The court shall conduct a hearing on the petition for adoption. The petitioner and the adoptee shall attend the hearing, unless the court waives a party's appearance for good cause shown by the party. As used in this subsection, "good cause" includes burdensome travel requirements.

B. The petitioner shall present and prove each allegation set forth in the petition for adoption by clear and convincing evidence.

C. The court shall grant a decree of adoption if it finds that the petitioner has proved by clear and convincing evidence that:

(1) the court has jurisdiction to enter a decree of adoption affecting the adoptee;

(2) the adoptee has consented to the adoption;

(3) service of the petition for adoption has been made or dispensed with as to all persons entitled to notice;

(4) at least thirty days have passed since the filing of the petition for adoption;

(5) the petitioner is a suitable adoptive parent and the best interests of the petitioner, adoptee and the public are served by the adoption; and

(6) if the adoptee is foreign born, the adoptee is legally free for adoption.

D. In addition to the findings set forth in Subsection C of this section, the court, in any decree of adoption, shall make findings with respect to each allegation of the petition.

E. If the court determines that any of the findings for a decree of adoption have not been met or that the adoption is not in the best interests of the petitioner, adoptee or the public, the court shall deny the petition.

F. The decree of adoption shall include the new name of the adoptee and shall not include any other name by which the adoptee has been known or the names of the former parents. The decree of adoption shall order that from the date of the decree, the adoptee shall be the child of the petitioner and accorded the status set forth in Section 13 of the Adult Adoption Act.

G. A decree of adoption shall be entered within six months of the filing of the petition.

H. A decree of adoption may not be attacked upon the expiration of one year from the date of the entry of the decree.

Section 13

Section 13. STATUS OF ADOPTION AND PETITIONER UPON ENTRY OF DECREE OF ADOPTION.--

A. Once adopted, an adoptee shall take a name agreed upon by the petitioner and the adoptee and approved by the court.

B. After adoption, the adoptee and the petitioner shall sustain the legal relation of parent and child as if the adoptee were the biological child of the petitioner and the petitioner were the biological parent of the child. The adoptee shall have all rights and be subject to all the duties of that relation, including the right of inheritance from and through the petitioner, and the petitioner shall have all rights and be subject to all duties of that relation, including the right of inheritance from and through the adoptee.

Section 14

Section 14. BIRTH CERTIFICATES.--

A. Within thirty days after an adoption decree is entered, the petitioner shall prepare an application for a birth certificate in the new name of the adoptee showing the petitioner as the adoptee's parent and shall provide the application to the clerk of the court. The clerk of the court shall forward the application:

(1) for a person born in the United States, to the appropriate vital statistics office of the place, if known, where the adoptee was born; or

(2) for all other persons, to the state registrar of vital statistics. In the case of the adoption of a person born outside the United States, if requested by the petitioner, the court shall make findings, based on evidence from the petitioner and other reliable state or federal sources, on the date and place of birth of the adoptee. The findings shall be certified by the court and included with the application for a birth certificate.

B. The state registrar of vital statistics shall prepare a birth record in the new name of the adoptee in accordance with vital statistics laws.

Section 15

Section 15. RECOGNITION OF FOREIGN DECREES.--Every judgment establishing the relationship of parent and child by adult adoption issued pursuant to due process of law by the tribunals of any other jurisdiction within or without the United States shall be recognized in this state, so that the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the judgment were issued by the courts of this state.HB 882

CHAPTER 297

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE LOCAL ECONOMIC DEVELOPMENT ACT; PROVIDING FOR PUBLIC SUPPORT OF LOCAL ECONOMIC DEVELOPMENT PROJECTS; PROVIDING POWERS AND DUTIES; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Local Economic Development Act".

Section 2

Section 2. FINDINGS AND PURPOSE OF ACT.--

A. The legislature finds that:

(1) development of the New Mexico economy is vital to the well-being of the state and its residents;

(2) it is difficult for municipalities and counties in New Mexico to attract and retain businesses capable of enhancing the local and state economy without the resources necessary to compete with other states and locales;

(3) municipalities and counties may need to be able to provide land, buildings and infrastructure as a tool for basic business growth and the introduction of basic business ventures into the state;

(4) it is in the best interest of the state, municipalities and counties to encourage local or regional solutions to economic development; and

(5) the access to public resources needs to be carefully controlled and managed for the continued and future benefit of New Mexico citizens.

B. The purpose of the Local Economic Development Act is to implement the provisions of the 1994 constitutional amendment to Article 9, Section 14 of the constitution of New Mexico to allow public support of economic development to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of that act is to allow municipalities and counties to enter into joint powers agreements to plan and support regional economic development projects.

Section 3

Section 3. DEFINITIONS.--As used in the Local Economic Development Act:

A. "department" means the economic development department;

B. "economic development project" or "project" means the provision of direct or indirect assistance to a qualifying business by a local or regional government, and includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure; public works improvements essential to the location or expansion of a qualifying business; and payments for professional services contracts necessary for local or regional governments to implement a plan or project;

C. "governing body" means the city council or city commission of a city, the board of trustees of a town or village or the board of county commissioners of a county;

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

E. "municipality" means any incorporated city, town or village;

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

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

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

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

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

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

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

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

Section 4

Section 4. ECONOMIC DEVELOPMENT PROJECTS--RESTRICTIONS ON PUBLIC EXPENDITURES OR PLEDGES OF CREDIT.--

A. No local or regional government shall provide public support for economic development projects as permitted pursuant to Article 9, Section 14 of the constitution of New□Mexico except as provided in the Local Economic Development Act or as otherwise permitted by law.

B. The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended by a local government for economic development projects pursuant to Article 9, Section 14 of the constitution of New Mexico and the Local Economic Development Act shall not exceed five percent of the annual general fund expenditures of the local government in that fiscal year. The value of any land or building contributed to any project pursuant to a project participation agreement shall not be subject to the limits of this subsection.

Section 5

Section 5. ECONOMIC DEVELOPMENT DEPARTMENT--TECHNICAL ASSISTANCE.--At the request of a local or regional government, the department shall provide technical assistance in the development of an economic development plan or economic development project.

Section 6

Section 6. ECONOMIC DEVELOPMENT PLAN--CONTENTS--PUBLICATION.--

A. Every local or regional government seeking to pursue economic development projects shall adopt an economic development plan or a comprehensive plan that includes an economic development component. The plan may be specific to a single economic development goal or strategy or may include several goals or strategies. Any plan or plan amendment shall be adopted by ordinance of the governing body of the local government or each local government of a regional government proposing the plan or plan amendment.

B. The economic development plan or the ordinance adopting the plan may:

(1) describe the local or regional government's economic development and community goals and assign priority to and strategies for achieving those goals;

(2) describe the types of qualifying entities and economic activities that will qualify for economic development projects;

(3) describe the criteria to be used to determine eligibility of an economic development project and a qualifying entity to participate in an economic development project;

(4) describe the manner in which a qualifying entity may submit an economic development project application, including the type of information required from the qualifying entity sufficient to ensure its solvency and ability to perform its contractual obligations, its commitment to remain in the community and its commitment to the stated economic development goals of the local or regional government;

(5) describe the process the local or regional government will use to verify the information submitted on an economic development project application;

(6) if an economic development project is determined to be unsuccessful, or if a qualifying entity seeks to leave the area, describe the methods the local or regional government will use to terminate its economic assistance and recoup its investment;

(7) identify revenue sources other than those of the local or regional government which must be used to support economic development projects;

(8) identify other resources the local or regional government is prepared to offer qualifying businesses, including specific land or buildings it is willing to lease, sell or grant a qualifying business; community infrastructure it is willing to build, extend or expand, including roads, water, sewers or other utilities and professional services contracts by local or regional governments necessary to provide these resources;

(9) detail the minimum benefit the local or regional government requires from a qualifying entity, including the number and types of jobs to be created; the proposed payroll; repayment of loans, if any; purchase by the qualifying basic business of local or regional government-provided land, buildings or infrastructure; the public to private investment ratio; and direct local tax base expansion;

(10) describe the safeguards of public resources that will be ensured, including specific ways the local or regional government can recover any costs, land, buildings or other thing of value if a qualifying entity ceases operation, relocates or otherwise defaults or reneges on its contractual or implied obligations to the local or regional government; and

(11) if a regional government, describe the joint powers agreement, including whether it can be terminated and, if so, how the contractual or other obligations, risks and any property will be assigned or divided among the local governments who are party to the agreement.

C. The economic development plan shall be printed and made available to the residents within the local or regional government area.

Section 7

Section 7. REGIONAL PLANS--JOINT POWERS AGREEMENT--REGIONAL GOVERNMENT.--

A. Two or more municipalities, two or more counties or one or more municipalities and counties may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act to develop a regional economic development plan which

may consist of existing local plans. The parties to the agreement shall be deemed a regional government for the purposes of the Local Economic Development Act.

B. The joint powers agreement shall require that the governing body of each local government approve each economic development project. The agreement may also provide for appointment of a project manager who shall be responsible for the management of projects and project funds. The agreement may provide for a regional body consisting of representatives from the governing bodies of each local government that is a party to the agreement and may determine the powers and duties of that body in implementing the regional government's plan and projects.

Section 8

Section 8. ECONOMIC DEVELOPMENT PROJECT APPLICATIONS.--

A. After the adoption of an economic development plan by a local or regional government, a qualifying entity shall submit to the local or regional government an economic development project application.

B. The application shall be on a form and require such information as the local or regional government deems necessary.

Section 9

Section 9. PROJECT EVALUATION--DEPARTMENT.--

A. The local or regional government shall review each project application, and projects shall be approved by ordinance.

B. The local or regional government's evaluation of an application shall be based on the provisions of the economic development plan, the financial and management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost-benefit analysis of the project and any other information the local or regional government believes is necessary for a full review of the economic development project application.

C. The local or regional government may negotiate with a qualifying business on the type or amount of assistance to be provided or on the scope of the economic development project.

Section 10

Section 10. PROJECT PARTICIPATION AGREEMENT--DUTIES AND REQUIREMENTS.--

A. The local or regional government and the qualifying entity shall enter into a project participation agreement.

B. The local or regional government shall require a substantive contribution from the qualifying entity for
each economic development project. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the economy.

C. The participation agreement at a minimum shall set out:

(1) the contributions to be made by each party to the participation agreement;

(2) the security provided to the local or regional government by the qualifying entity in the form of a lien, mortgage or other indenture and the pledge of the qualifying business's financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement;

(3) a schedule for project development and completion, including measurable goals and time limits for those goals; and

(4) provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory.

Section 11

Section 11. PROJECT REVENUES--SPECIAL FUND--ANNUAL AUDIT.--

A. Local or regional government revenues dedicated or pledged for funding or financing of economic development projects shall be deposited in a separate account. Separate accounts shall be established for each separate project. Money in the special account shall be expended only for economic development project purposes, which may include the payment of necessary professional services contract costs.

B. In the case of a regional government, revenues of each local government dedicated or pledged for economic development purposes shall be deposited in a special account of that local government and may be expended only by that local government as provided by the regional government's economic development plan and joint powers agreement.

C. The local or regional government shall provide for an annual independent audit in accordance with the Audit Act of each special fund and project account. The audit shall be submitted to the local or regional government. The audit is a public record.

Section 12

Section 12. PLAN AND PROJECT TERMINATION.--

A. At any time after approval of an economic development plan, the governing body of the local government or the governing body of each local government in a regional government may enact an ordinance terminating the economic development plan and dissolving or terminating any or all projects. An ordinance repealing an economic development plan shall not be effective unless the ordinance provides for satisfying existing contracts and the rights of the parties arising from those contracts.

B. Any unexpended and unencumbered balances remaining in any project fund or account upon repeal of a plan and termination or dissolution of a project may be transferred to the general fund of the local government holdingthe fund or account. In the case of funds or accounts of a regional government, the unexpended and unencumbered balances shall be divided among the local governments as provided in the joint powers agreement.

Section 13

Section 13. LIMITATIONS.--Nothing in the Local Economic Development Act shall be construed to affect any other requirements of the constitution or other laws regarding local government debt, issuance of bonds, use of tax revenues or the grant, lease or sale of land or other property.

Section 14

Section 14. SEVERABILITY.--If any part or application of the Local Economic Development Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 15

Section 15. Section 3-54-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-55-3) is amended to read:

"3-54-3. SUPPLEMENTAL METHOD FOR DISPOSING OF MUNICIPAL PROPERTY.--Sections 3-54-1 and 3-54-2 NMSA 1978 are intended to afford another and additional method of disposing of municipal real and personal property and are not to be construed as repealing or qualifying any other statutory authorization granted a municipality to dispose of or exchange real or personal municipal property or as affecting in any way the sale, lease, exchange or other disposition of real or personal property pursuant to the Local Economic Development Act."

Section 16

Section 16. EFFECTIVE DATE.--The provisions of this act shall become effective upon certification by the secretary of state that Article 9, Section 14 of the constitution of New Mexico has been amended as proposed by a joint resolution of the forty-first legislature, first session. HB 885

CHAPTER 298

RELATING TO THE ENVIRONMENT; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 7-1-6.25 NMSA 1978 (being Laws 1988, Chapter 70, Section 9, as amended) is amended to read:

"7-1-6.25. DISTRIBUTION--CORRECTIVE ACTION FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the corrective action fund of the net receipts attributable to the petroleum products loading fee. Imposition of the petroleum products loading fee shall cease on the first day of the month following the expiration of ninety days from the end of the month for which the unencumbered balance of the corrective action fund is certified to equal or exceed fifty million dollars ($50,000,000) and for every month thereafter until the unencumbered balance is certified by the secretary of environment to be less than or equal to twelve million dollars ($12,000,000) as of the end of any month, in which event the imposition of the petroleum products loading fee shall be reinstated on the first day of the month following the expiration of ninety days after the end of the month for which the certification was made and the distribution of the fee shall be returned to the corrective action fund."

Section 2

Section 2. A new section of the Hazardous Waste Act is enacted to read:

"UNDERGROUND STORAGE TANK FUND CREATED--APPROPRIATION.--

A. There is created in the state treasury the "underground storage tank fund" which shall be administered by the department. All balances in the fund are appropriated to the department for the sole purpose of meeting necessary expenses in the administration and operation of the underground storage tank program.

B. All fees collected pursuant to Subsection D of Section 74-4-4.4 NMSA 1978 shall be transmitted to the state treasurer for credit to the underground storage tank fund.

C. Balances remaining in the underground storage tank fund at the end of the fiscal year shall not revert to
the general fund."

Section 3

Section 3. Section 74-6B-3 NMSA 1978 (being Laws 1990, Chapter 124, Section 3, as amended) is amended to read:

"74-6B-3. DEFINITIONS.--As used in the Ground Water Protection Act:

A. "board" means the environmental improvement board;

B. "corrective action" means an action taken to investigate, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment;

C. "department" means the department of environment;

D. "operator" means any person in control of or having responsibility for the daily operation of the underground storage tank;

E. "owner" means:

(1) in the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; and

(2) in the case of an underground storage tank in use before November 8, 1984 but no longer in use after that date, any person who owned such a tank immediately before the discontinuation of its use;

F. "person" means an individual or any legal entity, including all governmental entities;

G. "regulated substance" means:

(1) any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; and

(2) petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure of sixty degrees fahrenheit and fourteen and seven-tenths pounds per square inch absolute;

H. "release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into ground water, surface water or subsurface soils in amounts exceeding twenty-five gallons;

I. "secretary" means the secretary of environment;

J. "site" means a place where there is or was at a previous time one or more underground storage tanks and may include areas contiguous to the actual location or previous location of the tanks; and

K. "underground storage tank" means a single tank or combination of tanks, including underground pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. The term does not include any:

(1) farm, ranch or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel or heating oil for noncommercial purposes;

(2) septic tank;

(3) pipeline facility, including gathering lines which are regulated under the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act;

(4) surface impoundment, pit, pond or lagoon;

(5) storm water or wastewater collection system;

(6) flow-through process tank;

(7) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(8) storage tank situated in an underground area, such as a basement, cellar, mineworking drift, shaft or tunnel, if the storage tank is situated upon or above the
surface of the undesignated floor; or

(9) pipes connected to any tank that is described in Paragraphs (1) through (8) of this subsection."

Section 4

Section 4. Section 74-6B-7 NMSA 1978 (being Laws 1990, Chapter 124, Section 7, as amended) is amended to read:

"74-6B-7. CORRECTIVE ACTION FUND CREATED--AUTHORIZATION FOR EXPENDITURES.--

A. There is created the "corrective action fund". This fund is intended to provide for financial assurance coverage required by federal law and shall be used by the department to take corrective action in response to a release, to pay for the costs of a minimum site assessment in excess of ten thousand dollars ($10,000); to pay the state's share of federal leaking underground storage tank trust fund cleanup costs as required by the federal Resource Conservation and Recovery Act and to make payments to or on behalf of owners and operators in accordance with Section 74-6B-13 NMSA 1978. The owner or operator of a site shall not use the corrective action fund as evidence of financial assurance to satisfy claims of third parties.

B. The board, after recommendations from the underground storage tank committee, shall adopt regulations for establishing priorities for corrective action at sites contaminated by underground storage tanks. The priorities shall be based on public health, safety and welfare and environmental concerns. In adopting regulations under this subsection, the board shall follow the procedures of Section 74-4-5 NMSA 1978. The provisions of that section relating to all other matters in connection with the adoption of regulations shall apply. The department shall establish priority lists of sites in accordance with the regulations adopted by the board.

C. The department shall make expenditures from the corrective action fund in accordance with regulations adopted by the board or the secretary for corrective action at sites contaminated by underground storage tanks. These expenditures shall be made by the department to perform corrective action, to pay for the costs of a minimum site assessment in excess of ten thousand dollars ($10,000) and to make payments to or on behalf of owners and operators in accordance with Section 74-6B-13 NMSA 1978. The department shall take corrective action at sites in the order of priority appearing on the priority lists, except when an emergency threat to public health, safety and welfare or to the environment exists.

D. No expenditure from the corrective action fund shall be authorized for corrective action at sites owned or operated by the United States or any agency or instrumentality thereof.

E. Nothing in this section authorizes payments for the repair or replacement of any underground storage tank or equipment.

F. Nothing in this section authorizes payments or commitments for payments in excess of the funds available.

G. Within sixty days after receipt of notification that the corrective action fund has become incapable of paying for assured corrective actions, the owner or operator shall obtain alternative financial assurance acceptable to the department."

Section 5

Section 5. REPEAL.--Section 74-6B-11 NMSA 1978 (being Laws 1990, Chapter 124, Section 11, as amended) is repealed.

Section 6

Section 6. EMERGENCY.--It is necessary for the public peace, health and safety that the provisions of this act take effect immediately. HB 937

CHAPTER 299

RELATING TO PINON NUTS; AMENDING THE PINON NUT ACT; PROVIDING FOR REPORTING AND ENFORCEMENT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 25-1-2 NMSA 1978 (being Laws 1987, Chapter 43, Section 2) is amended to read:

"25-10-2. UNLAWFUL LABELING, ADVERTISING OR SELLING OF PRODUCTS AS PINON NUTS.--

A. It is unlawful for any person to package any product and label the product as pinon nuts or as containing pinon nuts or to use the words pinon nuts in any prominent location on the label of such product or to advertise, sell or offer for sale any product which is labeled pinon nuts or as containing pinon nuts unless the product consists of pinon nuts or uses pinon nuts as an ingredient in the product.

B. As used in this section, "pinon nuts" means the edible nut which is the product of the pinon tree, scientifically known as genus "pinus", subgenus "strobus", section "parrya", subsection "cembroides"."

Section 2

Section 2. Section 25-10-3 NMSA 1978 (being Laws 1987, Chapter 43, Section 3) is amended to read:

"25-10-3. ENFORCEMENT.--

A. The board of regents of New Mexico state university shall enforce and administer the Pinon Nut Act

through the New Mexico department of agriculture. The board shall have the authority to promulgate regulations necessary for the enforcement of the Pinon Nut Act.

B. The department through its authorized inspectors or agents is authorized to:

(1) audit the purchase and sales records of any person, firm or corporation dealing with pinon nut sales; and

(2) enter, on any business day during the usual hours of business, any store, market or any other business or place where pinon nuts are sold or offered for sale under the provisions of the Pinon Nut Act in this state."

Section 3

Section 3. Section 25-10-4 NMSA 1978 (being Laws 1987, Chapter 43, Section 4) is amended to read:

"25-10-4. GENETIC RESEARCH PROGRAM INITIATED.--New Mexico state university shall:

A. devote an appropriate portion of its funding for the purpose of initiating a program of genetic research and procedures for developing a seed source for faster growing pinon trees suitable to New Mexico's climate;

B. study methods to prevent and control diseases that threaten the pinon trees in this state;

C. conduct and publish a nutritional analysis of pinon nuts;

D. research and recommend storage methods for both shelled and unshelled nuts for periods of up to three years;

E. recommend packaging methods for shelled nuts to preserve freshness;

F. conduct a marketing study to define the potential of exploiting the state's present wild-growing pinon nut crop resource both for in-state consumption and for out-of-state export;

G. conduct research in the development of mechanical means for harvesting pinon nuts from wild trees that will not cause damage to the trees or their surroundings and mechanical means for shelling the pinon nuts; and

H. report annually to the legislature regarding the amount of funding it is devoting and expending for the research, development and marketing programs called for in this section, the funding being devoted to and expended for other agricultural, range, forestry and land stewardship programs and the progress being made towards fulfilling the research, development and marketing programs called for in this section."

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. HB 942

CHAPTER 300

RELATING TO HORSE RACING; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. A new section of the Horse Racing Act is enacted to read:

"ADDITIONAL DAILY LICENSE FEE.--An additional daily license fee of five hundred dollars ($500) shall be paid by the applicant for each day of racing. Daily license fees shall be paid pursuant to the provisions of Section 60-1-19 NMSA 1978."

Section 2

Section 2. Section 60-1-12 NMSA 1978 (being Laws 1973, Chapter 323, Section 7) is amended to read:

"60-1-12. STEWARDS--POWERS AND DUTIES--REVIEW.--There shall be three stewards, licensed and employed by the state racing commission, to supervise each horse race meeting. One of the stewards shall be designated the presiding official steward of the race meet. Stewards, other than the presiding official steward, shall be employed subject to the approval of the licensee. All stewards shall be licensed or certified by a nationally recognized horse racing organization. Stewards shall exercise those powers and duties prescribed by the rules and regulations of the commission. Any decision or action of the stewards may be reviewed or reconsidered by the commission."

Section 3

Section 3. Section 60-1-19 NMSA 1978 (being Laws 1933, Chapter 55, Section 11, as amended) is amended to read:

"60-1-19. TIME FOR PAYMENT OF LICENSE FEES AND TAXES.--All license fees and taxes imposed pursuant to the Horse Racing Act shall be paid to the state racing commission at the close of the business day on Thursday of every week during and immediately after any race meeting or season. Failure to make weekly remittances by the licensee shall result in an assessment by the commission against the licensee of a fine of one percent of the amount due weekly."

Section 4

Section 4. Section 60-1-26 NMSA 1978 (being Laws 1987, Chapter 333, Section 3) is amended to read:

"60-1-26. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The state racing commission is terminated on July 1, 1999 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 60, Article 1 NMSA 1978 until July 1, 2000. Effective July 1, 2000, Chapter 60, Article 1 NMSA 1978 is repealed."

Section 5

Section 5. APPROPRIATION.--One hundred eighty-three thousand dollars ($183,000) is appropriated from the general fund to the state racing commission for expenditure in the eighty-second fiscal year for the purpose of employing track stewards. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB949

CHAPTER 301

RELATING TO PROTECTION OF PERSONS UNDER DISABILITY; PROVIDING PROCEDURES AND STANDARDS FOR GUARDIANSHIP AND CONSERVATORSHIP; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 45-5-101 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-101, as amended) is amended to read:

"45-5-101. DEFINITIONS AND USE OF TERMS.--Unless otherwise apparent from the context, in Chapter 45, Article 5 NMSA 1978:

A. "conservator" is as defined in Section 45-1-201 NMSA 1978;

B. "court", for purposes of Sections 45-5-101 through 45-5-502 NMSA 1978, means the district court or the children's or family division of the district court where such jurisdiction is conferred by the Children's Code;

C. "functional impairment" means an impairment that is measured by a person's inability to manage his personal care or the person's inability to manage his estate or financial affairs or both;

D. "guardian" is as defined in Section 45-1-201 NMSA 1978;

E. "guardian ad litem" is as defined in Section 45-1-201 NMSA 1978;

F. "incapacitated person" means any person who demonstrates over time either partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he is unable to manage his personal affairs or he is unable to manage his estate or financial affairs or both;

G. "inability to manage his personal care" means the inability, as evidenced by recent behavior, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene or safety so that physical injury, illness or disease has occurred or is likely to occur in the near future;

H. "inability to manage his estate or financial affairs or both" means gross mismanagement, as evidenced by recent behavior, of one's income and resources or medical inability to manage one's income and resources that has led or is likely in the near future to lead to financial vulnerability;

I. "interested person" means any person who has an interest in the welfare of the person to be protected under this article;

J. "least restrictive form of intervention" means that the guardianship or conservatorship imposed on the incapacitated person or minor ward represents only those limitations necessary to provide the needed care and rehabilitative services, and that the incapacitated person or minor ward shall enjoy the greatest amount of personal freedom and civil liberties;

K. "letters" is as defined in Section 45-1-201 NMSA 1978;

L. "limited conservator" means any person who is qualified to manage the estate and financial affairs of an incapacitated person pursuant to a court appointment in a limited conservatorship;

M. "limited conservatorship" means that an incapacitated person is subject to a conservator's exercise of some, but not all, of the powers enumerated in Sections 45-5-424 and 45-5-425 NMSA 1978;

N. "limited guardian" means any person who is qualified to manage the care, custody and control of an incapacitated person pursuant to a court appointment of a limited guardianship;

O. "limited guardianship" means that an incapacitated person is subject to a guardian's exercise of some but not all of the powers enumerated in Section 45-5-312 NMSA 1978;

P. "minor" is as defined in Section 45-1-201 NMSA 1978;

Q. "minor ward" means a minor for whom a guardian or conservator has been appointed solely because of minority;

R. "protective proceeding" means a conservatorship proceeding under Section 45-5-401 NMSA 1978;

S. "protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made;

T. "qualified health care professional" means a physician, psychologist, nurse practitioner or other health care practitioner whose training and expertise aid in the assessment of functional impairment;

U. "ward" means a person for whom a guardian has been appointed; and

V. "visitor" means a person who is an appointee of the court who has no personal interest in the proceeding and who has been trained or has the expertise to appropriately evaluate the needs of the person who is allegedly incapacitated. A "visitor" may include, but is not limited to, a psychologist, socia worker, developmental incapacity professional, physical and occupational therapist, an educator and a rehabilitation worker."

Section 2

Section 2. Section 45-5-302 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-302) is amended to read:

"45-5-302. VENUE.--Venue for guardianship proceedings for an alleged incapacitated person is in the judicial district where the alleged incapacitated person resides or is present. If the alleged incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the judicial district in which that court sits."

Section 3

Section 3. Section 45-5-303 NMSA 1978 (being Laws 1989, Chapter 252, Section 5) is amended to read:

"45-5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON.--

A. Any interested person may file a petition for the appointment of a person to serve as guardian for an alleged incapacitated person under the Probate Code. The petition shall state the following:

(1) the name, age, address of the alleged incapacitated person for whom the guardian is sought to be appointed;

(2) the nature of the alleged incapacity as it relates to the functional limitations and physical and mental condition of the alleged incapacitated person and the reasons why guardianship is being requested;

(3) if a limited guardianship is sought, the particular limitations requested;

(4) whether a guardian has been appointed or is acting in any state for the alleged incapacitated person;

(5) the name and address of the proposed guardian;

(6) the names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(7) the name and address of the person or institution having the care and custody of the alleged incapacitated person;

(8) the names and addresses of any other incapacitated persons for whom the proposed guardian is acting if the proposed guardian is an individual;

(9) the reasons the appointment of a guardian is sought and the interest of the petitioner in the appointment;

(10) the steps taken to find less restrictive alternatives to the proposed guardianship; and

(11) the qualifications of the proposed guardian.

B. Notice of a petition under this section for the appointment of a guardian and the hearing on the petition shall be given as provided in Section 45-5-309 NMSA 1978.

C. After the filing of a petition, the court shall set a date for hearing on the issues raised by the petition. Unless an alleged incapacitated person already has an attorney of his own choice, the court shall appoint an attorney to represent him. The court-appointed attorney in the proceeding shall have the duties of a guardian ad litem, as set forth in Section 45-5-303.1 NMSA 1978.

D. The person alleged to be incapacitated shall be examined by a qualified health care professional, appointed by the court, who shall submit a report in writing to the court. The report shall:

(1) describe the nature and degree of the alleged incapacitated person's incapacity, if any, and the level of the respondent's intellectual, developmental and social functioning; and

(2) contain observations, with supporting data, regarding the alleged incapacitated person's ability to make health care decisions and manage the activities of daily living.

E. The court shall also appoint a visitor who shall interview the person seeking appointment as guardian and the person alleged to be incapacitated. The visitor shall also visit the present place of abode of the person alleged to be incapacitated and the place where it is proposed he will be detained or reside if the requested appointment is made. The visitor shall evaluate the needs of the person alleged to be incapacitated and shall submit a written report to the court. The report shall include a recommendation regarding the appropriateness of the appointment of the proposed guardian. The report to the court shall also include recommendations regarding:

(1) those aspects of his personal care that the alleged incapacitated person can manage without supervision or assistance;

(2) those aspects of his personal care that the alleged incapacitated person could manage with the supervision or assistance of support services and benefits; and

(3) those aspects of his personal care that the alleged incapacitated person is unable to manage without the supervision of a guardian.

Unless otherwise ordered by the court, the appointment of the visitor terminates and the visitor is discharged from his duties upon entry of the order appointing the guardian and acceptance of the appointment by the guardian.

F. A person alleged to be incapacitated shall be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person or others as determined by the court.

G. The court upon request or its own motion may conduct hearings at the location of the alleged incapacitated person who is unable to be present in court.

H. The rules of evidence shall apply and no hearsay evidence that is not otherwise admissible in a court shall be admitted into evidence except as otherwise provided in this article. There is a legal presumption of capacity, and the burden of proof shall be on the petitioner to prove the allegations set forth in the petition. Such proof must be established by clear and convincing evidence.

I. A record of the proceedings shall be made if requested by the alleged incapacitated person or his attorney or when ordered by the court. Records, reports and evidence submitted to the court or recorded by the court shall be confidential.

J. The issue of whether a guardian shall be appointed for the alleged incapacitated person shall be determined by the court at a closed hearing unless the alleged incapacitated person requests otherwise.

K. Upon request of the petitioner or alleged incapacitated person, the court shall schedule a jury trial."

Section 4

Section 4. Section 45-5-303.1 NMSA 1978 (being Laws 1989, Chapter 252, Section 6) is amended to read:

"45-5-303.1. DUTIES OF GUARDIAN AD LITEM.--

A. The guardian ad litem shall:

(1) interview in person the alleged incapacitated person prior to the hearing;

(2) present the alleged incapacitated person's declared position to the court;

(3) interview the qualified health care professional, the visitor and the proposed guardian;

(4) review both the medical report submitted by the qualified health care professional and the report by the visitor; and

(5) obtain independent medical or psychological assessments, or both, if necessary.

B. Unless otherwise ordered by the court, the duties of the guardian ad litem terminate and the guardian ad litem is discharged from his duties upon entry of the order appointing the guardian and acceptance of the appointment by the guardian."

Section 5

Section 5. Section 45-5-304 NMSA 1978 (being Laws 1989, Chapter 252, Section 7) is amended to read:

"45-5-304. FINDINGS--ORDER OF APPOINTMENT.--

A. The court, at the hearing on the petition for

appointment for a guardian under this chapter, shall:

(1) inquire into the nature and extent of the functional limitations of the alleged incapacitated person; and

(2) ascertain his capacity to care for himself.

B. If it is determined that the alleged incapacitated person possesses the capacity to care for himself, the court shall dismiss the petition.

C. Alternatively, the court may appoint a full guardian as requested in the petition or a limited guardian and confer specific powers of guardianship after finding in the record based on clear and convincing evidence that:

(1) the person for whom a guardian is sought is totally incapacitated or is incapacitated only in specific areas as alleged in the petition;

(2) the guardianship is necessary as a means of providing continuing care, supervision and rehabilitation of the incapacitated person;

(3) there are no available alternative resources that are suitable with respect to the alleged incapacitated person's welfare, safety and rehabilitation;

(4) the guardianship is appropriate as the least restrictive form of intervention consistent with the preservation of the civil rights and liberties of the alleged incapacitated person; and

(5) the proposed guardian is both qualified and suitable and is willing to serve.

D. The court may enter any other appropriate order consistent with the findings of this section.

E. A copy of the order appointing the guardian shall be furnished to the incapacitated person and his counsel.

F. The order shall contain the name and address of the guardian as well as notice of the incapacitated person's right to appeal the guardianship appointment and of his right to seek alteration or termination of the guardianship at any time."

Section 6

Section 6. Section 45-5-307 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-307, as amended) is amended to read:

"45-5-307. DEATH, REMOVAL OR RESIGNATION OF GUARDIAN--TERMINATION OF GUARDIANSHIP.--

A. On the petition of the incapacitated person or any person interested in his welfare and upon notice and hearing, the court may remove a guardian and appoint a successor if it is in the best interest of the incapacitated person.

B. Upon death, removal or resignation of a guardian, the court may appoint another guardian or make any other order that may be appropriate. If a successor guardian is appointed, he succeeds to the title and powers of his predecessor.

C. The incapacitated person or any person interested in his welfare may petition for an order that he is no longer incapacitated and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court may be adjudged guilty of contempt of court.

D. Unless waived by the court upon the filing of a petition to terminate a guardianship for reasons other than the death of the incapacitated person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian, as set forth in Section 45-3-303 NMSA1978."

Section 7

Section 7. Section 45-5-309 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-309, as amended) is amended to read:

"45-5-309. NOTICES IN GUARDIANSHIP PROCEEDINGS.--

A. In a proceeding for the appointment or removal of a guardian of an incapacitated person, other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing and a copy of the petition and any interim orders that may have been entered shall be given to each of the following:

(1) the person alleged to be incapacitated; and

(2) his spouse, parents and adult children, or if there are no adult children, at least one of his closest adult relatives if any can be found.

Notice of hearing shall be given to any person who is serving as the guardian or conservator of the person to be protected or who has primary responsibility for his care.

B. Notice shall be served personally on the alleged incapacitated person and his spouse if they can be found within New Mexico. Notice to an out-of-state spouse, the parents and to all other persons, except the alleged incapacitated person, shall be given as provided in Section 45-1-401 NMSA 1978.

C. At least fourteen days' notice shall be given before the hearing takes place. The notice shall be in plain language and large type and shall include the following information and shall be substantially in the following form:

"NOTICE

TO: (name and address of person receiving notice)

On (date of hearing) at (time of hearing) in (place of hearing) at (city), New Mexico, the (name and address of court) will hold a hearing to determine whether a guardian should be appointed for (name of alleged incapacitated person). The purpose of this proceeding is to protect (name of alleged incapacitated person). A copy of the petition requesting appointment of a guardian is attached to this notice.

At the hearing the court will determine whether (name of alleged incapacitated person) is an incapacitated person under New Mexico law.

If the court finds that (name of alleged incapacitated person) is incapacitated, the court at the hearing shall also consider whether (name of proposed guardian, if any) should be appointed as guardian of (name of alleged incapacitated person). The court may, in its discretion, appoint some other qualified person as guardian. The court may

also, in its discretion, limit the powers and duties of the guardian to allow (name of alleged incapacitated person) to retain control over certain activities.

(Name of alleged incapacitated person) shall attend the hearing and be represented by an attorney. The petition may be heard and determined in the absence of (name of alleged incapacitated person) if the court determines that the presence of (name of alleged incapacitated person) is not possible. If (name of alleged incapacitated person) attends the hearing and is not represented by an attorney, the court must appoint an attorney to represent the alleged incapacitated person.

The court may, on its own motion or on request of any interested person, postpone the hearing to another date and time.

_____

(signature of petitioner)"."

Section 8

Section 8. Section 45-5-310 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-310, as amended) is amended to read:

"45-5-310. TEMPORARY GUARDIANS.--

A. When a petition for guardianship has been filed, but adherence to the procedures set out in this section would cause immediate and irreparable harm to the alleged incapacitated person's physical health, the court may appoint a temporary guardian prior to the final hearing and decision on the petition, subject to the requirements of this section.

B. Upon motion of the petitioner, the court shall schedule a hearing on the appointment of a temporary guardian for the earliest possible date, appoint counsel for the alleged incapacitated person and give notice as provided in Section 45-5-309 NMSA 1978. Upon a finding that serious and irreparable harm to the alleged incapacitated person's health would result during the pendency of petition, the court shall appoint a temporary guardian and shall specify the temporary guardian's powers in order to prevent serious and irreparable harm to the alleged incapacitated person. The duration of the temporary guardianship shall not exceed sixty days, except that upon order of the court, the temporary guardianship may be extended for not more than thirty days.

C. A temporary guardian may be appointed without notice to the alleged incapacitated person and his attorney only if it clearly appears from specific facts shown by affidavit or sworn testimony that immediate and irreparable harm will result to the alleged incapacitated person before a hearing on the appointment of a temporary guardian can be held. The alleged incapacitated person shall be notified within twenty-four hours of the appointment of a temporary guardian by the petitioner as provided in Subsection C of Section 45-5-309 NMSA 1978. On two days' notice to the party who

obtained the appointment of a temporary guardian without notice, or on such shorter notice to that party as the court may prescribe, the alleged incapacitated person or his counsel may appear and move dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

D. A temporary guardian is entitled to the care and custody of the alleged incapacitated person, and the authority of any permanent guardian previously appointed by the court is suspended as to those specific matters granted to the temporary guardian by the court. A temporary guardian may be removed by the court at any time. A temporary guardian shall make any report the court requires. In all other respects, the provisions of the Probate Code concerning guardians apply to temporary guardians.

E. Appointment of a temporary guardian shall have the effect of limiting the legal rights of the individual as specified in the court order. Appointment of a temporary guardian shall not be evidence of incapacity."

Section 9

Section 9. Section 45-5-311 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-311, as amended) is amended to read:

"45-5-311. WHO MAY BE APPOINTED GUARDIAN--PRIORITIES.--

A. Any person deemed to be qualified by the court may be appointed guardian of an incapacitated person, except that no individual who operates or is an employee of a boarding home, residential care home, nursing home, group home or other similar facility in which the incapacitated person resides may serve as guardian for the incapacitated person, except an employee may serve in such capacity when related by affinity or consanguinity.

B. Persons who are not disqualified have priority for appointment as guardian in the following order:

(1) a guardian or other like fiduciary appointed by the appropriate court of any other jurisdiction;

(2) any person previously nominated to serve as guardian in a writing signed by the incapacitated person prior to his incapacity;

(3) the spouse of the incapacitated person;

(4) an adult child of the incapacitated person;

(5) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(6) any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition;

(7) a person nominated by the person who is caring for the incapacitated person or paying benefits to him; and

(8) any other person.

C. With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having a lower priority under this section and shall take into consideration:

(1) the preference of the incapacitated person;

(2) the geographic location of the proposed guardian;

(3) the relationship of the proposed guardian to the incapacitated person;

(4) the ability of the proposed guardian to carry out the powers and duties of the guardianship; and

(5) potential financial conflicts of interest between the incapacitated person and proposed guardian."

Section 10

Section 10. Section 45-5-312 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-312, as amended) is amended to read:

"45-5-312. GENERAL POWERS AND DUTIES OF THE LIMITED GUARDIAN AND GUARDIAN.--

A. If the court enters judgment pursuant to Subsection C of Section 45-5-304 NMSA 1978, it shall appoint a limited guardian if it determines that the incapacitated person is able to manage some but not all aspects of his personal care. The court shall specify those powers that the limited guardian shall have and may further restrict each power so as to permit the incapacitated person to care for himself commensurate with his ability to do so. A person for whom a limited guardian has been appointed retains all legal and civil rights except those that have been specifically granted to the limited guardian by the court. The limited guardian shall exercise his supervisory powers over the incapacitated person in a manner that is the least restrictive form of intervention consistent with the order of the court.

B. A guardian of an incapacitated person has the same powers, rights and duties respecting the incapacitated person that a parent has respecting his unemancipated minor child, except that a guardian is not legally obligated to provide from his own funds for the incapacitated person and is not liable to third persons for acts of the incapacitated person solely by reason of the guardianship. In particular and without qualifying the foregoing, a guardian or his replacement has the following powers and duties, except as modified by order of the court:

(1) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the incapacitated person, a guardian is entitled to custody of the incapacitated person and may establish the incapacitated person's place of abode within or without New Mexico;

(2) if entitled to custody of the incapacitated person, a guardian shall make provision for the care, comfort and maintenance of the incapacitated person and, whenever appropriate, arrange for his training and education. He shall take reasonable care of the incapacitated person's clothing, furniture, vehicles and other personal effects and commence conservatorship proceedings if other property of the incapacitated person is in need of protection;

(3) a guardian may consent or withhold consent that may be necessary to enable the incapacitated person to receive or refuse medical or other professional care, counsel, treatment or service. That decision shall be made in accordance with the values of the incapacitated person, if known, or the best interests of the incapacitated person if the values are not known;

(4) if no conservator for the estate of the incapacitated person has been appointed, the guardian may institute proceedings to compel any person under a duty to support the incapacitated person or to pay sums for the welfare of the incapacitated person;

(5) if the incapacitated person is certified as terminally ill or in an irreversible coma under the procedures described in Section 24-7-5 NMSA 1978, a guardian may consent to the physician removing or withholding maintenance medical treatment, as defined in Section 24-7-2 NMSA 1978, if the guardian concludes that the incapacitated person, if competent, would have chosen the termination of that reatment; and

(6) the guardian shall exercise his supervisory powers over the incapacitated person in a manner that is least restrictive of his personal freedom and consistent with the need for supervision.

C. Any guardian of an incapacitated person for whom a conservator also has been appointed shall control the care and custody of the incapacitated person and is entitled to receive reasonable sums for his services and for room and board furnished to the incapacitated person. The guardian may request the conservator to expend the

incapacitated person's estate by payment to third persons or institutions for the incapacitated person's care and maintenance."

Section 11

Section 11. Section 45-5-314 NMSA 1978 (being Laws 1989, Chapter 252, Section 14) is amended to read:

"45-5-314. ANNUAL REPORT.--

A. The guardian of an incapacitated person shall file an annual report with the appointing court within thirty days of the anniversary date of the guardian's appointment. A copy of the report shall also be submitted to the district judge who appointed the guardian or his successor, to the incapacitated person and to his conservator, if any. The report shall include information concerning the progress and condition of the incapacitated person, including but not limited to his health, medical and dental care, residence, education, employment and habitation; a report on the manner in which the guardian carried out his powers and fulfilled his duties; and the guardian's opinion regarding the continued need for guardianship. The report shall be substantially in the following form:

"IN THE DISTRICT COURT

_____ COUNTY, STATE OF NEW MEXICO

In the matter of the) No. _____

Guardianship of)

_____)
(Enter Name of Incapacitated Person))

An Incapacitated Person.)

GUARDIAN'S REPORT

Pursuant to Section 45-5-314 NMSA 1978, the undersigned duly appointed, qualified and acting guardian of the above-mentioned incapacitated person reports to the court as follows:

1. My name is: _____
2. My address and telephone number are:_____
_____
_____

3. The name, if applicable, and address of the place where the incapacitated

person now resides
are:_____
_____
_____

4. A description of the incapacitated person's place of residence and of programs, activities or services in which the incapacitated person is involved is as follows:_____
_____
_____

5. The name of the person primarily responsible for the care of the incapacitated person at such person's place of residence
is:_____

6. The name and address of any hospital or other institution where the incapacitated person is now admitted on a temporary basis
are:_____
_____

7. A brief description of the incapacitated person's physical condition
is:_____

8. A brief description of the incapacitated person's mental condition is:
_____

9. A brief description of contracts made on behalf of the incapacitated person during the past year
is:_____
_____

10. A brief description of major decisions made on the incapacitated person's behalf during the past year
is:_____
_____ 11. The reasons, if any, why the guardianship should continue are:_____ Signature of Guardian:
_____

Date: _____".

B. Any guardian may rely on a qualified health care professional's current written report to provide descriptions of the physical and mental conditions required in items 7, 8 and 11 of the annual report as specified in Subsection A of this section.

C. The guardian may be fined five dollars ($5.00) per day for an overdue annual report. The fine shall be used to fund the costs of visitors, counsel and functional assessments utilized in conservatorship and guardianship proceedings pursuant to the Probate Code.

D. The court shall not waive the requirement of an annual report under any circumstance, but may grant an extension of time not to exceed sixty days. The court may require the filing of more than one report annually."

Section 12

Section 12. Section 45-5-401 NMSA 1978 (being Laws 1975p, Chapter 257, Section 5-401, as amended) is amended to read:

"45-5-401. CONSERVATORSHIP PROCEEDINGS.--Upon petition and after notice and hearing in accordance with the provisions of the Probate Code, the court may appoint a conservator as follows:

A. appointment of a conservator may be made in relation to the estate and financial affairs of a minor if the court determines that:

(1) a minor owns property that requires management or protection that cannot otherwise be provided;

(2) a minor has or may have financial affairs that may be jeopardized or prevented by his minority; or

(3) funds are needed for a minor's support and education and that protection is necessary or desirable to obtain or provide funds; and

B. appointment of a conservator may be made in relation to the estate and financial affairs of a person for reasons other than minority if the court finds that the person has property that may be wasted or dissipated unless proper management is provided; that funds are needed for the support, care and welfare of the person or those entitled to be supported by him; that protection is necessary or desirable to obtain or provide funds; and that:

(1) the person is incapacitated; or

(2) the person is unable to manage his estate and financial affairs effectively for reasons such as confinement, detention by a foreign power or disappearance."

Section 13

Section 13. Section 45-5-403 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-403) is amended to read:

"45-5-403. VENUE.--Venue for conservatorship proceedings is:

A. in the judicial district where the person to be protected resides or is present; or

B. if the person to be protected does not reside in New Mexico, in any judicial district in New Mexico where he has property. If the person to be protected is admitted to an institution pursuant to the order of a court of competent jurisdiction, venue is also in the judicial district in which that court sits."

Section 14

Section 14. Section 45-5-404.1 NMSA 1978 (being Laws 1989, Chapter 252, Section 18) is amended to read:

"45-5-404.1. DUTIES OF GUARDIAN AD LITEM.--

A. The guardian ad litem shall:

(1) interview the person to be protected in person prior to the hearing;

(2) present the position of the person to be protected to the court;

(3) interview the qualified health care professional, the visitor, the proposed conservator and any other person who may have relevant information concerning the person to be protected;

(4) review both the medical report submitted by the qualified health care professional and the report by the visitor; and

(5) obtain independent medical or psychological assessments, or both, if necessary.

B. Unless otherwise ordered by the court, the duties of the guardian ad litem terminate and the guardian ad litem is discharged from his duties upon entry of the order appointing the conservator and acceptance of the appointment by the conservator."

Section 15

Section 15. Section 45-5-405 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-405, as amended) is amended to read:

"45-5-405. NOTICE IN CONSERVATORSHIP PROCEEDINGS.--

A. In a proceeding for the appointment or removal of a conservator of an incapacitated person or a person to be protected, other than the appointment of a temporary conservator or the temporary suspension of a conservator, notice of hearing and a copy of the petition and any interim orders that may have been entered shall be given to each of the following:

(1) the person to be protected; and

(2) his spouse, parents and adult children, or if there are no adult children, at least one of his closest adult relatives if any can be found.

Notice of hearing shall be given to any person who is serving as the guardian or conservator of the person to be protected or who has primary responsibility for his care.

B. Notice shall be served personally on the person to be protected and his spouse if the spouse can be found within New Mexico. Notice to an out-of-state spouse, parent and all other persons, except the person to be protected, shall be given as provided in Section 45-1-401 NMSA 1978.

C. At least fourteen days' notice shall be given before the hearing takes place. The notice should be in plain language and large type and shall include the following information and shall be substantially in the following form:

"NOTICE

TO: (name and address of person receiving notice)

On (date of hearing) at (time of hearing) in (place of hearing) at (city), New Mexico, the (name and address of court) will hold a hearing to determine whether a conservator should be appointed for (name of the person to be protected). The purpose of this proceeding is to appoint a conservator. A copy of the petition requesting appointment of a conservator is attached to this notice.

At the hearing, the court will determine whether (name of person to be protected) needs to be protected by a conservator under New Mexico law.

If the court finds that (name of the person to be protected) is in need of a conservator, the court at the hearing shall also consider whether (name of proposed conservator, if any) should be appointed as conservator of (name of person to be protected). The court may, in its discretion, appoint some other qualified person as conservator. The court may also, in its discretion, limit the powers and duties of the conservator to allow (name of person to be protected) to retain control over certain activities.

(Name of person to be protected) shall attend the hearing and be represented by an attorney. The petition may be heard and determined in the absence of (name of person to be protected) if the court determines that the presence of (name of person to be protected) is not required. If (name of person to be protected) attends the hearing and is not represented by an attorney, the court shall appoint an attorney to represent the person to be protected.

_____

(signature of petitioner)".

D. Notice of a petition for appointment of a conservator and of any subsequent hearing shall be given to any interested person who has filed a request for notice under Section 45-5-406 NMSA 1978 and to such other persons as the court may

direct. Except as otherwise provided in Subsection A of this section, notice shall be given in accordance with Section 45-1-401 NMSA 1978."

Section 16

Section 16. Section 45-5-406 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-406) is amended to read:

"45-5-406. PROTECTIVE PROCEEDINGS--REQUEST FOR NOTICE--INTERESTED PERSON.--

A. Any interested person who desires to be notified before any order is made in a protective proceeding may file with the clerk of the court a request for notice. The clerk shall mail a copy of the demand to the petitioner or the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing.

B. An interested person in protective proceedings includes any governmental agency paying or planning to pay benefits to the person to be protected."

Section 17

Section 17. Section 45-5-407 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-407, as amended) is amended to read:

"45-5-407. PROCEDURE FOR COURT APPOINTMENT OF A CONSERVATOR.--

A. Upon receipt of a petition for appointment of a conservator or other protective order because of minority, the court shall set a date for hearing on the matters alleged in the petition. If at any time in the proceeding the court finds the minor is or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen years of age or older. An attorney appointed by the court to represent a minor shall represent and protect the interests of the minor.

B. Upon receipt of a petition for appointment of a conservator for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected is already represented by an attorney of his own choice, the court shall appoint an attorney to represent him in the proceeding. The court-appointed attorney shall have the duties of a guardian ad litem as set forth in Section 45-5-404.1 NMSA 1978.

C. If the petition is for the appointment of a conservator for an incapacitated person, the person to be protected shall be examined by a qualified health

care professional appointed by the court who shall submit a report in writing to the court. The report shall:

(1) describe the nature and degree of the person's incapacity, if any, and the level of the intellectual, developmental and social functioning of the person to be protected; and

(2) contain observations, with supporting data, regardingthe ability of the person to be protected to manage his estate or financial affairs.

D. The court shall also appoint a visitor who shall interview the person seeking appointment as conservator and the person to be protected. The visitor shall also visit the present place of residence of the person to be protected. The visitor shall evaluate the needs of the person to be protected and shall submit a written report to the court. The report shall include a recommendation regarding the appropriateness of the appointment of the proposed conservator. The report shall also include recommendations regarding:

(1) those aspects of his financial affairs that the person to be protected can manage without supervision or assistance;

(2) those aspects of his financial affairs that the person to be protected could manage with the supervision or assistance of support services and benefits; and

(3) those aspects of his financial affairs that the person to be protected is unable to manage even with the supervision or assistance of support services and benefits.

Unless otherwise ordered by the court, the appointment of the visitor terminates and the visitor is discharged from his duties upon entry of the order appointing the conservator and acceptance of the appointment by the conservator.

E. The person to be protected shall be present at the hearing on the issues raised by the petition and any response to the petition, unless the court determines it is not in the best interest of the person for whom a conservator is sought to be present because of a threat to the health or safety of the person for whom a conservator is sought or others as determined by the court. The court upon request or its own motion may conduct hearings at the location of the person to be protected if he is unable to be present in court.

F. The person to be protected shall not be permitted by the court to consent to the appointment of a conservator.

G. The court, at the hearing on the petition for appointment of conservator, shall:

(1) inquire into the nature and extent of the functional limitations of the person to be protected; and

(2) ascertain his capacity to manage his financial affairs.

H. If it is determined that the person to be protected possesses the capacity to manage his estate or financial affairs, or both, the court shall dismiss the petition.

I. Alternatively, the court may appoint a full conservator, as requested in the petition, or a limited conservator and confer specific powers of conservatorship after finding in the record based on clear and convincing evidence that:

(1) the person to be protected is totally incapacitated or is incapacitated only in specific areas as alleged in the petition;

(2) the conservatorship is necessary as a means of effectively managing the estate or financial affairs, or both, of the person to be protected;

(3) there are not available alternative resources that enable the effective management of the estate and financial affairs of the person to be protected;

(4) the conservatorship is appropriate as the least restrictive form of intervention consistent with the preservation of the property of the to be protected; and

(5) the proposed conservator is both qualified and suitable and is willing to serve.

J. After hearing, upon finding that a basis for the appointment of a conservator has been established, the court shall make an appointment of a conservator. The court shall appoint a limited conservator if it determines that the incapacitated person is able to manage some but not all aspects of his estate and financial affairs. The court shall specify those powers that the limited conservator shall have and may further restrict each power so as to permit the incapacitated person to care for his estate and financial affairs commensurate with his ability to do so.

K. A person for whom a conservator has been appointed retains all legal and civil rights except those that have been specifically granted to the conservator by the court. The conservator shall exercise his supervisory powers over the estate and financial affairs of the incapacitated person in a manner that is the least restrictive form of intervention consistent with the order of the court.

L. The rules of evidence shall apply and no hearsay evidence that is not otherwise admissible in a court shall be admitted into evidence except as otherwise provided in the Probate Code.

M. A record of the proceedings shall be made if requested by the person to be protected, his attorney or when ordered by the court. Records, reports and evidence submitted to the court or recorded by the court shall be confidential.

N. The issue of whether a conservator shall be appointed shall be determined by the court at a closed hearing unless the person to be protected requests otherwise.

O. Upon request of the petitioner or person to be protected, the court shall schedule a jury trial.

P. Upon entry of an order appointing a conservator, a copy of the order shall be furnished to the person for whom the conservator was appointed and that person's counsel. The order shall contain the name and address of the conservator as well as notice to the person for whom the conservator was appointed of that person's right to appeal the appointment and of that person's right to seek alteration or termination of the conservatorship at any time."

Section 18

Section 18. Section 45-5-408 NMSA 1978 (being Laws 1989, Chapter 252, Section 21) is amended to read:

"45-5-408. TEMPORARY CONSERVATORS.--

A. When a petition for appointment of a conservator has been filed, but adherence to the procedures set out in this section would cause serious, immediate and irreparable harm to the estate or financial interests, or both, of the person to be protected, the court may appoint a temporary conservator prior to the final hearing and decision on the petition, subject to the requirements of this section.

B. Upon motion of the petitioner, the court shall schedule a hearing on the appointment of a temporary conservator for the earliest possible date, appoint counsel for the person to be protected and give notice as provided in Section 45-5-405 NMSA 1978. Upon a finding that serious, immediate and irreparable harm to the estate and financial interests of the person to be protected would result during the pendency of petition, the court shall appoint a temporary conservator and shall specify the temporary conservator's powers in order to prevent serious, immediate and irreparable harm to the property of the person to be protected. The duration of the temporary conservatorship shall not exceed sixty days, except that upon order of the court, the temporary conservatorship may be extended for no more than thirty days.

C. A temporary conservator may be appointed without notice to the person to be protected only if it clearly appears from specific facts shown by affidavit or sworn testimony that serious, immediate and irreparable harm will result to the estate or financial interests of the person to be protected before a hearing on the appointment of

a temporary conservator can be held. The person to be protected shall be notified in a writing by the petitioner within twenty-four hours of the appointment of a temporary conservator in substantial accordance with the provisions of Subsection B of Section 45-5-405 NMSA 1978. On two days' notice to the party who obtained the appointment of a temporary conservator without notice or on such shorter notice to that party as the court may prescribe, the person to be protected may appear and move for dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

D. Appointment of a temporary conservator shall have the effect of limiting the legal rights of the person to be protected. Appointment of a temporary conservator shall not be evidence of incapacity."

Section 19

Section 19. Section 45-5-409 NMSA 1978 (being Laws 1989, Chapter 252, Section 22) is amended to read:

"45-5-409. ANNUAL REPORT AND ACCOUNT.--

A. Every conservator shall file an annual report and account with the appointing court within thirty days of the anniversary date of the conservator's appointment, upon the conservator's resignation or removal or upon termination of the conservatorship. A copy of the annual report and account shall also be mailed to the district judge who appointed the conservator or his successor, to the incapacitated person and to his guardian, if any. The report shall include information concerning the progress and condition of the person under conservatorship, a report on the manner in which the conservator carried out his powers and fulfilled his duties and the conservator's opinion regarding the continued need for conservatorship. The report may be substantially in the following form:

"IN THE DISTRICT COURT

_____ COUNTY, STATE OF NEW MEXICO

In the matter of the) No. _____

Conservatorship of)

_____)
(Enter Name of Person Under Conservatorship)

CONSERVATOR'S REPORT AND ACCOUNT

Pursuant to Section 45-5-47 NMSA 1978, the undersigned duly appointed, qualified and acting conservator of the above-mentioned protected person reports to the court as follows:

1. My name is:
_____

2. My address and telephone number are:
_____

3. The name, if applicable, and address of the place where the person under conservatorship now resides
are:_____
_____

4. The name of the person primarily responsible for the care of the person under conservatorship at such person's place of residence is:
_____
_

5. The name and address of any hospital or other institution where the person under conservatorship is now admitted on a temporary basis are:
_____

6. A brief description of the physical condition of the person under conservatorship is: _____
_____
_____

7. A brief description of the mental condition of the person under conservatorship is: _____
_____
_____

8. A description of contracts entered into on behalf of the person under conservatorship during the past year:
_____
_____

9. Describe all financial decisions made during the past year including all receipts and disbursements, any sale, lease or mortgage of estate assets and any investment made on behalf of the person under conservatorship:
_____
_____

10. The reasons, if any, why the conservatorship should continue are: _____

_____

_____

Signature of Conservator: _____

Date: _____".

B. Any conservator may rely on a qualified health care professional's current written report to provide descriptions of the physical and mental conditions required in items 6, 7 and 10 of the annual report and account as specified in Subsection A of this section.

C. The court shall not waive the requirement of an annual report and account under any circumstance, but may grant an extension of time. The court may require the filing of more than one report and account annually.

D. The conservator may be fined five dollars ($5.00) per day for an overdue annual report and account. The fine shall be used to fund the costs of visitors, counsel and functional assessments utilized in conservatorship and guardianship proceedings pursuant to the Probate Code.

E. In connection with any account, the court may require a conservator to submit to a physical check of the property in his control, to be made in any manner the court may order.

F. In any case in which property consists in whole or in part of benefits paid by the veterans administration to the conservator or his predecessor for the benefit of the protected person, the veterans administration office that has jurisdiction over the area is entitled to a copy of any report and account filed under Chapter 45, Article 5 NMSA 1978."

Section 20

Section 20. Section 45-5-410 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-410, as amended) is amended to read:

"45-5-410. WHO MAY BE APPOINTED CONSERVATOR--PRIORITIES.--

A. The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the incapacitated person. The following are entitled to consideration for appointment in the order listed:

(1) a conservator, guardian of property or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the incapacitated person resides;

(2) any person previously nominated to serve as conservator in a writing signed by the incapacitated person prior to his incapacity;

(3) an individual or corporation nominated by the incapacitated person if he is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(4) the spouse of the incapacitated person;

(5) an adult child of the incapacitated person;

(6) a parent of the incapacitated person or a person nominated by the will of a deceased parent;

(7) any relative of the incapacitated person with whom he has resided for more than six months prior to the filing of the petition;

(8) a person nominated by the person who is caring for the incapacitated person or paying benefits to him; and

(9) any other person.

B. A person under the priorities of Paragraph (1), (2), (4), (5), (6) or (7) of Subsection A of this section may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court shall select the one who is best qualified of those willing to serve.

C. The court, for good cause, may pass over a person having priority and appoint a person having lesser priority under this section and shall take into consideration:

(1) the preference of the incapacitated person;

(2) geographic location of the proposed conservator;

(3) the relationship of the proposed conservator to the incapacitated person;

(4) the ability of the proposed conservator to carry out the powers and duties of the conservatorship; and

(5) potential financial conflicts of interest between the incapacitated person and the proposed conservator."

Section 21

Section 21. Section 45-5-415 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-415, as amended) is amended to read:

"45-5-415. DEATH, RESIGNATION OR REMOVAL OF CONSERVATOR--TERMINATION OF CONSERVATORSHIP.--

A. On the petition of the incapacitated person or any person interested in his welfare, the court may remove a conservator for good cause, upon notice and hearing. A temporary conservator may be appointed pursuant to Section 45-5-408 NMSA 1978 pending a final hearing.

B. Upon death, resignation or removal of a conservator, the court may appoint another conservator or make any other order that may be appropriate. If a successor conservator is appointed, he succeeds to the title and powers of his predecessor.

C. The incapacitated person or any person interested in his welfare may petition for an order that he is no longer in need of a conservator and for removal or resignation of the conservator. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court may be adjudged guilty of contempt of court.

D. Upon the filing of a petition to terminate a conservatorship for reasons other than termination of minority or the death of the person under conservatorship, the court, shall follow the same procedures as set forth in Section 45-5-407 NMSA 1978."

Section 22

Section 22. Section 45-5-501 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-501, as amended) is amended to read:

"45-5-501. WHEN POWER OF ATTORNEY IS NOT AFFECTED BY INCAPACITY.--

A. Whenever a principal designates another person as his attorney-in-fact or agent by a power of attorney in writing and the writing contains the words, "This power of attorney shall not be affected by incapacity of the principal", "This power of attorney shall become effective upon the incapacity of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his incapacity, the authority of the attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later incapacity of the principal or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney-in-fact or agent pursuant to the power during any period of incapacity or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representatives as if the principal were alive and not incapacitated.

B. To the extent of his statutory or court-directed powers, the guardian has the same powers with regard to a power of attorney that the principal would have had if he were not incapacitated. Unless the court directs otherwise, the attorney-in-fact or agent, during the continuance of the appointment, shall report to the guardian as well as the principal.

C. To the extent of his statutory or court-directed powers, the conservator has the same powers with regard to a power of attorney that the principal would have had if he were not incapacitated. The attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator regarding the financial affairs of the principal, as well as to the principal.

D. Whenever a principal designates another person as his attorney-in-fact or agent by a power of attorney in writing, the following forms may be used:

"THE POWERS GRANTED BY THIS DOCUMENT ARE

BROAD AND SWEEPING. THIS FORM, THE NEW MEXICO

STATUTORY SHORT FORM UNDER SECTION 45-5-501

NMSA 1978, DOES NOT PROHIBIT THE USE OF ANY OTHER FORM.

POWER OF ATTORNEY

New Mexico Statutory Short Form

I, _____reside in _____,
(Name)

County, New Mexico. I appoint _____ to serve as my attorney(s)-in-fact. (Name(s))

If any attorney-in-fact appointed above is unable to serve, then I appoint_____to serve as successor attorney-in-fact in place of the person who is unable to serve.

This power of attorney shall not be affected by my incapacity but will terminate upon my death unless I have revoked it prior to my death. I intend by this power of attorney to avoid a court-supervised guardianship or conservatorship. Should my attempt be defeated, I ask that my agent be appointed as guardian or conservator of my person or estate.

_____
_____

CHECK AND INITIAL THE FOLLOWING PARAGRAPH ONLY IF YOU WANT YOUR ATTORNEY(S)-IN-FACT TO BE ABLE TO ACT ALONE AND INDEPENDENTLY OF

EACH OTHER. IF YOU DO NOT CHECK AND INITIAL THE FOLLOWING PARAGRAPH AND MORE THAN ONE PERSON IS NAMED TO ACT ON YOUR BEHALF THEN THEY MUST ACT JOINTLY.

_____

( ) _____ initials — If more than one person is appointed to serve as my attorneys-in-fact then they may act severally, alone and independently of each other.

My attorney(s)-in-fact shall have the power to act in my name, place and stead in any way which I myself could do with respect to the following matters to the extent permitted by law:

_____

INITIAL IN THE OPPOSITE BOX EACH AUTHORIZATION WHICH YOU DESIRE TO GIVE TO YOUR ATTORNEY(S)-IN-FACT. YOUR ATTORNEY(S)-IN-FACT SHALL BE AUTHORIZED TO ENGAGE ONLY IN THOSE ACTIVITIES WHICH ARE INITIALED.

_____

1. real estate transactions;..... ( )*
2. stocks and bonds, share and commodity transactions; ( )*
3. chattel and goods transactions;..... ( )
4. banking transactions;..... ( )
5. business operatng transactions;..... ( )
6. insurance transactions;..... ( )
7. estate transactions;..... ( )
8. claims and litigation;..... ( )
9. government benefits;..... ( )
10. records, reports and statements;..... ( )
11. state and federal tax transactions, including any transactions with the Internal Revenue Service;..... ( )
12. decisions regarding lifesaving and life prolonging medical treatment;..... ( )
13. decisions relating to medical treatment, surgical treatment, nursing care, medication, hospitalization, institutionalization in a nursing home or other facility and home health care;..... ( )
14. transfer of property or income as a gift to the principal's spouse for the purpose of qualifying the principal for governmental medical assistance;..... ( )
15. list other matters;..... ( )

_____ ( )

_____ ( )

_____ ( )
16. all of the above powers, including financial and health care decisions;..... ( )

_____ ( )

_____ ( )

_____ ( )

*Specifically identified real estate or stocks and bonds for which my attorney-in-fact is authorized to act follow. If nothing is listed, then the attorney-in-fact is authorized to act with respect to any real estate or stocks and bonds and other securities that I own. A copy of this power of attorney must be recorded in the office of the county clerk where the real estate is located.

_____ ( )

_____ ( )

_____ ( )

_____ ( )

_____ ( )

_____ ( )

_____ ( )

_____ ( )

_____

CHECK AND INITIAL THE FOLLOWING PARAGRAPH IF YOU INTEND FOR THIS POWER OF ATTORNEY TO BECOME EFFECTIVE ONLY IF YOU BECOME INCAPACITATED. YOUR FAILURE TO DO SO WILL MEAN THAT YOUR ATTORNEY(S)-IN-FACT ARE EMPOWERED TO ACT ON YOUR BEHALF FROM THE TIME YOU SIGN THIS DOCUMENT UNTIL YOUR DEATH UNLESS YOU REVOKE THE POWER BEFORE YOUR DEATH.

_____

( ) This power of attorney shall become effective only if I become incapacitated. My
_____ initials

attorney(s)-in-fact shall be entitled to rely on notarized statements from two qualified health care professionals as to my incapacity. By incapacity I mean

that among other things, I am unable to effectively manage my personal care, property or financial affairs.

_____
(Signature)

Dated:_____,19_____

ACKNOWLEDGEMENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me this_____ day of _____, 19_____, by _____ _____.

_____
Notary Public
My Commission Expires:

_____"; and

"THIS AFFIDAVIT IS FOR THE USE OF YOUR

ATTORNEY(S)-IN-FACT IF EVER

YOUR ATTORNEY(S)-IN-FACT ACTS ON YOUR BEHALF

UNDER YOUR WRITTEN POWER OF ATTORNEY.

AFFIDAVIT AS TO POWER OF ATTORNEY BEING IN FULL FORCE

STATE OF NEW MEXICO)
) ss.
COUNTY OF_____)

I/we_____ being duly sworn, state:

1. _____("Principal") of_____ County, New Mexico, signed a written Power of Attorney on _____,

19_____, appointing the undersigned as his/her attorney(s)-in-fact. (A true copy of the power of attorney is attached hereto and incorporated herein.)

2. As attorney(s)-in-fact and under and by virtue of the Power of Attorney, I/we have this date executed the following described instrument:_____.

3. At the time of executing the above described instrument I/we had no actual knowledge or actual notice of revocation or termination of the Power of Attorney by death or otherwise, or notice of any facts indicating the same.

4. I/we represent that the principal is now alive; has not, at any time, revoked or repudiated the power of attorney; and the power of attorney still is in full force and effect.

5. I/we make this affidavit for the purpose of inducing_____ to accept delivery of the above described instrument, as executed by me/us in my/our capacity of

attorney(s)-in-fact for the Principal.

_____, Attorney-in-fact

_____, Attorney-in-fact

Sworn to before me_____this_____day of _____, 19_____.

_____
Notary Public

My commission expires: _____"."

Section 23

Section 23. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"COMPENSATION AND EXPENSES.--If not otherwise compensated for services rendered, any visitor, attorney, qualified health care professional or guardian appointed in a guardianship proceeding is entitled to reasonable compensation from the estate of the incapacitated person."

Section 24

Section 24. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"FOREIGN GUARDIAN--PROOF OF AUTHORITY--BOND--POWERS.--If no local guardian has been appointed or no petition therefor is pending in New Mexico, a foreign guardian may file with the district court in the county in which the incapacitated person resides authenticated copies of his appointment and of any official bond he has given and a statement of his address and telephone number. Thereafter, he may exercise in New Mexico all powers and shall have the duties of a local guardian and may maintain actions and proceedings in New Mexico subject to any conditions imposed upon nonresident parties generally."

Section 25

Section 25. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"PERMISSIBLE COURT ORDERS.--

A. The court shall exercise the authority conferred in Chapter 45, Article 5 NMSA 1978 to encourage the development of maximum self-reliance and independence of a protected person and make protective orders only to the extent necessitated by the protected person's mental and adaptive limitations and other conditions warranting the procedure.

B. The court has the following powers that may be exercised directly or through a conservator in respect to the estate and financial affairs of a protected person:

(1) while a petition for appointment of a conservator or other protective order is pending and after notice and a preliminary hearing, the court may preserve and apply the property of the person to be protected as may be required for the support of the person or his dependents;

(2) after notice and hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and financial affairs of the minor which are or may be necessary for the best interest of the minor and members of the minor's immediate family;

(3) after notice and hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court, for the benefit of the person and members of the person's immediate family, has all the powers over the estate and financial affairs which the person could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to, the power to:

(a) make gifts;

(b) convey or release contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy;

(c) exercise or release powers held by the protected person as trustee, personal representative, custodian for minors, conservator or donee of a power of appointment;

(d) enter into contracts;

(e) create revocable or irrevocable trusts of property of the estate which may extend beyond the disability or life of the person;

(f) exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value;

(g) exercise options of the person to purchase securities or other property;

(h) exercise any right to an elective share in the estate of the person's deceased spouse; and

(i) renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.

C. The court may exercise or direct the exercise of the following powers only if satisfied, after notice and hearing, that it is in the best interest of the protected person, and that the person either is incapable of consenting or has consented to the proposed exercise of power:

(1) to exercise or release powers of appointment of which the protected person is donee;

(2) to renounce or disclaim interests;

(3) to make gifts in trust or otherwise exceeding twenty percent of any year's income of the estate; and

(4) to change beneficiaries under insurance and annuity policies.

D. A determination that a basis for appointment of a conservator or other protective order exists has no effect on the capacity of the protected person."

Section 26

Section 26. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"ROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS AUTHORIZED.--

A. If after notice in accordance with Section 45-5-405 NMSA 1978 to all interested persons, as defined in Section 45-1-201 NMSA 1978, and after hearing, it is established that a basis exists as described in Section 45-5-401 NMSA 1978, for affecting the estate and financial affairs of a person, the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service or care arrangement meeting the foreseeable needs of the person. The court shall appoint a guardian ad litem to represent the interests of the person at the hearing. Protective arrangements and single transactions include:

(1) payment, delivery, deposit or retention of funds or property;

(2) sale, mortgage, lease or other transfer of property;

(3) entry into an annuity contract, a contract for life care, a deposit contract and a contract for training and education; and

(4) addition to or establishment of a trust.

B. When it has been established in a proceeding authorized by this section that a basis exists as described in Section 45-5-401 NMSA 1978 for affecting the estate and financial affairs of a person, the court, without appointing a conservator, may authorize, direct or ratify any contract, trust or other single transaction relating to the protected person's estate and financial affairs if the court finds that the transaction is in the best interests of the protected person.

C. Before approving a transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of the disability, whether the protected person needs the continuing protection of a conservator. The court may appoint one or more persons to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. That person shall have the authority conferred by order of the court, shall serve until discharged by order of the court and shall report to the court of all matters done pursuant to the court's order."

Section 27

Section 27. A new section of Chapter 45, Article 5 NMSA 1978 is enacted to read:

"ENFORCEABILITY OF AN ADVANCE DIRECTIVE EXECUTED IN ANOTHER JURISDICTION.--An advance directive durable power of attorney, living will, right to die statement or similar document that is executed in another state or jurisdiction in compliance with the laws of that state or jurisdiction, or in compliance with the laws of this state, shall be deemed valid and enforceable in this state, to the extent the document is not inconsistent with the public policy of this state."

Section 28

Section 28. REPEAL.--Sections 45-5-419 and 45-5-433 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-419 and Laws 1989, Chapter 252, Section 28, as amended) are repealed.

Section 29

Section 29. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 953

CHAPTER 302

RELATING TO TAXATION; EXTENDING THE PERIOD OF TIME THAT THE COUNTY FIRE PROTECTION EXCISE TAX CAN BE IMPOSED.

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

Section 1

Section 1. Section 7-20A-3 NMSA 1978 (being Laws 1979, Chapter 398, Section 3, as amended) is amended to read:

"7-20A-3. COUNTY FIRE PROTECTION EXCISE TAX--AUTHORITY TO IMPOSE--ORDINANCE REQUIREMENTS.--

A. The majority of the members elected to the governing body may enact an ordinance imposing an excise tax on any person engaging in business in the county area for the privilege of engaging in business. This tax is to be referred to as the "county fire protection excise tax". The rate of the tax shall be one-fourth of one percent or one-eighth of one percent of the gross receipts of the person engaging in business. The tax provided in the County Fire Protection Excise Tax Act shall be imposed for a period not more than ten years from the effective date of the ordinance imposing the tax.

B. The governing body of a county shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for the purpose of financing the operational expenses, ambulance

services or capital outlay costs of independent fire districts or ambulance services provided by the county. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated and shall be used by the county for that purpose.

C. Any ordinance enacted under the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1, whichever date occurs first after the expiration of at least five months from the date the ordinance is approved by the electorate.

D. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county area, voting in the election, vote in favor of imposing the county fire protection excise tax. The governing body shall provide for an election on the question of imposing a county fire protection excise tax within sixty days after the date the ordinance is adopted. Such question may be submitted to the qualified electors and voted upon as a separate question at any special election called for that purpose by the governing body. The election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a county fire protection excise tax fails, the governing body shall not again propose a county fire protection excise tax for a period of one year after the election.

E. Any ordinance repealed under the provisions of the County Fire Protection Excise Tax Act shall be repealed effective on either July 1 or January 1." HB 143

CHAPTER 303

RELATING TO TAXATION; AUTHORIZING IMPOSITION OF A COUNTY CORRECTIONAL FACILITY GROSS RECEIPTS TAX; ESTABLISHING PROCEDURES FOR IMPOSITION AND COLLECTION OF THE TAX; AUTHORIZING ISSUANCE OF REVENUE BONDS; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1

Section 1. SHORT TITLE.--Sections 3 through 14 of this act may be cited as the "County Correctional Facility Gross Receipts Tax Act".

Section 2

Section 2. DEFINITIONS.--As used in the County Correctional Facility Gross Receipts Tax Act:

A. "county" means:

(1) a class A county, the population of which does not exceed one hundred fifty thousand as determined by the 1990 decennial census; or

(2) a class B county with a population of at least fifty-seven thousand but less than sixty thousand according to the 1990 federal decennial census;

B. "county board" means the board of county commissioners of a county;

C. "department" means the taxation and revenue department, the secretary of taxation and revenue, or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

D. "judicial-correctional facility" means a facility for housing and use by judicial and corrections agencies, including housing for persons confined in county corrections facilities; however, none of the facilities are required to be located on the same or contiguous parcels of land;

E. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter;

F. "person" means an individual or any other legal entity;

G. "pledged revenues" means the revenue, net income or net revenues authorized to be pledged to the payment of revenue bonds issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act;

H. "refunding bond" means a refunding revenue bond issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act to refund revenue bonds issued pursuant to the provisions of that act; and

I. "revenue bond" means a county correctional facility gross receipts tax revenue bond.

Section 3

Section 3. COUNTY CORRECTIONAL FACILITY GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE--RATE--ORDINANCE REQUIREMENTS--REFERENDUM.--

A. The majority of the members elected to the county board may enact an ordinance imposing on a county-wide basis an excise tax not to exceed a rate of one-eighth of one percent of the gross receipts of any person engaging in business in the county, including all municipalities within the county; provided that the voters of the county have approved the issuance of general obligation bonds of the county sufficient to pay at least one-half of the costs of the construction and equipping of the new county

judicial-correctional facility for which the county correctional facility gross receipts tax revenue is dedicated. The tax may be referred to as the "county correctional facility gross receipts tax". The county correctional facility gross receipts tax shall be imposed only once for the period necessary for payment of the principal and interest on revenue bonds issued pursuant to the County Correctional Facility Gross Receipts Tax Act, but the period shall not exceed ten years from the effective date of the ordinance imposing the tax.

B. Any ordinance imposing a county correctional facility gross receipts tax pursuant to this section shall:

(1) impose the tax in any number of increments of one-sixteenth of one percent not to exceed an aggregate amount of one-eighth of one percent;

(2) specify that the imposition of the tax will begin on either July 1 or January 1, whichever occurs first after the expiration of at least three months from the date that the department is notified personally or by mail by the county that imposition of the county correctional facility gross receipts tax has been approved by a majority of the registered voters in the county voting on the question; and

(3) dedicate the revenue from the county correctional facility gross receipts tax for the purpose of constructing, purchasing, furnishing, equipping, rehabilitating, expanding or improving a judicial-correctional facility or the grounds of a judicial-correctional facility, including but not limited to acquiring and improving parking lots, landscaping or any combination of the foregoing or to payment of principal and interest on revenue bonds or refunding bonds issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act.

C. An ordinance imposing a county correctional facility gross receipts tax pursuant to this section shall not become effective until approved by a majority of the registered voters in the county voting on the question at an election to be held within sixty days after the date that the ordinance is adopted by the board. If a property tax at a rate necessary to comply with the provisions of Subsection A of this section has not been approved by the voters of the county, the question submitted to the voters shall be the question of imposing a county correctional facility gross receipts tax and a property tax at a rate necessary for the issuance of general obligation bonds of the county sufficient to comply with the provisions of the County Correctional Facility Gross Receipts Tax Act. The question shall be submitted to the voters at any general election or special election called for that purpose by the board. The election upon the question shall be called, held, conducted and canvassed in substantially the same manner as may be provided by law for general elections. If the question of imposing the county correctional facility gross receipts tax and a property tax, if the question includes a property tax, fails, the board shall not again propose imposition of a county correctional facility gross receipts tax for a period of one year after the election.

D. Revenue produced by the imposition of a county correctional facility gross receipts tax that is in excess of the annual principal and interest due on bonds secured by a pledge of the county correctional facility gross receipts taxmay be accumulated in a debt service reserve account until an amount equal to the maximum amount permitted pursuant to the provisions of the United States treasury regulations is accumulated in the debt service reserve account. After the
debt service reserve account requirements have been met, the excess revenue shall be accumulated in an extraordinary mandatory redemption fund and annually used to redeem the bonds prior to their stated maturity date.

E. When all outstanding bonds have been paid, whether from the debt service reserve, the redemption fund or maturity, the ordinance shall be repealed if the county correctional facility gross receipts tax revenue is no longer required for the purposes for which it may be used pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act.

F. The repeal of an ordinance imposing a county correctional facility gross receipts tax shall state that the repeal shall be effective on January 1 or July 1, whichever occurs first following the date the department is notified personally or by mail by the county of the repeal.

Section 4

Section 4. ORDINANCE SHALL CONFORM TO CERTAIN PROVISIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND REQUIREMENTS OF THE DEPARTMENT.--

A. Any ordinance imposing the county correctional facility gross receipts tax shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act then in effect and as it may be amended from time to time.

B. The governing body of any county imposing the county correctional facility gross receipts tax shall adopt the model ordinances furnished to the county by the department.

Section 5

Section 5. COLLECTION BY DEPARTMENT--TRANSFER OF PROCEEDS--DEDUCTIONS.--

A. The department shall collect the county correctional facility gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The department shall remit to each county for which it is collecting a county correctional facility gross receipts tax the amount of the tax collected, less any disbursement for tax credits, refunds and the payment of interest applicable to the county correctional facility gross receipts tax. Transfer of the tax to a county shall be made
within the month following the month in which the tax is collected.

Section 6

Section 6. SPECIFIC EXEMPTIONS.--No county correctional facility gross receipts tax shall be imposed on the gross receipts arising from:

A. the transmission of messages by wire or other means from one point within the county to another point outside the county; or

B. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county.

Section 7

Section 7. REVENUE BONDS--AUTHORITY TO ISSUE--ORDINANCE AUTHORIZING ISSUE--PLEDGE OF REVENUE.--

A. In addition to any other law authorizing a county to issue revenue bonds, a county may issue revenue bonds pursuant to the County Correctional Facility Gross Receipts Tax Act, for the purposes specified in that act. Revenue bonds issued pursuant to the County Correctional Facility Gross Receipts Tax Act may be referred to as "county correctional facility gross receipts tax revenue bonds".

B. A county board, by majority vote, may adopt an ordinance providing for issuance of revenue bonds pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act, the principal and interest of which shall be paid from the revenue derived by the county from the county correctional facility gross receipts tax and any other revenue that the county may dedicate to the payment of the revenue bonds.

C. Revenue bonds or refunding revenue bonds issued as authorized pursuant to the County Correctional Facility Gross Receipts Tax Act are:

(1) not general obligations of the county; and

(2) collectible only from the county correctional facility gross receipts tax and, if authorized, other properly pledged revenues, and each bond shall be payable solely from the properly pledged revenues and the bondholders shall not look to any other county fund for the payment of the interest and principal of the bonds.

Section 8

Section 8. REVENUE BONDS--EXECUTION--NONREPEALABLE--ISSUANCE TIME LIMITATION.--

A. The revenue bonds authorized pursuant to the County Correctional Facility Gross Receipts Tax Act shall be executed by the chairman of the county board and either the county treasurer or the county clerk and may be authenticated by any public or private transfer agent or registrar, or its successor, named or otherwise designated by the governing body. The bonds may be executed as provided under the Uniform Facsimile Signature of Public Officials Act, and the coupons, if any, shall bear the facsimile signature of the county treasurer.

B. Any law that authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to the County Correctional Facility Gross Receipts Tax Act or that affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision for full discharge has been made.

C. Except for the purpose of refunding previous revenue bond issues, no county shall sell revenue bonds payable from pledged revenues after the expiration of two years from the date of the ordinance authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue.

Section 9

Section 9. REVENUE BONDS--PURPOSE OF ISSUE--USE OF PROCEEDS.--

A. Revenue bonds may be issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act for the purposes of constructing, purchasing, furnishing, equipping, rehabilitating, expanding or improving a judicial-correctional facility or the grounds of a judicial-correctional facility, including but not limited to acquiring and improving parking lots, landscaping or any combination of the foregoing.

B. No county shall divert, use or expend any money received from the issuance of bonds for any purpose other than the purpose for which the bonds were issued.

Section 10

Section 10. REVENUE BONDS--TERMS.--Revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the county board in the ordinance;

B. shall be subject to a prior redemption at the county's option at such time or times and upon such terms and conditions without the payment of premiums;

C. may mature at any time or times not exceeding ten years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in such other form as may be determined by the county board;

E. shall be sold for cash at above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act; and

F. may be sold at public or negotiated sale.

Section 11

Section 11. REVENUE BONDS--REFUNDING AUTHORIZATION.--

A. Any county having issued revenue bonds as authorized in the County Correctional Facility Gross Receipts Tax Act may issue refunding revenue bonds pursuant to an ordinance adopted by majority vote of the county board for the purpose of refinancing, paying and discharging all or any part of such outstanding revenue bonds of any one or more or all outstanding issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds or to any facilities relating thereto; or

(4) for any combination of such purposes.

B. To pay the principal and interest on refunding bonds, the county may pledge irrevocably the pledged revenues from the revenue bonds originally issued pursuant to the County Correctional Facility Gross Receipts Tax Act.

C. Bonds for refunding and bonds for any purpose permitted by the County Correctional Facility Gross Receipts Tax Act may be issued separately or issued in combination in one series or more.

Section 12

Section 12. REFUNDING BONDS--ESCROW--DETAIL.--

A. Refunding bonds issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act shall be authorized by ordinance. Any revenue bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the bonds refunded at the time or times provided in Subsection A of this section. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds including any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest on the refunding bonds and the principal of the refunding bonds or both interest and principal as the county may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available to retire the refunded bonds. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest

of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States of America, the par value of which obligatons is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the county shall exercise a prior redemption option. Any purchaser of any refunding bond issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act is in no manner responsible for the application of the proceeds thereof by the county or any of its officers, agents or employees.

D. Refunding bonds may be sold at a public or private sale and may bear such additional terms and provisions as may be determined by the county subject to the limitations in the County Correctional Facility Gross Receipts Tax Act. Refunding bonds are not subject to the provisions of any other statute. HB 144

CHAPTER 304

RELATING TO MOTOR VEHICLES; PROVIDING FOR AN INCREASE IN THE FEES DISTRIBUTED TO A MUNICIPALITY, COUNTY OR FEE AGENT OPERATING A MOTOR VEHICLE FIELD OFFICE.

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

Section 1

Section 1. Section 66-6-23 NMSA 1978 (being Laws 1978, Chapter 35, Section 358, as amended) is amended to read:

"66-6-23. DISPOSITION OF FEES.--

A. After the necessary disbursements for refunds and other purposes have been made, the money remaining, except for remittances received within the previous two months that are unidentified as to source or disposition, shall be distributed as follows:

(1) to each municipality, county or fee agent operating a motor vehicle field office, an amount equal to six dollars ($6.00) per driver's license and three dollars ($3.00) per identification card, registration or title transaction performed;

(2) to each municipality or county, other than a class A county or a municipality with a population in excess of two hundred thousand within a class A county, operating a motor vehicle field office, an amount equal to fifty cents ($.50) for each administrative service fee remitted by that county or municipality to the department under the provisions of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to one-half of each fee received from motorcycle endorsements; and

(b) the remainder of each driver's license fee collected by the department employees from an applicant to whom a license is granted after deducting from the driver's license fee the amount of the distribution under Paragraph (1) of this subsection with respect to that collected driver's license fee;

(4) to the general fund, the amount of the fees provided for in Subsection A of Section 66-5-408 NMSA 1978; and

(5) to the division:

(a) an amount equal to one-half of each fee received from motorcycle endorsements; and

(b) an amount equal to the fees provided for in Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978.

B. The balance, exclusive of unidentified remittances, after having been reduced by the distributions required by Subsection A of this section, shall be further reduced by a distribution of forty-three percent of the balance to the state road fund, and the remainder of the balance shall be transferred or distributed by the state treasurer on or before the last day of the month next after its receipt, as follows:

(1) forty-one and three-tenths percent shall be distributed to the state road fund;

(2) seventeen and six-tenths percent shall be transferred to each county in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties;

(3) seventeen and six-tenths percent shall be transferred to the counties, each county receiving an amount equal to the proportion, determined by the secretary of highway and transportation in accordance with Subsection E of this section, that the mileage of public roads maintained by the county is to the total mileage of public roads maintained by all counties of the state. Amounts distributed to each county

in accordance with this paragraph shall be credited to the respective county road fund and be used for the improvement and maintenance of the public roads in the county and to pay for the acquisition of rights-of-way and material pits. For this purpose, the board of county commissioners of each of the respective counties shall certify by April 1 of each year to the secretary of highway and transportation the total mileage as of April 1 of that year; provided that in their report the boards of county commissioners shall identify each of the public roads maintained by them, by name, route and location. By agreement and in cooperation with the state highway and transportation department, the boards of county commissioners of the various counties may use or designate any of the funds provided in this paragraph for any federal aid program;

(4) nine and four-tenths percent shall be allocated among the counties in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the sum of net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, determined for the incorporated municipality is to the sum of net taxable value plus assessed value determined for all incorporated municipalities within the county. Amounts transferred to incorporated municipalities under the provisions of this paragraph shall be used for the construction, maintenance and repair of streets within the municipality and for payment of paving assessments against property owned by federal, county or municipal governments. In any county in which there are no incorporated municipalities, the amount allocated under this paragraph shall be transferred to the county road fund and used in accordance with the provisions of Paragraph (3) of this subsection; and

(5) fourteen and one-tenth percent shall be allocated among the counties in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the county and incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the computed taxes due for the county and each incorporated municipality within the county bear to the total computed taxes due for the county and incorporated municipalities within the county; for the purposes of this paragraph, the term "computed taxes due" for any jurisdiction means the sum of the net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, for that jurisdiction multiplied by an average of the rates for residential and nonresidential property imposed for that jurisdiction pursuant to Subsection B of Section 7-37-7 NMSA 1978.

C. To carry out the provisions of this section, during the month of June of each year:

(1) the department shall determine and certify to the department of finance and administration the proportions that the department is required to determine by Subsection B of this section using information for the preceding calendar year on the number of vehicles registered in each county based on the address of the owner or place where the vehicle is principally located, the registration fees for the vehicles registered in each county, the total number of vehicles registered in the state and the total registration fees for all vehicles registered in the state; and

(2) the department of finance and administration shall determine the proportions that the department of finance and administration is required to determine by Subsection B of this section based upon the net taxable values, as that term is defined in the Property Tax Code, and assessed values, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act, for the preceding tax year and the tax rates imposed pursuant to Subsection B of Section 7-37-7 NMSA 1978 in the preceding September.

D. By June 30 of each year, the department of finance and administration shall determine the appropriate percentage of money to be transferred to each county and municipality for each purpose in accordance with Subsection A of this section based upon the proportions determined by or certified to the department of finance and administration. The percentages determined shall be used to compute the amounts to be transferred to the counties and municipalities during the succeeding fiscal year.

E. The board of county commissioners of each of the respective counties shall, by May 1, 1988 and by April 1 of every year thereafter, certify reports to the secretary of highway and transportation of the total mileage of public roads maintained by each county as of May 1, 1988 and by April 1 of every year thereafter; provided that in their reports the boards of county commissioners shall identify each of the public roads maintained by them by name, route and location. By July 1 of every year, the secretary of highway and transportation shall verify the reports of the counties and revise, if necessary, the total mileage of public roads maintained by each county and the mileage verified by the secretary of highway and transportation shall be the official mileage of public roads maintained by each county. After August 1, 1988, distribution of amounts to any county for road purposes shall be made in accordance with this section.

F. If a county has not made the required mileage certification pursuant to Section 67-3-28.3 NMSA 1978 by May 1, 1988 and by April 1 of every year thereafter, the secretary of highway and transportation shall estimate the mileage maintained by those counties for the purpose of making distribution to all counties, and the amount calculated to be distributed each month to those counties not certifying mileage shall be reduced by one-third each month for that fiscal year and that amount not distributed to those counties shall be distributed equally to all counties which have certified mileages."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 203

CHAPTER 305

RELATING TO HUMAN RIGHTS; AMENDING A CERTAIN SECTION OF THE HUMAN RIGHTS ACT PERTAINING TO GRIEVANCE PROCEDURES.

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

Section 1

Section 1. Section 28-1-10 NMSA 1978 (being Laws 1969, Chapter 196, Section 9, as amended) is amended to read:

"28-1-10. GRIEVANCE PROCEDURE.--

A. Any person claiming to be aggrieved by an unlawful discriminatory practice and any member of the commission who has reason to believe that discrimination has occurred may file with the human rights division a written complaint which shall state the name and address of the person alleged to have engaged in the discriminatory practice, all information relating to the discriminatory practice and any other information that may be required by the commission. All complaints shall be filed with the division within one hundred eighty days after the alleged act was committed.

B. The director shall advise the respondent that a complaint has been filed against him and shall furnish him with a copy of the complaint. The director shall promptly investigate the alleged act. If the director determines that the complaint lacks probable cause, he shall dismiss the complaint and notify the complainant and respondent of the dismissal. The complaint shall be dismissed subject to appeal as in the case of other orders of the commission.

C. If the director determines that probable cause exists for the complaint, he shall attempt to achieve a satisfactory adjustment of the complaint through persuasion and conciliation. The director and staff shall neither disclose what has transpired during the attemptedconciliation nor divulge information obtained during any hearing before the commission or a commissioner prior to final action relating to the complaint. Any officer or employee of the labor department who makes public in any manner whatever any information in violation of this subsection is guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year.

D. Any person who has filed a complaint with the human rights division may request and shall receive an order of nondetermination from the director one hundred eighty days after the division's receipt of the complaint. The order of nondetermination may be appealed pursuant to the provisions of Section 28-1-13 NMSA 1978.

E. In the case of a complaint filed by or on behalf of a person who has an urgent medical condition and has notified the director in writing of the test results, the director shall make the determination whether probable cause exists for the complaint and shall attempt any conciliation efforts within ninety days of the filing of the written complaint or notification, whichever occurs last.

F. If conciliation fails or if, in the opinion of the director, informal conference cannot result in conciliation, the commission shall issue a written complaint in its own name against the respondent, except that in the case of a complaint filed by or on behalf of a person who has an urgent medical condition, who has notified the director in writing of the test results and who so elects, the director shall issue an order of nondetermination which may be appealed pursuant to the provisions of Section 28-1-13 NMSA 1978. The complaint shall set forth the alleged discriminatory practice, the secretary's regulation or the section of the Human Rights Act alleged to have been violated and the relief requested. The complaint shall require the respondent to answer the allegations of the complaint at a hearing before the commission and shall specify the date, time and place of the hearing. The hearing date shall not be more than fifteen or less than ten days after service of the complaint. The complaint shall be served on the respondent personally or by registered mail, return receipt requested. The hearing shall be held in the county where the respondent is doing business or the alleged discriminatory practice occurred.

G. Within one year of the filing of a complaint by a person aggrieved, the commission or its director shall:

(1) dismiss the complaint for lack of probable cause;

(2) achieve satisfactory adjustment of the complaint as evidenced by order of the commission; or

(3) file a formal complaint on behalf of the commission.

H. Upon the commission's petition, the district court of the county where the respondent is doing business or the alleged discriminatory practice occurred may grant injunctive relief pending hearing by the commission or pending judicial review of an order of the commission so as to preserve the status quo or to ensure that the commission's order as issued will be effective. The commission shall not be required to post a bond.

I. For purposes of this section, "urgent medical condition" means any medical condition as defined by an appropriate medical authority through documentation or by direct witness of a clearly visible disablement and which poses a serious threat to the life of the person with the medical condition." HB 205

CHAPTER 306

RELATING TO TAXATION; CHANGING THE DEFINITION OF COUNTY FOR PURPOSES OF THE LOCAL HOSPITAL GROSS RECEIPTS TAX ACT; EXPANDING THE PURPOSES FOR WHICH THE LOCAL HOSPITAL GROSS RECEIPTS TAX MAY BE IMPOSED; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-20C-2 NMSA 1978 (being Laws 1991, Chapter 176, Section 2) is amended to read:

"7-20C-2. DEFINITIONS.--As used in the Local Hospital Gross Receipts Tax Act:

A. "county" means:

(1) a class B county having a population of less than twenty-five thousand according to the most recent federal decennial census and having a net taxable value for rate-setting purposes for the 1990 property tax year or any subsequent year of more than two hundred fifty million dollars ($250,000,000);

(2) a class B county having a population of less than forty-seven thousand but more than forty-four thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1992 property tax year of more than three hundred million dollars ($300,000,000) but less than six hundred million dollars ($600,000,000); or

(3) a class B county in New Mexico having a population of less than ten thousand according to the most recent federal decennial census and having a net taxable value for rate-setting purposes for the 1990 property tax year or any subsequent year of more than one hundred million dollars ($100,000,000);

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "governing body" means the board of county commissioners of a county;

D. "local hospital gross receipts tax" means the tax authorized to be imposed under the Local Hospital Gross Receipts Tax Act;

E. "person" means an individual or any other legal entity; and

F. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act."

Section 2

Section 2. Section 7-20C-3 NMSA 1978 (being Laws 1991, Chapter 176, Section 3) is amended to read:

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

A. The majority of the members elected to the governing body may enact an ordinance imposing an excise tax on any person engaging in business in the county for the privilege of engaging in business. This tax is to be referred to as the "local hospital gross receipts tax". The rate of the tax shall be one-half of one percent of the gross receipts of the person engaging in business if the tax is initially imposed before January 1, 1993. The rate of the tax shall be one-eighth of one percent of the gross receipts of the person engaging in business if the tax is initially imposed after January 1, 1993. The local hospital gross receipts tax shall be imposed only once for the period necessary for payment of the principal and interest on revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed ten years from the effective date of the ordinance imposing the tax. No local hospital gross receipts tax shall be imposed initially after January 1, 1993 unless the voters of the county have approved the issuance of general obligation bonds of the county sufficient to pay at least one-half of the costs of the county hospital facility or county twenty-four hour urgent care or emergency facility for which the local hospital gross receipts tax revenues are dedicated, including the costs of all applicable land or building acquisition and renovation, design, construction, equipping and furnishing of the facility.

B. No local hospital gross receipts tax authorized in Subsection A of this section shall be imposed initially after January 1, 1993 unless:

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

(2) in a county described in Paragraph (3) of Subsection A of Section 7-20C-2 NMSA 1978, the voters of the county have approved the imposition of a property tax at a rate that would produce annual revenue equal to the amount of annual revenue from a one-eighth of one percent gross receipts tax on persons engaging in business in the county and which tax is dedicated for the purpose of acquisition, renovation, operation or maintenance of a county hospital facility.

C. The governing body of a county, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, shall dedicate the revenue for acquisition of land for and the design, construction, equipping and furnishing of a county hospital facility to be operated by the county or operated and maintained by another party pursuant to a lease with the county, or, if the county is enacting the ordinance imposing the tax after July 1, 1993, may dedicate the revenue for acquisition, renovation and equipping of a building for a county hospital facility or a county twenty-four-hour urgent care or emergency facility and for operation and maintenance of that facility for the period of time the tax is imposed not to exceed ten years. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated and the revenue shall be used by the county for that purpose.

D. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county voting in the election vote in favor of imposing the local hospital gross receipts tax. The governing body shall provide for an election on the question of imposing the tax within sixty days after the date the ordinance is adopted. The question may be submitted to the qualified electors and voted upon as a separate question in a general election or in any special election called for that purpose by the governing body. A special election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a local hospital gross receipts tax fails, the governing body shall not again propose a local hospital gross receipts tax for a period of one year after the election. A certified copy of any ordinance imposing a local hospital gross receipts tax shall be mailed to the department within five days after the ordinance is adopted in any election called for that purpose.

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

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

Section 3

Section 3. Section 7-20C-9 NMSA 1978 (being Laws 1991, Chapter 176, Section 9) is amended to read:

"7-20C-9. LOCAL HOSPITAL REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES.--

A. A county, other than a county described in Paragraph (2) of Section 7-20C-2 NMSA 1978, may issue local hospital revenue bonds pursuant to the Local Hospital Gross Receipts Tax Act for the purpose of acquiring land for, and designing, constructing, equipping and furnishing a county hospital facility to be operated by the county or by another party pursuant to a lease with the county.

B. The county issuing the local hospital revenue bonds pursuant to the Local Hospital Gross Receipts Tax Act shall pledge irrevocably all of the net receipts derived from the imposition of the local hospital gross receipts tax and any other revenues as necessary for the payment of principal and interest on the revenue bonds."

Section 4

Section 4. A new section of the Local Hospital Gross Receipts Tax Act, Section 7-20C-9.1 NMSA 1978, is enacted to read:

"7-20C-9.1. NEW MEXICO FINANCE AUTHORITY--REVENUE BONDS.--

A. For a county described in Paragraph (2) of Subsection A of Section 7-20C-2 NMSA 1978, the provisions of this section shall govern the financing of the acquisition, renovation or equipping of a building for a county hospital facility or a county twenty-four-hour urgent care or emergency facility.

B. Upon approval of the voters pursuant to Section 7-20C-3 NMSA 1978, the county shall determine if the issuance of revenue bonds is necessary to finance that portion of the local hospital facility that will not therwise be financed with general obligation bonds and local revenues. Upon a determination that the issuance of revenue bonds is necessary, the county shall enter into an agreement with the New Mexico finance authority for issuance and sale of New Mexico finance authority revenue bonds for the purpose of the acquisition, renovation or equipping of a county hospital facility or twenty-four-hour urgent care or emergency care facility in that county and for transfer of local hospital gross receipts tax proceeds to the authority in the amount necessary for that purpose.

C. Local hospital gross receipts tax proceeds transferred to the authority shall be pledged irrevocably for the payment of principal, interest, any premiums and the expenses related to issuance and sale of the bonds and shall be deposited into a special bond fund or account of the authority. To the extent such revenues are not needed to meet current debt service requirements, including any reserve fund requirements, the authority shall transfer such excess to the county to be used for the purpose for which the local hospital gross receipts tax is dedicated. The legislature shall not repeal, amend or otherwise modify any law that affects or impairs any revenue

bonds of the New Mexico finance authority secured by a pledge of local hospital gross receipts tax revenues."

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 333

CHAPTER 307

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE INCOME TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT.

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

Section 1

Section 1. Section 7-2-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 26, as amended) is amended to read:

"7-2-2. DEFINITIONS.--For the purpose of the Income Tax Act and unless the context requires otherwise:

A. "adjusted gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code, as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part of the estate's or trust's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year;

(2) means, for taxpayers other than estates or trusts, that part of the taxpayer's income defined as adjusted gross income plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year; and

(3) includes, for all taxpayers, any other income of the taxpayer not included in adjusted gross income but upon which a federal tax is calculated pursuant to the Internal Revenue Code for income tax purposes, except amounts for which a

calculation of tax is made pursuant to Section 55 of the Internal Revenue Code, as that section may be amended or renumbered; "base income" also includes interest received on a state or local bond;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "fiduciary" means a guardian, trustee, executor, administrator, committee, conservator, receiver, individual or corporation acting in any fiduciary capacity;

F. "filing status" means "married filing joint returns", "married filing separate returns", "head of household", "surviving spouse" and "single", as those terms are generally defined for federal tax purposes;

G. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

H. "head of household" means "head of household" as generally defined for federal income tax purposes;

I. "individual" means a natural person, an estate, a trust or a fiduciary acting for a natural person, trust or estate;

J. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

K. "lump-sum amount" means an amount that, for the purpose of determining liability for federal income tax, was not included in adjusted gross income but upon which the five-year-averaging or the ten-year-averaging method of tax computation provided in Section 402 of the Internal Revenue Code, as that section may be amended or renumbered, was applied;

L. "modified gross income" means all income of the taxpayer and, if any, the taxpayer's spouse and dependents, undiminished by losses and from whatever source derived, including:

(1) compensation;

(2) net profit derived from business;

(3) gains derived from dealings in property;

(4) interest;

(5) net rents;

(6) royalties;

(7) dividends;

(8) alimony and separate maintenance payments;

(9) annuities;

(10) income from life insurance and endowment contracts;

(11) pensions;

(12) discharge of indebtedness;

(13) distributive share of partnership income;

(14) income in respect of a decedent;

(15) income from an interest in an estate or trust;

(16) social security benefits;

(17) unemployment compensation benefits;

(18) workers' compensation benefits;

(19) public assistance and welfare benefits;

(20) cost-of-living allowances; and

(21) gifts;

M. "modified gross income" does not include:

(1) payments for hospital, dental, medical or drug expenses whether made to or on behalf of the taxpayer;

(2) the value of room and board provided by federal, state or local governments or by private individuals or agencies based upon financial need and not as a form of compensation;

(3) payments made pursuant to a federal, state or local government program directly or indirectly to a third party on behalf of the taxpayer when identified to a particular use or invoice by the payer; or

(4) payments made pursuant to Sections 7-2-14, 7-2-14.1, 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

N. "net income" means, for estates and trusts, base income adjusted to exclude amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States and means, for taxpayers other than estates or trusts, base income adjusted to exclude:

(1) an amount equal to the standard deduction allowed the taxpayer for the taxpayer's taxable year by Section 63 of the Internal Revenue Code, as that section may be amended or renumbered;

(2) an amount equal to the itemized deductions, as defined in Section 63 of the Internal Revenue Code, as that section may be amended or renumbered, allowed the taxpayer for the taxpayer's taxable year less the amount excluded pursuant to Paragraph (1) of this subsection;

(3) an amount equal to the product of the exemption amount allowed for the taxpayer's taxable year by Section 151 of the Internal Revenue Code, as that section may be amended or renumbered, multiplied by the number of personal exemptions allowed for federal income tax purposes;

(4) income from obligations of the United States of America less expenses incurred to earn that income;

(5) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States;

(6) for taxable years that began prior to January 1, 1991, an amount equal to the sum of:

(a) net operating loss carryback deductions to that year from taxable years beginning prior to January 1, 1991 claimed and allowed, as provided by the Internal Revenue Code; and

(b) net operating loss carryover deductions to that year claimed and allowed; and

(7) for taxable years beginning on or after January 1, 1991, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed, provided that the amount of any net operating loss carryover from a taxable year beginning on or after January 1, 1991 may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next four succeeding taxable years in turn until the net operating loss carryover is exhausted; in no event shall a net operating loss carryover be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies;

O. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

P. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (6) or (7) of Subsection N of this section, may be excluded from base income;

Q. "nonresident" means every individual not a resident of this state;

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

S. "resident" means an individual who is domiciled in this stte during any part of the taxable year; but any individual who, on or before the last day of the taxable year, changed his place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Income Tax Act;

T. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

U. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or any political subdivision of a foreign country;

V. "state or local bond" means a bond issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions,

the interest from which is excluded from income for federal income tax purposes under Section 103 of the Internal Revenue Code, as that section may be amended or renumbered;

W. "surviving spouse" means "surviving spouse" as generally defined for federal income tax purposes;

X. "taxable income" means net income less any lump-sum amount;

Y. "taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Income Tax Act and includes, in the case of the return made for a fractional part of a year under the provisions of the Income Tax Act, the period for which the return is made; and

Z. "taxpayer" means any individual subject to the tax imposed by the Income Tax Act."

Section 2

Section 2. Section 7-2-18 NMSA 1978 (being Laws 1977, Chapter 196, Section 1, as amended) is amended to read:

"7-2-18. TAX REBATE OF PROPERTY TAX DUE WHICH EXCEEDS THE ELDERLY TAXPAYER'S MAXIMUM PROPERTY TAX LIABILITY--REFUND.--

A. Any resident who has attained the age of sixty-five and files an individual New Mexico income tax return and is not a dependent of another individual may claim a tax rebate for the taxable year for which the return is filed. The tax rebate shall be the amount of property tax due on the resident's principal place of residence for the taxable year which exceeds the property tax liability indicated by the table in Subsection F of this section, based upon the taxpayer's modified gross income.

B. Any resident otherwise qualified under this section who rents a principal place of residence from another person may calculate the amount of property tax due by multiplying the gross rent for the taxable year by six percent. The tax rebate shall be the amount of property tax due on the taxpayer's principal place of residence for the taxable year which exceeds the property tax liability indicated by the table in Subsection F of this section, based upon the taxpayer's modified gross income.

C. "Principal place of residence" for purposes of this section means the dwelling, whether owned or rented, and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multi-dwelling or a multi-purpose building and a part of the land upon which it is built.

D. No claim for the tax rebate provided in this section shall be allowed a resident who was an inmate of a public institution for more than six months during the taxable year or who was not physically present in New Mexico for at least six months during the taxable year for which the tax rebate could be claimed.

E. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on a joint return.

F. The tax rebate provided for in this section may be claimed in the amount of the property tax due each taxable year which exceeds the amount shown as property tax liability in the following table:

ELDERLY HOMEOWNERS' MAXIMUM PROPERTY TAX LIABILITY TABLE

Taxpayer's Modified Gross Income		Property Tax Liability
Over	But Not Over	
$ 0	$ 1,000	$20
1,000	2,000	25
2,000	3,000	30
3,000	4,000	35
4,000	5,000	40
5,000	6,000	45
6,000	7,000	50
7,000	8,000	55
8,000	9,000	60
9,000	10,000	75
10,000	11,000	90
11,000	12,000	105
12,000	13,000	120

13,000	14,000	135
14,000	15,000	150
15,000	16,000	180.

G. If a taxpayer's modified gross income is zero, the taxpayer may claim a tax rebate based upon the amount shown in the first row of the table. The tax rebate provided for in this section shall not exceed two hundred fifty dollars ($250) per return, and, if a return is filed separately which could have been filed jointly, the tax rebate shall not exceed one hundred twenty-five dollars ($125). No tax rebate shall be allowed any taxpayer whose modified gross income exceeds sixteen thousand dollars ($16,000).

H. The tax rebate provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the tax rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer."

Section 3

Section 3. Section 7-2A-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 33, as amended) is amended to read:

"7-2A-2. DEFINITIONS.--For the purpose of the Corporate Income and Franchise Tax Act and unless the context requires otherwise:

A. "affiliated group" means that term as it is used in the Internal Revenue Code;

B. "bank" means any national bank, national banking association, state bank or bank holding company;

C. "base income" means that part of the taxpayer's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and claimed by the taxpayer for that year; "base income" also includes interest received on a state or local bond;

D. "corporation" means corporations, joint stock companies, real estate trusts organized and operated under the Real Estate Trust Act, financial corporations and banks, other business associations and, for corporate income tax purposes, partnerships taxed as corporations under the Internal Revenue Code;

E. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

F. "financial corporation" means any savings or building and loan association or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

G. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

H. "Internal Revenue Code" means the United States Internal Revenue Code, as amended;

I. "net income" means base income adjusted to exclude:

(1) amounts that have been taxed as income under the Banking and Financial Corporations Tax Act;

(2) income from obligations of the United States less expenses incurred to earn that income;

(3) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States;

(4) for taxable years that began prior to January 1, 1991, an amount equal to the sum of:

(a) net operating loss carryback deductions to that year from taxable years beginning prior to January 1, 1991 claimed and allowed, as provided by the Internal Revenue Code; and

(b) net operating loss carryover deductions to that year claimed and allowed; and

(5) for taxable years beginning on or after January 1, 1991, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed, provided that the amount of any net operating loss carryover from a taxable year beginning on or after January 1, 1991 may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next four succeeding taxable years in turn until the net operating loss carryover is exhausted; in no event shall a net operating loss carryover be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies;

J. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

K. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (4) or (5) of Subsection I of this section, may be excluded from base income;

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

M. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

N. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or political subdivision thereof or any political subdivision of a foreign country;

O. "state or local bond" means a bod issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions, the interest from which is excluded from income for federal income tax purposes under Section 103 of the Internal Revenue Code, as that section may be amended or renumbered;

P. "taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act and includes, in the case of the return made for a fractional part of a year under the provisions of that act, the period for which the return is made;

Q. "taxpayer" means any corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act; and

R. "unitary corporations" means two or more integrated corporations other than a foreign corporation incorporated in a foreign country and not engaged in trade or business in the United States during the taxable year, that are owned in the amount of

more than fifty percent and controlled by the same person and for which at least one of the following conditions exists:

(1) there is a unity of operations evidenced by central purchasing, advertising, accounting or other centralized services;

(2) there is a centralized management or executive force and centralized system of operation; or

(3) the operations of the corporations are dependent upon or contribute property or services to one another individually or as a group."

Section 4

Section 4. Section 7-2A-8.3 NMSA 1978 (being Laws 1983, Chapter 213, Section 12, as amended) is amended to read:

"7-2A-8.3. COMBINED RETURNS.--

A. A unitary corporation that is subject to taxation under the Corporate Income and Franchise Tax Act and that has not previously filed a combined return pursuant to this section or a consolidated return pursuant to Section 7-2A-8.4 NMSA 1978 may elect to file a combined return with other unitary corporations as though the entire combined net income were that of one corporation. The return filed under this method of reporting shall include the net income of all the unitary corporations. Transactions among the unitary corporations may be eliminated by applying the appropriate rules for reporting income for a consolidated federal income tax return. A corporation that has filed an income tax return with New Mexico pursuant to Section 7-2A-8.4 NMSA 1978 shall not file pursuant to this section unless the secretary gives prior permission to file on a combined return basis.

B. Once corporations have reported net income through a combined return for any taxable year, they shall file combined returns for subsequent taxable years, so long as they remain unitary corporations, unless the corporations elect to file pursuant to Section 7-2A-8.4 NMSA 1978 or unless the secretary grants prior permission for one or more of the corporations to file individually.

C. For taxable years beginning on or after January 1, 1993, no unitary corporation once included in a combined return shall elect, or be granted permission by the secretary, for any subsequent taxable year to separately account for its income in New Mexico pursuant to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978."

Section 5

Section 5. Section 7-2A-8.4 NMSA 1978 (being Laws 1983, Chapter 213, Section 13, as amended) is amended to read:

"7-2A-8.4. CONSOLIDATED RETURNS.--

A. A corporation that is subject to taxation under the Corporate Income and Franchise Tax Act and that reports to the internal revenue service for federal income tax purposes its net income consolidated with the net income of one or more other corporations may elect to report to New□Mexico on the same basis.

B. Once a corporation has been included in a consolidated return to New Mexico, the corporation shall not elect to file a New Mexico return under any other method without prior permission of the secretary, unless the change in reporting method is required or allowed under the Internal Revenue Code. Furthermore, such a corporation shall not elect and the secretary shall not grant it permission to separately account for income in New Mexico pursuant to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978."

Section 6

Section 6. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 1993. HB 373

CHAPTER 308

RELATING TO COUNTIES; PROVIDING FOR PUBLIC UTILITIES IN CERTAIN CLASS B COUNTIES; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. A new Section 4-36-8 NMSA 1978 is enacted to read:

"4-36-8. CLASS B COUNTY--SEWER AND WATER UTILITY.--

A. Any class B county of the state having a population of more than ninety-eight thousand but less than one hundred thousand, according to the last federal decennial census, and having a net taxable value for rate-setting purposes for the 1991 property tax year of more than one billion four hundred million dollars ($1,400,000,000) but less than one billion five hundred million dollars ($1,500,000,000) shall be permitted to purchase, own, operate and sell sewer and water utilities. Such class B counties shall not purchase, own, operate or sell any other utilities.

B. In the operation of a sewer or water utility by a class B county, the county shall set just and reasonable rates based on cost of service."

Section 2

Section 2. Section 4-62-1 NMSA 1978 (being Laws 1992, Chapter 95, Section 1) is amended to read:

"4-62-1. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--

A. In addition to any other law authorizing a county to issue revenue bonds, a county may issue revenue bonds pursuant to Chapter 4, Article 62 NMSA 1978 for the purposes specified in this section. The term "pledged revenues", as used in Chapter 4, Article 62 NMSA 1978, means the revenues, net income or net revenues authorized to be pledged to the payment of particular revenue bonds as specifically provided in Subsections B through F of this section.

B. Gross receipts tax revenue bonds may be issued for any one or more of the following purposes:

(1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making
improvements to one or more public buildings or purchasing or improving any ground relating thereto, including but not necessarily limited to acquiring and improving parking lots or any combination of the foregoing;

(2) acquiring or improving county or public parking lots, structures or facilities or any combination of the foregoing;

(3) purchasing, acquiring or rehabilitating firefighting equipment or any combination of the foregoing;

(4) acquiring, extending, enlarging, bettering, repairing, otherwise improving or maintaining storm sewers and other drainage improvements, sanitary sewers, sewage treatment plants or water utilities, including but not limited to the acquisition of rights of way and water and water rights or any combination of the foregoing;

(5) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges or any combination of the foregoing, or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges or any combination of the foregoing; provided that any of the foregoing improvements may include but is not limited to the acquisition of rights of way;

(6) purchasing, acquiring, constructing, making additions to, enlarging, bettering, extending or equipping any airport facilities or any combination of the foregoing, including without limitation the acquisition of land, easements or rights of way;

(7) purchasing or otherwise acquiring or clearing land or purchasing, otherwise acquiring and beautifying land for open space;

(8) acquiring, constructing, purchasing, equipping, furnishing, making additions to, renovating, rehabilitating, beautifying or otherwise improving public parks, public recreational buildings or other public recreational facilities or any combination of the foregoing; or

(9) acquiring, constructing, extending, enlarging, bettering, repairing or otherwise improving or maintaining solid waste disposal equipment, equipment for operation and maintenance of sanitary landfills, sanitary landfills, solid waste facilities or any combination of the foregoing.

A county may pledge irrevocably any or all of the revenue from the first one-eighth of one percent increment of the county gross receipts tax for payment of principal and interest due in connection with, and other expenses related to, gross receipts tax revenue bonds. If the county gross receipts tax revenue from the first one-eighth of one percent increment of the county gross receipts tax is pledged for payment of principal and interest as authorized by this subsection, the pledge shall require the revenues received from that increment of the county gross receipts tax to be deposited into a special bond fund for payment of the principal, interest and expenses. At the end of each fiscal year, any money remaining in the special bond fund after the annual obligations for the bonds are fully met may be transferred to any other fund of the county.

C. Fire protection revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating any independent fire district project or facilities, including, where applicable, purchasing, otherwise acquiring or improving the ground for the project, or any combination of such purposes. A county may pledge irrevocably any or all of the county fire protection excise tax revenue for payment of principal and interest due in connection with, and other expenses related to, fire protection revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "fire protection revenue bonds".

D. Environmental revenue bonds may be issued for the acquisition and construction of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities. A county may pledge irrevocably any or all of the county environmental services gross receipts tax revenue for payment of principal and interest due in connection with, and other expenses related to, environmental revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "environmental revenue bonds".

E. Gasoline tax revenue bonds may be issued for the acquisition of rights of way for and the construction, reconstruction, resurfacing, maintenance, repair or other improvement of county roads and bridges. A county may pledge irrevocably any

or all of the county gasoline tax revenue for payment of principal and interest due in connection with, and other expenses related to, county gasoline tax revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "gasoline tax revenue bonds".

F. Utility revenue bonds or joint utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving water facilities, sewer facilities, gas facilities or electric facilities or for any combination of the foregoing purposes. A county may pledge irrevocably any or all of the net revenues from the operation of the utility or joint utility for which the particular utility or joint utility bonds are issued to the payment of principal and interest due in connection with, and other expenses related to, utility or joint utility revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "utility revenue bonds" or "joint utility revenue bonds".

G. Project revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating any revenue-producing project, including, as applicable, purchasing, otherwise acquiring or improving the ground therefore, and including but not limited to acquiring and improving parking lots, or may be issued for any combination of the foregoing purposes. The county may pledge irrevocably any or all of the net revenues from the operation of the revenue-producing project for which the partiular project revenue bonds are issued to the payment of the interest on and principal of the project revenue bonds. The net revenues of any revenue-producing project may not be pledged to the project revenue bonds issued for any other revenue-producing project that is clearly unrelated in nature; but nothing in this subsection prevents the pledge to any of the project revenue bonds of any revenues received from any existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular revenue-producing project. Any general determination by the governing body that any facilities or equipment are reasonably related to and shall constitute a part of a specified revenue-producing project shall be conclusive if set forth in the proceedings authorizing the project revenue bonds. As used in Chapter 4, Article 62 NMSA 1978:

(1) "project revenue bonds" means the bonds authorized in this subsection; and

(2) "project revenues" means the net revenues of revenue-producing projects that may be pledged to project revenue bonds pursuant to this subsection.

H. Except for the purpose of refunding previous revenue bond issues, no county may sell revenue bonds payable from pledged revenue after the expiration of two years from the date of the ordinance authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue.

I. No bonds may be issued by a county, other than an H class county or a class B county as defined in Section 4-36-8 NMSA 1978, to acquire, equip, extend, enlarge, better, repair or construct any utility unless such utility is regulated by the New Mexico public service commission under the Public Utility Act and the issuance of the bonds is approved by the commission. For purposes of Chapter 4, Article 62 NMSA 1978, a "utility" includes but is not limited to any water, wastewater, sewer, gas or electric utility or joint utility serving the public. H class counties shall obtain New Mexico public service commission approvals required by Section 3-23-3 NMSA 1978.

J. Any law that imposes or authorizes the imposition of a county gross receipts tax, a county environmental services gross receipts tax, a county fire protection excise tax or the gasoline tax, or that affects any of those taxes, shall not be repealed or amended in such a manner as to impair any outstanding revenue bonds that are issued pursuant to Chapter 4, Article 62 NMSA 1978 and that may be secured by a pledge of those taxes unless the outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

K. As used in this section:

(1) "county environmental services gross receipts tax revenue" means the revenue from the county environmental services gross receipts tax transferred to the county pursuant to Subsection E of Section 7-1-6.13 NMSA 1978;

(2) "county fire protection excise tax revenue" means the revenue from the county fire protection excise tax transferred to the county pursuant to Subsection A of Section 7-1-6.13 NMSA 1978;

(3) "county gross receipts tax revenue" means the revenue attributable to the first one-eighth of one percent increment of the county gross receipts tax transferred to the county pursuant to Subsection B of Section 7-1-6.13 NMSA 1978 and any distribution related to the first one-eighth of one percent made pursuant to Section 7-1-6.16 NMSA 1978;

(4) "gasoline tax revenue" means the revenue from that portion of the gasoline tax distributed to the county pursuant to Sections 7-1-6.9 and 7-1-6.26 NMSA 1978; and

(5) "public building" includes but is not limited to fire stations, police buildings, jails, libraries, museums, auditoriums, convention halls, hospitals, buildings for administrative offices, courthouses and garages for housing, repairing and maintaining county vehicles and equipment."

Section 3

Section 3. Section 62-3-3 NMSA 1978 (being Laws 1967, Chapter 96, Section 3, as amended) is amended to read:

"62-3-3. DEFINITIONS, WORDS AND PHRASES.--Unless otherwise specified, when used in the Public Utility Act, as amended:

A. "affiliated interest" means:

(1) every person who owns or holds, directly or indirectly, ten percent or more of the voting securities of a public utility;

(2) every person who owns or holds, directly or indirectly, ten percent or more of the voting securities of a person described in Paragraph (1) of this subsection or this paragraph; and

(3) every person ten percent or more of whose voting securities is owned, directly or indirectly, by a public utility;

B. "commission" means the New Mexico public service commission;

C. "commissioners" means any member of the commission;

D. "municipality" means any municipal corporation organized under the laws of the state, class B counties as defined in Section 4-36-8 NMSA 1978 and H class counties;

E. "person" means individuals, firms, partnerships, companies, rural electric cooperatives organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, as amended, corporations and lessees, trustees or receivers appointed by any court. It shall not mean any municipality as defined in this section unless the municipality has elected to come within the terms of the Public Utility Act, as amended, as provided in Section 62-6-5 NMSA 1978. In the absence of such voluntary election by any municipality to come within the provisions of the Public Utility Act, as amended, the municipality shall be expressly excluded from the operation of that act and from the operation of all of its provisions, and no such municipality shall for any purpose be considered a public utility;

F. "securities" means stock, stock certificates, bonds, notes, debentures, mortgages or deeds of trust or other evidences of indebtedness issued, executed or assumed by any utility;

G. "public utility" or "utility" means every person not engaged solely in interstate business and, except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that now does or hereafter may own, operate, lease or control:

(1) any plant, property or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses;

(2) any plant, property or facility for the manufacture, storage, distribution, sale or furnishing to or for the public of natural or manufactured gas or mixed or liquefied petroleum gas, for light, heat or power or for other uses; but the term "public utility" or "utility" shall not include any plant, property or facility used for or in connection with the business of the manufacture, storage, distribution, sale or furnishing of liquefied petroleum gas in enclosed containers or tank truck for use by others than consumers who receive their supply through any pipeline system operating under municipal authority or franchise, and distributing to the public;

(3) any plant, property or facility for the supplying, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, domestic or other uses; provided, however, nothing contained in this paragraph shall be construed to apply to irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(4) any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam for heat or power or other uses; or

(5) any plant, property or facility for the supplying and furnishing to or for the public of sanitary sewers for transmission and disposal of sewage produced by manufacturing, municipal, domestic or other uses; provided that nothing herein shall be deemed to include within the term "public utility" or "utility" as used in the Public Utility Act any utility owned and operated by any class B county as defined in Section 4-36-8 NMSA 1978 either directly or through a corporation owned by or under contract with such a county;

H. "rate" means every rate, tariff, charge or other compensation for utility service rendered or to be rendered by any utility and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, tariff, charge or other compensation and any schedule or tariff or part of a schedule or tariff thereof;

I. "service" or "service regulation" means every rule, regulation, practice, act or requirement in any way relating to the service or facility of a utility;

J. "Class I transaction" means the sale, lease or provision of real property, water rights or other goods or services by an affiliated interest to any public utility with which it is affiliated or by a public utility to its affiliated interest;

K. "Class II transaction" means:

(1) the formation after the effective date of this 1982 act of a corporate subsidiary by a public utility or a public utility holding company by a public utility or its affiliated interest;

(2) the direct acquisition of the voting securities or other direct ownership interests of a person by a public utility if such acquisition would make the utility the owner of ten percent or more of the voting securities or other direct ownership interests of that person;

(3) the agreement by a public utility to purchase securities or other ownership interest of a person other than a nonprofit corporation, contribute additional equity to, acquire additional equity interest in or pay or guarantee any bonds, notes, debentures, deeds of trust or other evidence of indebtedness of any such person; provided,
however, that a public utility may honor all agreements entered into by such utility prior to the effective date of this 1982 act; or

(4) the divestiture by a public utility of any affiliated interest which is a corporate subsidiary of the public utility;

L. "corporate subsidiary" means any person ten percent or more of whose voting securities or other ownership interests are directly owned by a public utility; and

M. "public utility holding company" means an affiliated interest which controls a public utility through the direct or indirect ownership of voting securities of such public utility."

Section 4

Section 4. Section 62-6-4 NMSA 1978 (being Laws 1941, Chapter 84, Section 17, as amended) is amended to read:

"62-6-4. SUPERVISION AND REGULATION OF UTILITIES.--

A. The commission shall have general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations and in respect to its securities, all in accordance with the provisions and subject to the reservations of the Public Utility Act, and to do all things necessary and convenient in the exercise of its power and jurisdiction. Nothing in this section, however, shall be deemed to confer upon the commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipal corporation either directly or through a municipally owned corporation, or owned and operated by any H class county or by a class B county as defined in Section 4-36-8 NMSA 1978 either directly or through a corporation owned by or under contract with an H class county or by a class B county as defined in Section 4-36-8 NMSA 1978. No inspection or supervision fees shall be paid by such municipalities or municipally owned corporations or a class B county as defined in Section 4-36-8 NMSA 1978 or H class counties or such corporation owned by or under contract with a class B county as defined in Section 4-36-8 NMSA 1978 or an H class county with respect to operations

conducted in a class B county as defined in Section 4-36-8 NMSA 1978 or in H class counties.

B. The sale, furnishing or delivery of gas, water or electricity by any person to a utility for resale to or for the public shall be subject to regulation by the commission but only to the extent necessary to enable the commission to determine that the cost to the utility of the gas, water or electricity at the place where the major distribution to the public begins is reasonable and that the methods of delivery of the gas, water or electricity are adequate; provided, however, that nothing in this subsection shall be construed to perit regulation by the commission of production or sale price at the wellhead of gas or petroleum, except regulation of abandonment pursuant to Section 62-7-8 NMSA 1978.

C. The sale, furnishing or delivery of coal, uranium or other fuels by any affiliated interest to a utility for the generation of electricity for the public shall be subject to regulation by the commission but only to the extent necessary to enable the commission to determine that the cost to the utility of the coal, uranium or other fuels at the point of sale is reasonable and that the methods of delivery of the electricity are adequate; provided, however, that nothing in this subsection shall be construed to permit regulation by the commission of production or sale price at the wellhead of gas or petroleum, except regulation of abandonment pursuant to Section 62-7-8 NMSA 1978. Nothing in this section shall be construed to permit regulation by the commission of production or sale price at the point of production of coal, uranium or other fuels."

Section 5

Section 5. Section 72-4-8 NMSA 1978 (being Laws 1959, Chapter 286, Section 7) is amended to read:

"72-4-8. WATER SYSTEM COST PAID FROM BOND PROCEEDS ONLY.--No county that undertakes to acquire or establish a water supply system under the authority of Sections 72-4-2 through 72-4-12 NMSA 1978 shall have the power to pay out of its general funds or otherwise contribute any part of the costs of acquiring a water supply system. The entire cost of acquiring the system shall be paid out of the proceeds from the sale of water revenue bonds issued under the authority of Sections 72-4-2 through 72-4-12 NMSA 1978."

Section 6

Section 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. HB 510

CHAPTER 309

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE CORPORATE INCOME AND FRANCHISE TAX ACT TO REQUIRE CERTAIN CORPORATIONS TO PAY A SURCHARGE AND TO CLARIFY CERTAIN REPORTING METHODS.

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

Section 1

Section 1. Section 7-2A-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 33, as amended) is amended to read:

"7-2A-2. DEFINITIONS.--For the purpose of the Corporate Income and Franchise Tax Act and unless the context requires otherwise:

A. "affiliated group" means that term as it is used in the Internal Revenue Code;

B. "bank" means any national bank, national banking association, state bank or bank holding company;

C. "base income" means that part of the taxpayer's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and claimed by the taxpayer for that year; "base income" also includes interest received on a state or local bond;

D. "corporation" means corporations, joint stock companies, real estate trusts organized and operated under the Real Estate Trust Act, financial corporations and banks, other business associations and, for corporate income tax purposes, partnerships taxed as corporations under the Internal Revenue Code;

E. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

F. "financial corporation" means any savings or building and loan association or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

G. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

H. "Internal Revenue Code" means the United States Internal Revenue Code, as amended;

I. "net income" means base income adjusted to exclude:

(1) amounts that have been taxed as income under the Banking and Financial Corporations Tax Act;

(2) income from obligations of the United States less expenses incurred to earn that income;

(3) other amounts that the state is prohibited from taxing because of the laws or constitution of this state or the United States;

(4) for taxable years that began prior to January 1, 1991, an amount equal to the sum of:

(a) net operating loss carryback deductions to that year from taxable years beginning prior to January 1, 1991 claimed and allowed, as provided by the Internal Revenue Code; and

(b) net operating loss carryover deductions to that year claimed and allowed; and

(5) for taxable years beginning on or after January 1, 1991, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed, provided that the amount of any net operating loss carryover from a taxable year beginning on or after January 1, 1991 may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next four succeeding taxable years in turn until the net operating loss carryover is exhausted; in no event may a net operating loss carryover be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies;

J. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or

renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

K. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (4) or (5) of Subsection I of this section, may be excluded from base income;

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

M. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

N. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or political subdivision thereof or any political subdivision of a foreign country;

O. "state or local bond" means a bond issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions, the interest from which is excluded from income for federal income tax purposes under Section l03 of the Internal Revenue Code, as that section may be amended or renumbered;

P. "taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Corporate Income and Franchise Tax Act and includes, in the case of the return made for a fractional
part of a year under the provisions of that act, the period for which the return is made;

Q. "taxpayer" means any corporation subject to the taxes imposed by the Corporate Income and Franchise Tax Act; and

R. "unitary corporations" means two or more integrated corporations, other than any foreign corporation incorporated in a foreign country and not engaged in trade or business in the United States during the taxable year, that are owned in the amount of more than fifty percent and controlled by the same person and for which at least one of the following conditions exists:

(1) there is a unity of operations evidenced by central purchasing, advertising, accounting or other centralized services;

(2) there is a centralized management or executive force and centralized system of operation; or

(3) the operations of the corporations are dependent upon or contribute property or services to one another individually or as a group."

Section 2

Section 2. Section 7-2A-8.3 NMSA 1978 (being Laws 1983, Chapter 213, Section 12, as amended) is amended to read:

"7-2A-8.3. COMBINED RETURNS.--

A. A unitary corporation that is subject to taxation under the Corporate Income and Franchise Tax Act and that has not previously filed a combined return pursuant to this section or a consolidated return pursuant to Section 7-2A-8.4 NMSA 1978 may elect to file a combined return with other unitary corporations as though the entire combined net income were that of one corporation. The return filed under this method of reporting shall include the net income of all the unitary corporations. Transactions among the unitary corporations may be eliminated by applying the appropriate rules for reporting income for a consolidated federal income tax return. Any corporation that has filed an income tax return with New Mexico pursuant to Section 7-2A-8.4 NMSA 1978 shall not file pursuant to this section unless the secretary gives prior permission to file on a combined return basis.

B. Once corporations have reported net income through a combined return for any taxable year, they shall file combined returns for subsequent taxable years, so long as they remain unitary corporations, unless the corporations elect to file pursuant to Section 7-2A-8.4 NMSA 1978 or unless the secretary grants prior permission for one or more of the corporations to file individually.

C. For taxable years beginning on or after January 1, 1993, no unitary corporation once included in a combined return may elect, or be granted permission by the secretary, for any subsequent taxable year to separately account pursuant to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978."

Section 3

Section 3. Section 7-2A-8.4 NMSA 1978 (being Laws 1983, Chapter 213, Section 13, as amended) is amended to read:

"7-2A-8.4. CONSOLIDATED RETURNS.--

A. Any corporation that is subject to taxation under the Corporate Income and Franchise Tax Act and that reports to the internal revenue service for federal income tax purposes its net income consolidated with the net income of one or more other corporations may elect to report to New Mexico on the same basis.

B. Once a corporation has been included in a consolidated return to New Mexico, the corporation shall not elect to file a New Mexico return under any other method without prior permission of the secretary, unless the change in reporting method is required or allowed under the Internal Revenue Code. Furthermore, such a corporation shall not elect nor shall the secretary grant it permission to separately account for income in New Mexico pursuant to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978."

Section 4

Section 4. TEMPORARY PROVISION--SURCHARGE ON CERTAIN RETURNS.--For taxable years beginning in 1993, there is imposed upon each unitary corporation having a net income of over one million dollars ($1,000,000) and filing a return pursuant to the Corporate Income and Franchise Tax Act other than a return filed in accordane with Section 7-2A-8.3 or 7-2A-8.4 NMSA 1978 a surtax equal to the lesser of two hundred thousand dollars ($200,000) or the product of the rate eighteen percent multiplied by the corporation's corporate income tax due; provided that if more than one member of a group of unitary corporations reports corporate income tax pursuant to the Corporate Income and Franchise Tax Act using a return other than a return filed in accordance with Section 7-2A-8.3 or 7-2A-8.4 NMSA 1978, the total surtax for the members of that group filing such returns may not exceed four hundred thousand dollars ($400,000).

Section 5

Section 5. APPLICABILITY.--The provisions of Sections 1 through 3 of this act apply to taxable years beginning on or after January 1, 1993.HB 680

CHAPTER 310

RELATING TO TAXATION; AMENDING AND REPEALING CERTAIN SECTIONS OF

CHAPTER 40 OF LAWS 1992 RELATING TO RESEARCH AND DEVELOPMENT SERVICES.

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

Section 1

Section 1. Section 7-9-54.1 NMSA 1978 (being Laws 1992, Chapter 40, Section 1) is amended to read:

"7-9-54.1. DEDUCTION--GROSS RECEIPTS FROM SALE OF AEROSPACE SERVICES TO CERTAIN ORGANIZATIONS.--

A. As used in this section,

(1) "aerospace services" means:

(a) research and development services performed or sold by an organization; or

(b) services performed or sold in connection with the operation of a spaceport for the launching and recovery of reusable rockets and other spacecraft;

(2) "organization" means:

(a) an organization described in Subsection A of Section 7-9-29 NMSA 1978 other than a prime contractor operating facilities in New Mexico designated as a national laboratory by act of congress; or

(b) the prime contractor under a contract with an agency of the United States for the operation of a spaceport for the launching and recovery of reusable rockets and other spacecraft.

B. Receipts from selling on or after October 1, 1995, an aerospace service for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a nontaxable transaction certificate. The buyer delivering the nontaxable transaction certificate shall separately state the value of the aerospace service purchased in the buyer's charge for the aerospace service on its subsequent sale to an organization or to the United States, and the subsequent sale shall be in the ordinary course of business of selling aerospace services to an organization or to the United States.

C. A percentage of the receipts from selling aerospace services to the United States or any agency or instrumentality thereof may be deducted from gross receipts in accordance with the following table:

Deductible Receipts During the Period	Percentage
October 1, 1995 through September 30, 1996	10%
October 1, 1996 through September 30, 1997	25%
October 1, 1997 through September 30, 1999	50%
October 1, 1999 and thereafter	100%."

Section 2

Section 2. Laws 1992, Chapter 40, Section 4 is amended to read:

"Section 4. EFFECTIVE DATE.--The effective date of the provisions of Section 7-9-54.1 NMSA 1978 is October 1, 1995."

Section 3

Section 3. REPEAL.--Laws 1992, Chapter 40, Sections 2 and 3 are repealed.

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 843

CHAPTER 311

RELATING TO THE STATE CORPORATION COMMISSION; INCREASING CERTAIN STATE CORPORATION COMMISSION FILING FEES, LICENSE FEES AND OTHER FEES, CHARGES AND PENALTIES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 53-2-1 NMSA 1978 (being Laws 1975, Chapter 65, Section 1, as amended) is amended to read:

"53-2-1. FEES OF STATE CORPORATION COMMISSION.--

A. For filing documents and issuing certificates, the state corporation commission shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, a fee of one dollar ($1.00) for each one thousand shares of the total amount of authorized shares, but in no case less than one hundred dollars ($100) or more than five thousand dollars ($5,000);

(2) filing articles of amendment and issuing a certificate of amendment increasing the total amount of authorized shares or filing restated articles of incorporation and issuing a restated certificate of incorporation increasing the total amount of authorized shares, a fee equal to the difference between the fee computed at the rate set forth in Paragraph (1) of this subsection upon the total amount of authorized shares, including the proposed increase, and the fee computed at the rate set forth in Paragraph (1) of this subsection upon the total amount of authorized shares, excluding the proposed increase, but in no case less than one hundred dollars ($100) or more than five thousand dollars ($5,000);

(3) filing articles of amendment and issuing a certificate of amendment not involving an increase in the total amount of authorized shares or filing restated articles of incorporation and issuing a restated certificate of incorporation not involving an increase in the total amount of authorized shares, a fee of one hundred dollars ($100);

(4) filing articles of merger, consolidation or exchange and issuing a certificate of merger or consolidation or exchange, a fee equal to the difference between the fee computed at the rate set forth in Paragraph (1) of this subsection upon the total amount of authorized shares in the articles of merger or consolidation in excess of the total amount of authorized shares of the corporations merged or consolidated, or upon the amount of the shares exchanged, but in no case less than two hundred dollars ($200) or more than five thousand dollars ($5,000);

(5) filing an application to reserve a corporate name or filing a notice of transfer of a reserved corporate name, a fee of twenty-five dollars ($25.00);

(6) filing a statement of a change of address of the registered office or change of the registered agent, or both, a fee of twenty-five dollars ($25.00);

(7) filing a statement of the establishment of a series of shares, a fee of one hundred dollars ($100);

(8) filing a statement of reduction of authorized shares, a fee of one hundred dollars ($100);

(9) filing a statement of intent to dissolve, a statement of revocation of voluntary
dissolution proceedings or articles of dissolution, a fee of fifty dollars ($50.00);

(10) filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, a fee of fifty dollars ($50.00);

(11) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state not increasing the total amount of authorized shares, a fee of two hundred dollars ($200);

(12) filing:

(a) an application for a certificate of authority of a foreign corporation and issuing to it a certificate of authority; or

(b) articles of merger or consolidation increasing the total amount of authorized shares which the surviving or new corporation is authorized to issue in excess of the aggregate number of shares which the merging or consolidating domestic and foreign corporations authorized to transact business in this state had

authority to issue, a fee of one dollar ($1.00) for each one thousand shares of the total amount of authorized shares which is represented in this state, but in no case less than two hundred dollars ($200) or more than five thousand dollars ($5,000). The fees payable on an increase in the total amount of authorized shares shall be imposed only on the increased number of shares represented in this state, and the total amount of authorized shares previously authorized which was represented in this state shall be taken into account in determining the rate applicable to the increased amount of authorized shares. The number of authorized shares of a corporation represented in this state shall be that proportion of its total amount of authorized shares which the sum of the value of its property located in this state and the gross amount of business transacted by it or from places of business in this state bears to the sum of the value of all of its property, wherever located, and the gross amount of its business, wherever transacted. Such proportion shall be determined from information contained in the application for a certificate of authority to transact business in this state;

(13) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, a fee of fifty dollars ($50.00);

(14) filing a corporate report and filing a supplemental report, a fee of twenty-five dollars ($25.00);

(15) filing any other statement, corrected document or report of a domestic or foreign corporation, a fee of twenty-five dollars ($25.00);

(16) issuing a certificate of good standing and compliance, a fee of fifty dollars ($50.00); and

(17) issuing a letter of reinstatement of a domestic or foreign corporation, a fee of one hundred dollars ($100).

B. The state corporation commission shall also charge and collect for certifying copies of any document, instrument or paper relating to a corporation, a fee of one dollar ($1.00) per page, but in no case less than ten dollars ($10.00). In addition, a fee of twenty-five dollars ($25.00) shall be paid in each instance where the commission provides the copies of the document to be certified.

C. As used in this section, "total amount of authorized shares" means all shares of stock the corporation is authorized to issue.

D. The state corporation commission shall also charge and collect fees, according to a fee schedule approved by the department of finance and administration, for the provision of services requested by persons, agencies and entities dealing with the commission."

Section 2

Section 2. Section 53-2-3.1 NMSA 1978 (being Laws 1979, Chapter 179, Section 1) is amended to read:

"53-2-3.1. FEES OF STATE CORPORATION COMMISSION--DISHONORED CHECK--CIVIL PENALTY.--In addition to any penalties, fees or costs under Section 53-2-3 NMSA 1978, any person who pays a fee, tax, penalty or interest by check to the state corporation commission and which check is dishonored upon presentation, is liable to the commission for such fee, tax, penalty or interest together with a civil penalty of twenty dollars ($20.00) for each such check."

Section 3

Section 3. Section 53-4-5 NMSA 1978 (being Laws 1939, Chapter 164, Section 5, as amended) is amended to read:

"53-4-5. ARTICLES OF INCORPORATION--CONTENTS.--Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least three of them, if natural persons, and by the presidents and secretaries, if associations, before an officer authorized to take acknowledgments. Within the limitations set forth in Chapter 53, Article 4 NMSA 1978, the articles shall contain:

A. a statement as to the purpose for which the association is formed;

B. the name of the association, which shall include the word "cooperative";

C. the term of existence of the association, which may be perpetual;

D. the address of its initial registered office and the name of its initial registered agent at such address;

E. the names and addresses of the incorporators of the association;

F. the names and addresses of the directors who shall manage the affairs of the association for the first year, unless sooner changed by the members;

G. a statement that an affidavit signed by each director stating that he consents to being a director is on file with the cooperative association;

H. a statement of whether the association is organized with or without shares and the number of shares or memberships subscribed for;

I. if organized with shares, the amount of authorized capital, the number and types of shares and the par value thereof, which may be placed at any figure, and the rights, preferences and restrictions of each type of share;

J. the minimum number of shares that must be owned in order to qualify for membership;

K. the maximum amount or percentage of capital that may be owned or controlled by any member; and

L. the method by which any surplus, upon dissolution of the association, shall be distributed in conformity with the requirements of Section 53-4-36 NMSA 1978 for division of such surplus.

The articles may also contain any other provisions not inconsistent with Chapter 53, Article 4 NMSA 1978."

Section 4

Section 4. Section 53-4-6 NMSA 1978 (being Laws 1939, Chapter 164, Section 6) is amended to read:

"53-4-6. ARTICLES OF INCORPORATION--FILING--RECORDATION--FEES.--The articles of incorporation shall be filed with the state corporation commission together with a fee of fifty dollars ($50.00) and shall be recorded with the county clerk of the county where the principal office is located for a fee of one dollar ($1.00)."

Section 5

Section 5. Section 53-4-7 NMSA 1978 (being Laws 1939, Chapter 164, Section 7) is amended to read:

"53-4-7. ARTICLES OF INCORPORATION--AMENDMENTS--FEE.--

A. Amendments to the articles may be proposed by a two-thirds vote of the board of directors or by petition of one-tenth of the association's members. Notice of the meeting to consider the amendment shall be sent by the secretary at least thirty days in advance thereof to each member at his last known address, accompanied by the full text of the proposal and by that part of the articles to be amended. Two-thirds of the members voting may adopt the amendment and when verified by the president and secretary, it shall be filed with the state corporation commission within thirty days of its adoption, and a fee of twenty-five dollars ($25.00) shall be paid.

B. If the amendment is to alter the preferences of outstanding shares of any type or to authorize the issuance of shares having preferences superior to outstanding shares of any type, the vote of two-thirds of the members owning the outstanding shares affected by the change shall also be required for the adoption of the amendment.

C. The amount of capital and the number and par value of shares may be diminished or increased by amendment of the articles, but the capital shall not be diminished below the amount of paid-up capital existing at the time of amendment."

Section 6

Section 6. Section 53-4-34 NMSA 1978 (being Laws 1939, Chapter 164, Section 34) is amended to read:

"53-4-34. ANNUAL REPORT.--

A. Every association shall annually, within sixty days of the close of its operations for that year, make a report of its condition sworn to by the president and secretary, which report shall be filed with the state corporation commission. The report shall state:

(1) the name and principal address of the association;

(2) the names and addresses of the officers and directors, and the name and address of its initial registered agent and registered office;

(3) the amount and nature of its authorized, subscribed and paid-in capital, the number of its shareholders, the par value of its shares and the rate at which any interest-dividends have been paid. For nonshare associations, the annual report shall state the total number of members, the number admitted or withdrawn during the year and the amount of membership fees received; and

(4) the receipts, expenditures, assets and liabilities of the association.

A copy of this report shall be kept on file at the principal office of the association.

B. Any person who subscribes or makes oath to such report containing a false statement, known to the person to be false, shall upon conviction thereof be fined not exceeding five hundred dollars ($500) or imprisoned not exceeding one year, or both.

C. Every association shall pay an annual fee of ten dollars ($10.00) upon filing the report."

Section 7

Section 7. Section 53-4-45 NMSA 1978 (being Laws 1939, Chapter 164, Section 45) is amended to read:

"53-4-45. TAXATION.--Associations formed under Chapter 53, Article 4 NMSA 1978 and foreign corporations admitted under Section 53-4-41 NMSA 1978 to do business in this state shall pay an annual license fee of twenty dollars ($20.00)."

Section 8

Section 8. Section 53-8-85 NMSA 1978 (being Laws 1975, Chapter 217, Section 85, as amended) is amended to read:

"53-8-85. FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES.--The corporation commission shall charge and collect for:

A. filing articles of incorporation and issuing a certificate of incorporation, twenty-five dollars ($25.00);

B. filing articles of amendment and issuing a certificate of amendment, twenty dollars ($20.00);

C. filing restated articles of incorporation and issuing a restated certificate of incorporation, twenty dollars ($20.00);

D. filing articles of merger or consolidation and issuing a certificate of merger or consolidation, twenty dollars ($20.00);

E. filing a statement of change of address of registered office or change of registered agent, or both, ten dollars ($10.00);

F. filing articles of dissolution, ten dollars ($10.00);

G. filing an application of a foreign corporation for a certificate of authority to conduct affairs in New Mexico and issuing a certificate of authority, twenty-five dollars ($25.00);

H. filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in New Mexico and issuing an amended certificate of authority, twenty dollars ($20.00);

I. filing an application to reserve a corporation name or filing a notice to transfer of a reserved corporate name, ten dollars ($10.00);

J. filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in New Mexico, twenty-five dollars ($25.00);

K. filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, ten dollars ($10.00);

L. filing any other statement or report, including an annual report, of a domestic or foreign corporation, ten dollars ($10.00);

M. issuing a certificate of good standing and compliance, ten dollars ($10.00); and

N. issuing a letter or reinstatement of a domestic or foreign corporation, a fee of twenty-five dollars ($25.00)."

Section 9

Section 9. Section 53-8-86.1 NMSA 1978 (being Laws 1979, Chapter 180, Section 3) is amended to read:

"53-8-86.1. FEES OF STATE CORPORATION COMMISSION--DISHONORED CHECK--CIVIL PENALTY.--Any person or corporation who pays a fee by check to the state corporation commission and which check is dishonored upon presentation is liable to the commission for such fees together with a civil penalty of twenty dollars ($20.00) for each such check."

Section 10

Section 10. Section 53-8-87 NMSA 1978 (being Laws 1975, Chapter 217, Section 86, as amended) is amended to read:

"53-8-87. MISCELLANEOUS CHARGES.--The corporation commission shall charge and collect for furnishing a copy of any document, instrument or paper relating to a corporation, one dollar ($1.00) per page, but in no case
less than five dollars ($5.00). In addition, if certifying the document, ten dollars ($10.00) shall be paid for the certificate and affixing the seal thereto."

Section 11

Section 11. Section 63-7-20 NMSA 1978 (being Laws 1951, Chapter 194, Section 1, as amended) is amended to read:

"63-7-20. UTILITY AND CARRIER INSPECTION--FEE.--Each utility and carrier doing business in this state which is subject to the control and jurisdiction of the commission by virtue of the provisions of Article 11 of the constitution of New Mexico with respect to its rates and service shall pay annually to the commission a fee in performance of its duties as now provided by law. The fee for carriers shall not exceed one-fourth of one percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. The fee for utilities shall not exceed one-half of one percent of its gross receipts from business transacted in New Mexico for the preceding calendar year. This sum shall be payable annually on or before January 20 or in equal quarterly installments on or before January 20, April 20, July 20 and October 20 in each year. No similar fee shall be imposed upon the utility or carrier. In the case of utilities or carriers engaged in interstate business, the fees shall be measured by the gross receipts of the utilities or carriers from intrastate business only for the preceding calendar year and not in any respect upon receipts derived wholly or in part from interstate business. As used in this section, "utility" includes telephone companies and transmission companies."

Section 12

Section 12. Section 76-12-8 NMSA 1978 (being Laws 1937, Chapter 152, Section 8) is amended to read:

"76-12-8. FILING AND RECORDING ARTICLES OF INCORPORATION.--The articles of incorporation shall be filed with the state corporation commission, and a copy thereof, duly certified by the commission, shall be recorded in the office of the county clerk of the county where the principal office of the association is to be located in this state. For filing the articles of incorporation, an association shall pay to the state corporation commission fifty dollars ($50.00) together with the proportionate part of the annual license fee which may be due for the succeeding fraction of the fiscal year, and for filing an amendment to the articles, twenty-five dollars ($25.00). For filing the certified copy of the articles of association with the county clerk, the association shall pay a fee of one dollar ($1.00)."

Section 13

Section 13. Section 76-12-20 NMSA 1978 (being Laws 1937, Chapter 152, Section 20) is amended to read:

"76-12-20. TAXATION.--It is the duty of every association organized under the Cooperative Marketing Association Act and foreign associations admitted to do business in this state under that act to procure annually from the state corporation commission a license authorizing the transaction of business in the state. Each domestic or foreign corporation shall pay annually a license fee of twenty-five dollars ($25.00) to the state corporation commission before receiving such license."

Section 14

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.HB 946

CHAPTER 312

RELATING TO HIGHWAYS; AMENDING SECTION 67-3-28.2 NMSA 1978 (BEING LAWS 1986, *CHAPTER 20, SECTION 125, AS AMENDED) TO AUTHORIZE EXPENDITURE OF A CERTAIN PORTION OF THE LOCAL GOVERNMENTS ROAD FUND FOR PURCHASE OF CERTAIN ROAD EQUIPMENT FOR LOCAL GOVERNMENTS WHO DEMONSTRATE FINANCIAL HARDSHIP.*

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

Section 1

Section 1. Section 67-3-28.2 NMSA 1978 (being Laws 1986, Chapter 20, Section 125, as amended) is amended to read:

"67-3-28.2. LOCAL GOVERNMENTS ROAD FUND CREATED--USES.--

A. There is created in the state treasury the "local governments road fund" to be administered by the department. All income received from investment of the fund shall be credited to the fund. No money in the fund shall be used by the department to administer any program, and no entity receiving a distribution pursuant to a program requiring matching funds shall use another distribution made pursuant to this section to meet the match required.

B. No more than five hundred thousand dollars ($500,000) annually from the local governments road fund shall be used by the department to purchase at fair market value, for municipalities and counties that can demonstrate financial hardship as determined by the department, automotive, major road and miscellaneous equipment that would otherwise be sold at auction by the department as unusable for department purposes. The department shall adopt rules setting the procedure to carry out the purposes of this subsection.

C. Except for the amount in Subsection B of this section, money in the local governments road fund shall be distributed in the following amounts for the specified purposes:

(1) forty-two percent for the cooperative agreements program to be used solely for the cooperative agreements entered into pursuant to Section 67-3-28 NMSA 1978 and in accordance with the match authorized pursuant to Section 67-3-32 NMSA 1978; provided, however, that distribution amounts made pursuant to this paragraph in each year shall be based on the following allocations:

(a) thirty-three percent for agreements entered into with counties;

(b) forty-nine percent for agreements entered into with municipalities;

(c) fourteen percent for agreements entered into with school districts; and

(d) four percent for agreements entered into with other entities;

(2) sixteen percent for the municipal arterial program to be used solely for the necessary project development, construction, reconstruction, improvement, maintenance, repair and right-of-way and material acquisition of and for those streets which are principal extensions of rural state highways and of other streets

not on the state highway system but which qualify under the designated criteria established by the department. In entering into agreements with municipalities to provide funds for any project qualifying for the municipal arterial program, the department shall give preference to municipalities which contribute an amount equal to at least twenty-five percent of the project cost;

(3) sixteen percent for school bus routes to be used solely for acquiring rights of way and constructing, maintaining, repairing, improving and paving school bus routes and public school parking lots; and

(4) twenty-six percent for the county arterial program to be used for project development, construction, reconstruction, improvement, maintenance, repair and right-of-way and material acquisition of and for county roads for which individual counties have prioritized road projects. Prior to entering into any agreements for projects with the counties for the following fiscal year, in June of each year the department shall determine and certify the amount to which each county is entitled pursuant to the following schedule:

Road Mileage Category Based on Number of Miles Maintained By a County:	Entitlement to County:
400 miles or under	$250 for each mile
401 to 800 miles	$100,000 plus $200 for each mile over 400 miles
801 to 1,200 miles	$180,000 plus $150 for each mile over 800 miles
1,201 to 1,600 miles	$240,000 plus $100 for each mile over 1,200 miles
Over 1,600 miles	$300,000 plus $50 for each mile over 1,600 miles.

If in any year there is an insufficient amount in the fund of the county arterial program to certify the total amount to which all counties are entitled, the department shall decrease the entitlement amount due to each county in the same proportion as the insufficiency is to the total entitlements to all counties. Distribution of an entitlement amount and an agreement entered into with a county for any of the purposes for which the money may be spent requires an amount from the county equal to at least twenty-five percent of the entitlement. Any uncommitted or unencumbered balance remaining in the county arterial program fund at the end of a fiscal year shall be transferred to the cooperative agreement program specified in Paragraph (1) of this subsection for additional funding of that program in the next fiscal year.

C. The department may transfer funds from the state road fund to the local governments road fund to facilitate cash flow for the funding of these local governments

road projects. The administrator of the local governments road fund shall reimburse the state road fund in a timely manner for any such transfers." HB 1004

CHAPTER 313

RELATING TO TAXATION; ENACTING THE VENTURE CAPITAL INVESTMENT ACT; PROVIDING AN INCOME TAX CREDIT.

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

Section l. SHORT TITLE.--This act may be cited as the "Venture Capital Investment Act".

Section 2

Section 2. DEFINITIONS.--As used in the Venture Capital Investment Act:

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

B. "Internal Revenue Code" means the federal Internal Revenue Code of l986, as amended or renumbered;

C. "New Mexico income tax" means the tax imposed pursuant to the Income Tax Act;

D. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

E. "taxpayer" means any individual subject to the tax imposed pursuant to the Income Tax Act; and

F. "testing period" means the five-year period a stock is held by a taxpayer beginning with the first day of the taxpayer's holding period for the stock.

Section 3

Section 3. TAX CREDIT.--

A. Any taxpayer who pays federal income tax on a qualified diversifying business net capital gain may claim a credit against the taxpayer's New Mexico income tax liability equal to a capital gain tax differential, if the taxpayer allocates the qualified diversifying business net capital gain to New Mexico.

B. The tax credit provided in Subsection A of this section may only be deducted from the taxpayer's New Mexico income tax liability. Any portion of the credit that remains unused at the end of the taxpayer's taxable year may be carried forward and deducted from the taxpayer's New Mexico
income tax liability in succeeding years.

C. As used in this section:

(1) "capital gain tax differential" equals either:

(a) an amount equal to fifty percent of the federal income tax paid by the taxpayer on qualified diversifying business net capital gains; or

(b) in the event that the taxpayer makes an election pursuant to Section 13 of the Venture Capital Investment Act and the taxpayer has not previously paid federal income tax on the qualified diversifying business net capital gain that accrued prior to that election, then an amount equal to fifty percent of the federal income tax paid by the taxpayer on the gain on the sale of that qualified diversifying business stock times the percentage derived by dividing the gain on such stock accruing since the election by the total gain on the stock accruing since its original acquisition without regard to the election; and

(2) "qualified diversifying business net capital gain" means the net capital gain for the taxable year determined under the Internal Revenue Code by taking into account only gains or losses from sales or exchanges of qualified diversifying business stock with a holding period of more than five years at the time of the sale or exchange.

Section 4

Section 4. QUALIFIED DIVERSIFYING BUSINESS STOCK.--

A. For purposes of the Venture Capital Investment Act, "qualified diversifying business stock" means, except as otherwise provided in Section 13 of that act, any stock in a corporation that is originally issued after June 30, l994 but before July l, 2001, if:

(1) on the date of issuance the corporation is a qualified diversifying business;

(2) except as otherwise provided in Subsection B of this section and in Sections 9 and 10 of the Venture Capital Investment Act, the stock is acquired by the taxpayer at its original issue, either:

(a) in exchange for money or other property, not including stock; or

(b) as compensation for services, other than services performed as an underwriter of such stock; and

(3) the stock throughout the testing period meets the active manufacturing business requirements, the New Mexico business requirements and the successful business requirements of Sections 6, 7 and 8 of the Venture Capital Investment Act.

B. For purposes of Paragraph (2) of Subsection A of this section, stock shall not be treated as acquired by the taxpayer at its original issue if:

(1) it is issued directly or indirectly in redemption of, or otherwise in exchange for, stock that is not qualified diversifying business stock; or

(2) it is issued in an exchange described in Section 35l of the Internal Revenue Code in exchange for property other than qualified diversifying business stock, if immediately after the exchange, both the issuer and transferee of the stock are members of the same controlled group of corporations as defined in Section 1563 of the Internal Revenue Code.

Section 5

Section 5. QUALIFIED DIVERSIFYING BUSINESS.--

A. For purposes of the Venture Capital Investment Act, "qualified diversifying business" means, except as otherwise provided in Section 13 of that act, any domestic corporation that has its commercial domicile in New Mexico and with respect to which the aggregate amount of money, other property and services received by the corporation for stock, as a contribution to capital and as paid-in surplus, plus the accumulated earnings and profits of the corporation, does not exceed twenty-five million dollars ($25,000,000), provided:

(1) the determination made under this subsection shall be made at the time of issuance, but shall include amounts received in the issuance and all prior issuances; and

(2) in the case of stock issued in a calendar year after l993, the amount shall not exceed an amount equal to twenty-five million dollars ($25,000,000) multiplied by the cost-of-living adjustment determined under Section 1 (f)(3) of the Internal Revenue Code for that calendar year by substituting "l992" for "l987" in Subparagraph (B) of that section.

B. For the purpose of making the determination in Subsection A of this section:

(1) the amount taken into account with respect to any property other than money shall be an amount equal to the adjusted basis of that property for determining capital gain:

(a) reduced, but to not below zero, by any liability to which the property was subject or which was assumed by the corporation; and

(b) determined at the time the property was received by the corporation; and

(2) the amount taken into account with respect to stock issued for services shall be the value of those services.

Section 6

Section 6. ACTIVE MANUFACTURING BUSINESS REQUIREMENT.--

A. To meet the requirements of Paragraph (3) of Subsection A of Section 4 of the Venture Capital Investment Act, a corporation throughout the testing period shall:

(l) be engaged in the active conduct of a manufacturing trade or business; and

(2) use substantially all of its assets in the active conduct of a manufacturing trade or business.

B. For purposes of Subsection A of this section, a "manufacturing trade or business" means the manufacture of, and the business activities related to the manufacture of, all non-durable and durable goods, including but not limited to food and kindred products; textile mill products; apparel and other textile products; paper and allied products; printing and publishing, including publishing of computer software; chemicals and allied products; pharmaceuticals and bio-technology products; petroleum and coal products; rubber and miscellaneous products; leather and leather products; lumber and wood products; furniture and fixtures; primary metal industries; fabricated metal products; machinery and computer equipment; electronic equipment; transportation equipment other than motor vehicles; stone products; clay products; glass products; and instruments and related products.

C. For purposes of Subsection A of this section, if, in connection with any future manufacturing trade or business, a corporation is engaged in any of the following activities, the corporation shall be treated with respect to such activities as engaged in, and assets used in such activities shall be treated as used in, the active conduct of a manufacturing trade or business, whether or not the corporation has any gross income from such activities at the time of the determination:

(1) start-up activities described in Section 195(c)(l)(A) of the Internal Revenue Code;

(2) activities resulting in the payment or incurring of expenditures that may be treated as research and experimental expenditures under Section 174 of the Internal Revenue Code; or

(3) activities with respect to in-house research expenses described in Section 41(b)(4) of the Internal Revenue Code.

D. A corporation shall be treated as failing to meet the requirements of Subsection A of this section if at any time during the testing period more than ten percent of the value of its assets in excess of liabilities consists of stock in other corporations that are not subsidiaries of that corporation, provided:

(1) for purposes of this section, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets and to conduct its ratable share of the subsidiary's activities; and

(2) a corporation shall be considered a subsidiary if the parent owns at least fifty percent of the combined voting power of all classes of stock entitled to vote or at least fifty percent in value of all outstanding stock of that corporation.

E. For purposes of Paragraph (2) of Subsection A of this section, any assets that are held for investment and are to be used to finance future research and experimentation or working capital needs of the corporation shall be treated as used in the active conduct of a manufacturing trade or business.

F. A corporation shall be treated as failing to meet the requirements of Subsection A of this section if, at any time during the testing period, more than ten percent of the total value of its assets is real property that is not used in the active conduct of a manufacturing trade or business. However, the ownership of, dealing in or renting of real property shall not be treated as the active conduct of manufacturing trade or business.

G. For purposes of Subsection A of this section, rights to computer software that produce income described in Section 543(d) of the Internal Revenue Code shall be treated as an asset used in the active conduct of a manufacturing trade or business.

Section 7

Section 7. NEW MEXICO BUSINESS REQUIREMENT.--A corporation meets the requirements pursuant to Paragraph (3) of Subsection A of Section 4 of the Venture Capital Investment Act, if, throughout the testing period:

A. the corporation has its commercial domicile in New Mexico and all of its corporate directors who are also employees of the corporation are full-time residents of New Mexico;

B. at least two-thirds of all of the corporation's employees, at least two-thirds of its employees who perform research, development or design activities and at least two-thirds of its employees who perform manufacturing activities are full-time residents of New Mexico;

C. the corporation maintains an employee stock purchase plan, incentive stock option plan or similar plan pursuant to which employees of the corporation have the opportunity to acquire equity ownership in the corporation; and

D. the corporation employs on a full-time basis an average of at least fifty full-time New Mexico residents.

Section 8

Section 8. BUSINESS SUCCESS REQUIREMENT.--

A. To meet the requirements of Paragraph (3) of Subsection A of Section 4 of the Venture Capital Investment Act, at the end of the taxpayer's holding period, the corporation must have experienced a net increase in valuation of at least fifteen million dollars ($l5,000,000), provided:

(1) the increase in valuation shall be calculated by subtracting the amount determined pursuant to
Subsection A of Section 5 of the Venture Capital Investment Act or pursuant to an election under Section 13 of that act, as the case may be, from the current valuation of the corporation at the time of the transfer giving rise to the qualified diversifying business net capital gain;

(2) the current valuation of the corporation at the time of the transfer giving rise to the qualified diversifying business net capital gain equals the per-share value of the money and property received by the taxpayer on the transfer multiplied by the outstanding shares of the corporation, as calculated on a fully diluted basis; and

(3) in the case of any stock issued in a calendar year after l994, the net increase in valuation required shall be an amount equal to fifteen million dollars ($l5,000,000) multiplied by the cost-of-living adjustment determined under Section l (f)(3) of the Internal Revenue Code for that calendar year by substituting "l992" for "l987" in Subparagraph (B) of that section.

B. As used in this section, "as calculated on a fully diluted basis" means the number of shares that would be outstanding if all outstanding convertible securities were fully converted and all outstanding options and warrants were fully exercised.

Section 9

Section 9. SPECIAL RULES FOR OPTIONS, WARRANTS AND CERTAIN CONVERTIBLE INVESTMENTS.--

A. In the case of stock that is acquired by the taxpayer through the exercise of an applicable option or warrant, through the conversion of convertible debt or in exchange for securities of the corporation in a transaction described in Section 368 of the Internal Revenue Code:

(1) the stock shall be treated as acquired by the taxpayer at original issue; and

(2) the stock shall be treated as having been held during the period that the option, warrant or debt was held or that the security was outstanding.

B. For purposes of Subsection A of Section 5 of the Venture Capital Investment Act and notwithstanding Subsection B of that section, in the case of a debt instrument converted to stock, or stock issued in exchange for securities in a transaction described in Section 368 of the Internal Revenue Code, such stock shall be treated as issued for an amount equal to the sum of:

(1) the principal amount of the debt or security at the time of the conversion or exchange; and

(2) accrued but unpaid interest on that loan or security.

C. As used in this section, "applicable option or warrant" means an option or warrant that was issued in exchange for the performance of services for the corporation issuing it and is nontransferable.

Section l0. CERTAIN TAX-FREE AND OTHER TRANSFERS.--

A. This section applies to the following transfers of stock:

(1) by gift;

(2) at death;

(3) to the extent that the basis of the property in the hands of the transferee is determined by reference to the basis of the property in the hands of the transferor by reason of Sections 334(b), 723 or 732 of the Internal Revenue Code; and

(4) of qualified diversifying business stock for other qualified diversifying business stock in a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code.

B. In the case of a transfer of stock to which this section applies, the transferee shall be treated as having acquired the stock in the same manner as the transferor and as having held such stock during any continuous period immediately preceding the transfer during which it was held or treated as held under this section by the transferor.

C. In the case of a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code, if a qualified diversifying business stock is transferred for other stock that is not qualified diversifying business stock, the transfer shall be treated as a transfer to which this section applies solely with respect to the person receiving such other stock.

D. This section applies to the sale or exchange of stock treated as qualified diversifying business stock by reason of Subsection C of this section only to the extent of the gain, if any, that would have been recognized at the time of the transfer described in Subsection C of this section if Section 351 or 368 of the Internal Revenue Code had not applied at that time.

E. For purposes of this subsection, stock treated as qualified diversifying business stock under Subsection C of this section shall be so treated for subsequent transactions or reorganizations, except that the limitation of Subsection D of this section shall be applied as of the time of the first transfer to which Subsection C of this section applied.

F. Except in the case of a transaction described in Section 368 of the Internal Revenue Code, this section applies only if, immediately after the transaction, the corporation issuing the stock owns, directly or indirectly, stock representing control, within the meaning of Section 368(c) of the Internal Revenue Code, of the corporation whose stock was transferred.

Section 11

Section 11. STOCK EXCHANGED FOR PROPERTY.--For purposes of the Venture Capital Investment Act, in the case where the taxpayer transfers property other than money or stock to a corporation in exchange for stock in that corporation:

A. the stock shall be treated as having been acquired by the taxpayer on the date of that exchange; and

B. the basis of the stock in the hands of the taxpayer shall be treated as equal to the fair market value of the property exchanged.

Section l2. PASS-THRU ENTITIES.--For purposes of the Venture Capital Investment Act, any gain or loss of a pass-thru entity that is treated for purposes of that act as a gain or loss of any person holding an interest in that entity shall retain its character as qualified diversifying business capital gain or loss in the hands of that person.

Section 13

Section 13. ELECTION.--

A. On any date after June 30, l993, a taxpayer who holds any stock of a corporation that has its commercial domicile in New Mexico and meets the requirements of this section may elect to have the stock treated as a qualified diversifying business stock in accordance with the provisions of this section for purposes of claiming the tax credit pursuant to the Venture Capital Investment Act.

B. On any date after June 30, l994, if a taxpayer holds any stock of a corporation that has its commercial domicile in New Mexico on that date, and which stock, at the time it was issued, would have been treated as qualified diversifying business stock pursuant to the Venture Capital Investment Act but for the facts that the stock was issued on or before June 30, l994 and that the stock was issued by a corporation that at the time did not have its commercial domicile in New Mexico, and the value of such stock on that date exceeds its adjusted basis, the taxpayer may elect to set that date as the election date and treat the stock as having been sold on that date for an amount equal to its value on that date and as having been reacquired on that date for an amount equal to such value.

C. For purposes of determining the tax credit pursuant to Section 3 of the Venture Capital Investment Act, and whether or not the taxpayer actually incurs federal or New Mexico income tax liability, the gain from sales determined in Subsection B of this section shall be treated as received or accrued, and the holding period of the reacquired stock shall be treated as beginning, on that election date. Such stock shall be treated after such reacquisition as acquired in the same manner and at the same time as the original acquisition. Neither the requirement of Subsection A of Section 4 of the Venture Capital Investment Act that the stock must have been issued after June 30, l994 nor the requirement of Subsection A of Section 5 of the Venture Capital Investment Act that the issuing corporation have its commercial domicile in New Mexico shall apply.

D. An election under this section with respect to any stock shall be made in the manner the secretary prescribes. Such an election, once made with respect to any stock, is irrevocable.

E. Notwithstanding the provisions of this section, no credit shall be allowed or claimed on any qualified diversifying business net capital gain arising from the sale of stock prior to July 1, 1998.

Section 14

Section 14. ADMINISTRATION OF ACT.--The Venture Capital Investment Act shall be administered pursuant to the provisions of the Tax Administration Act.

Section 15

Section 15. TEMPORARY PROVISION--REGULATIONS.--The secretary shall promulgate regulations no later than November 1, 1993 to implement the provisions of the Venture Capital Investment Act. Such regulations shall at a minimum provide for corporations and taxpayers to make appropriate filings in a timely manner with the department so as to assure taxpayers of the availability in future years of the tax credit provided by the Venture Capital Investment Act.

Section l6. APPLICABILITY.--The provisions of this act apply to taxable years beginning on and after January l, l994.

Section 17

Section 17. NON-SEVERABILITY.--If any part or application of this act is held invalid, the entire act shall be deemed invalid and shall cease to apply and the credit shall not be extended to any taxpayer. HB 1024

CHAPTER 314

RELATING TO ELECTIONS; AMENDING PROVISIONS OF THE ELECTION CODE PERTAINING TO THE REGISTRATION OF VOTERS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 1-1-7.1 NMSA 1978 (being Laws 1979, Chapter 378, Section 1, as amnded) is amended to read:

"1-1-7.1. RESIDENCE FOR PURPOSE OF CANDIDACY AND SIGNING OF PETITIONS--RULE FOR DETERMINING.--For the purpose of determining the residence of a person desiring to be a candidate for the nomination or election to an office under the provisions of the Election Code or for the purpose of determining the residence of any signer of a petition required by the Election Code, permanent residence shall be resolved in favor of that place shown on the person's certificate of registration as his permanent residence, provided the person resides on the premises."

Section 2

Section 2. Section 1-1-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 7, as amended) is amended to read:

"1-1-8. ELECTION RETURNS.--As used in the Election Code, "election returns" means the certificate of the precinct board showing the total number of votes cast for each candidate, or for or against each proposed constitutional amendment or other question, and may include statements of canvass, signature rosters, poll books, tally books, machine printed returns and, in any canvass of returns for county candidates, the original certificates of registration in the possession of the county clerk, together with the copies of certificates of registration in the office of the county clerk."

Section 3

Section 3. A new section of the Election Code, Section1-2-3.1 NMSA 1978, is enacted to read:

"1-2-3.1. SECRETARY OF STATE--MULTIPURPOSE REGISTRATION FORM.--The secretary of state shall prescribe the form of a multipurpose certificate of registration, which shall be printed in English and Spanish. The certificate of registration form shall be clear and understandable to the average person and shall include brief but sufficient instructions to enable the qualified elector to complete the form. The certificate of registration form shall replace the
affidavit of registration."

Section 4

Section 4. Section 1-2-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 32, as amended) is amended to read:

"1-2-12. PRECINCT BOARD--NUMBER FOR EACH PRECINCT--BIPARTISAN.--

A. When absentee ballots are counted, the precinct board shall consist of:

(1) a presiding judge;

(2) two election judges who shall be of different political parties; and

(3) two election clerks who shall be of different political parties.

B. When one voting machine is to be used in a precinct, the precinct board shall consist of:

(1) a presiding judge;

(2) two election judges who shall be of different political parties; and

(3) one election clerk who shall be of a different political party than the presiding judge.

C. When two voting machines are to be used in a precinct, the precinct board shall consist of:

(1) a presiding judge;

(2) two election judges who shall be of different political parties; and

(3) two election clerks who shall be of different political parties.

D. When three voting machines are used in a precinct, the precinct board shall consist of:

(1) a presiding judge;

(2) two election judges who shall be of different political parties; and

(3) three election clerks, not more than two of whom shall belong to the same political party.

E. If the county clerk determines that additional election clerks are needed in a precinct, the clerk may appoint such additional election clerks as he deems necessary; provided, however, that such appointments shall be made in the manner that provides for representation from all major political parties.

F. In addition to the members of the precinct board provided for in this section, the county clerk may appoint an additional election clerk for the purpose of making changes in the certificate of registration of any voter who has voted in that election at the polling place."

Section 5

Section 5. Section 1-4-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 61) is amended to read:

"1-4-3. REGISTRATION DECLARED PERMANENT.--The registration of a qualified elector is permanent for all purposes during the life of such person unless and until his certificate of registration is canceled for any cause specified in the Election Code."

Section 6

Section 6. Section 1-4-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 63, as amended) is amended to read:

"1-4-5. METHOD OF REGISTRATION.--

A. A qualified elector may apply to a registration officer for registration.

B. The registration officer shall fill out each of the blanks on the original and the voter's copy of the certificate of registration by typing or printing in ink. Carbon paper may be used between the original and the voter's copy.

C. The qualified elector shall subscribe a certificate of registration.

(1) A person shall sign his original certificate of registration using his given name, middle name or initial and last name.

(2) If any qualified elector seeking to register is unable to read and write either the English or Spanish language or is unable to read or write because of some physical disability, the certificate of such person shall be filled out by a registration officer, and the name of the qualified elector so registering shall be subscribed by the making of his mark.

D. When properly executed by the registration officer, the original and the voter's copy of the certificate of registration shall be presented, either in person or by mail by the qualified elector or by the registration officer, to the county clerk of the county in which the qualified elector resides.

E. Only when the certificate of registration is properly filled out, subscribed by the qualified elector and accepted for filing by the county clerk as evidenced by his signature or stamp and the date of acceptance thereon shall it constitute an official public record of the registration of the qualified elector."

Section 7

Section 7. A new section of the Election Code, Section 1-4-5.1 NMSA 1978, is enacted to read:

"1-4-5.1. METHOD OF REGISTRATION--FORM.--

A. A qualified elector may also apply for registration by mail or in the office of the county clerk.

B. Certificate of registration forms may be requested from the secretary of state or any county clerk in person, by telephone or by mail for oneself or for others.

C. A qualified elector who wishes to register to vote shall fill out completely and sign the certificate of registration. The qualified elector may seek the assistance of any person in completing the certificate of registration.

D. Completed certificates of registration may be mailed or presented in person by the registrant or any other person to the secretary of state or presented in person by the registrant or any other person to the county clerk of the county in which the registrant resides.

E. If the registrant wishes to vote in the next election, the completed and signed certificate of registration shall be delivered or mailed and postmarked at least twenty-eight days before the election.

F. Upon receipt of a certificate of registration, the secretary of state shall send the certificate to the county clerk in the county where the qualified elector resides.

G. Only when the certificate of registration is properly filled out, signed by the qualified elector and accepted for filing by the county clerk as evidenced by his signature or stamp and the date of acceptance thereon and when notice has been received by the registrant, shall it constitute an official public record of the registration of the qualified elector.

H. The secretary of state shall prescribe the form of the certificate of registration, which shall be a postpaid mail-in format and shall be printed in Spanish and English. The certificate of registration form shall be clear and understandable to the average person and shall include brief but sufficient instructions to enable the qualified elector to complete the form without assistance."

Section 8

Section 8. Section 1-4-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 65) is amended to read:

"1-4-7. REGISTRATION BY TEMPORARY ABSENTEES.--A qualified elector who is temporarily out of his county of residence or out of New Mexico, may, upon request to the county clerk of his county of residence, obtain the prescribed certificate of registration form. After the certificate of registration has been subscribed, the qualified elector shall return it to the county clerk of his county of residence by mail. Upon receipt of the completed certificate of registration, the county clerk shall ascertain if such certificate of registration is to be filed or rejected in accordance with the Election Code."

Section 9

Section 9. Section 1-4-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 66, as amended) is amended to read:

"1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF REGISTRATION--CLOSE OF REGISTRATION.--

A. The county clerk shall receive certificates of registration at all times during normal working hours, except that he shall close registration at 5:00 p.m. on the twenty-eighth day immediately preceding any election at which the registration books are to be furnished to the precinct board.

B. Registration shall be reopened on the Monday following the election.

C. For purposes of a municipal or school election, the registration period for those precincts within the municipality or school district is closed at 5:00 p.m. on the twenty-eighth day immediately preceding the municipal or school election and is opened again on the Monday following the election.

D. During the period when registration is closed, the county clerk shall receive certificates of registration and other documents pertaining thereto but shall not file the certificate of registration in the registration book until the Monday following the election at which time a copy shall be mailed to the registrant at the address shown on the certificate of registration.

E. When the twenty-eighth day prior to any election referred to in this section is a Saturday, Sunday or legal holiday, registration shall be closed at 5:00 p.m. of the next succeeding regular business day for the office of the county clerk.

F. The county clerk shall accept for filing any certificate of registration that is hand delivered or received in the mail before 5:00 p.m. on the Friday immediately following the close of registration."

Section 10

Section 10. Section 1-4-11 NMSA 1978 (being Laws 1969, Chapter 240, Section 67, as amended) is amended to read:

"1-4-11. DUTIES OF COUNTY CLERK--UPON RECEIPT OF CERTIFICATES.--

A. Upon receipt of a complete certificate of registration, if in proper form, the county clerk shall determine if the qualified elector applying for registration is already registered in the registration recordsof the county. If the qualified elector is not already registered in the county and if the certificate of registration is received within the time allowed by law for filing certificates of registration in the county clerk's office, the county clerk shall sign or stamp, in the space provided therefor on each copy of the certificate, his name and the date the certificate was accepted for filing in the county registration records. A copy of the certificate of registration shall be handed or mailed to the voter and to no other person.

B. If the qualified elector is already registered in the county as shown by his original certificate of
registration currently on file in the county registration records, the county clerk shall not

accept the new certificate of registration unless it is filed pursuant to Sections 1-4-13, 1-4-15, 1-4-17 or 1-4-18 NMSA 1978. He shall stamp or write the word "rejected" on the new certificate of registration and hand or mail it to the voter with an explanation why the new certificate of registration was rejected and what remedial action, if any, the voter must take to bring his registration up to date."

Section 11

Section 11. Section 1-4-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 68, as amended) is amended to read:

"1-4-12. DUTIES OF COUNTY CLERK--FILING OF CERTIFICATES.--

A. Certificates of registration, if in proper form, shall be processed and filed by the county clerk as follows:

(1) the voter's copy of the certificate shall be delivered or mailed to the voter; and

(2) the original certificate shall be filed alphabetically by surname and inserted into the county register pursuant to Section 1-5-5 NMSA 1978.

B. The county clerk shall, on Monday of each week, process all certificates of registration, which are in proper form, that were received in his office up to 5:00 p.m. on the preceding Friday.

C. Original certificates of registration and their contents are public records."

Section 12

Section 12. Section 1-4-13 NMSA 1978 (being Laws 1969, Chapter 240, Section 69, as amended) is amended to read:

"1-4-13. CHANGE OF NAME--CORRECTING ERROR.--

A. Any voter who changes his name or discovers an error in his certificate of registration may have the name on his certificate changed or the error corrected by filing an application to change the certificate of registration.

B. The application to change the certificate of registration shall show the name by which the qualified elector previously registered, his change of name or correction of error and a request that the change be shown on his certificate of registration. The application shall be subscribed by the voter. When completed, the application shall be filed with the county clerk and retained for six years in a file established for that purpose.

C. The county clerk shall note the change of name or correction of error on the voter's certificate of registration."

Section 13

Section 13. Section 1-4-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 70, as amended) is amended to read:

"1-4-14. CERTIFICATE OF REGISTRATION--REPLACEMENT OF LOST COPY.--If any certificate of registration is lost, the county clerk upon application of the voter shall make a replacement copy thereof from the certificates in his office. The application for replacement of a lost copy of the certificate shall be retained for six years by the county clerk in a file established for that purpose. The certificate issued pursuant to the application shall be stamped "Replacement Copy"."

Section 14

Section 14. Section 1-4-15 NMSA 1978 (being Laws 1969, Chapter 240, Section 71, as amended) is amended to read:

"1-4-15. REGISTRATION--CHANGE OF PARTY AFFILIATION.--

A. A voter may change his designated party affiliation by executing an application for change of party affiliation.

B. A voter who has previously declined to designate a party affiliation but who desires to designate a party affiliation shall make an original designation of party affiliation by executing an application for designation of party affiliation.

C. The application for change of party affiliation shall show the name of the voter, his address, his present party affiliation, if previously designated, and the party with which he desires to affiliate. The application shall be subscribed by the voter before a registration officer.

D. When properly executed, the application shall be filed with the county clerk and retained for six years in a file established for that purpose. The county clerk shall note the change of, or original designation of, party affiliation on the voter's certificate of registration."

Section 15

Section 15. Section 1-4-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 72, as amended) is amended to read:

"1-4-16. REGISTRATION--WHEN PARTY AFFILIATION SHALL NOT BE MADE.--

A. No designation of party affiliation shall be made or changed on an existing certificate of registration at any time during which registration is closed.

B. Every person appearing as a candidate on the primary or general election ballot shall be a candidate only under the name and party affiliation designation appearing on his existing certificate of registration on file in the county clerk's office on the date of the governor's proclamation of a primary election."

Section 16

Section 16. Section 1-4-17 NMSA 1978 (being Laws 1969, Chapter 240, Section 73, as amended) is amended to read:

"1-4-17. REGISTRATION--CHANGE OF RESIDENCE WITHIN SAME COUNTY.--

A. A voter who has changed his residence within the same county shall complete a certificate of registration to change his registered residence address.

B. No change of registered residence address shall be made in any period during which registration is closed; however, the county clerk may accept applications for such change but shall not process them until the registration period is open.

C. The application for change of registered residence shall be filed with the county clerk, and the previous registration shall be retained for six years in a file established for that purpose."

Section 17

Section 17. Section 1-4-18 NMSA 1978 (being Laws 1969, Chapter 240, Section 74, as amended) is amended to read:

"1-4-18. CHANGE OF REGISTERED RESIDENCE TO ANOTHER COUNTY.--When a voter changes his registered residence address from one county in this state to another county in this state, he shall complete a certificate of registration and file it with the appropriate county clerk; provided, he shall not register in the county of new residence without first canceling his registration in the county of previous residence."

Section 18

Section 18. Section 1-4-19 NMSA 1978 (being Laws 1969, Chapter 240, Section 75, as amended) is amended to read:

"1-4-19. REGISTRATION--TRANSFER UPON CREATION OR CHANGE OF PRECINCTS--NOTICE TO VOTERS.--

A. When a new precinct is created or the boundaries of an existing precinct are changed, the board of county commissioners shall notify the county clerk of such action.

B. Upon receipt of the notice, the county clerk shall reflect such change on the voter file and mail to each affected voter a notice of the creation or change of precinct."

Section 19

Section 19. Section 1-4-23 NMSA 1978 (being Laws 1969, Chapter 240, Section 79, as amended) is amended to read:

"1-4-23. CANCELLATION OF REGISTRATION--BOARD OF REGISTRATION--GROUNDS-- WHEN.-- Beginning on the third Monday of March of each odd-numbered year, the board of registration shall cancel, or if applicable, suspend and cancel, certificates of registration for certain failure of the voter to vote."

Section 20

Section 20. Section 1-4-24 NMSA 1978 (being Laws 1969, Chapter 240, Section 80, as amended) is amended to read:

"1-4-24. CANCELLATION OF REGISTRATION--COUNTY CLERK--GROUNDS.--The county clerk shall cancel certificates of registration for the following reasons:

A. death of the voter;

B. legal insanity of the voter; or

C. a felony conviction of the voter."

Section 21

Section 21. Section 1-4-25 NMSA 1978 (being Laws 1969, Chapter 240, Section 81, as amended) is amended to read:

"1-4-25. CANCELLATION OF REGISTRATION--DETERMINATION OF DEATH.--

A. For purposes of cancellation of registration, the death of a voter shall be ascertained by obituary notices, probate records or by comparison of registration records with periodic certified lists of deceased residents
filed with the county clerk.

B. The state registrar of vital statistics shall file with the county clerk of the proper county for use by the board of registration periodic certified lists of deceased residents over the age of eighteen years regardless of the place of death.

C. The periodic certified list of deceased residents shall show the:

(1) name;

(2) age;

(3) sex;

(4) marital status;

(5) birth place;

(6) birth date;

(7) social security number, if any;

(8) address; and

(9) place and date of death of the deceased resident."

Section 22

Section 22. Section 1-4-26 NMSA 1978 (being Laws 1969, Chapter 240, Section 82) is amended to read:

"1-4-26. CANCELLATION OF REGISTRATION--DETERMINATION OF INSANITY.--

A. For purposes of cancellation of registration, the legal insanity of a voter shall be ascertained by comparison of registration records with the certification of legal insanity filed by the court with the county clerk.

B. When in proceedings held pursuant to law, the district court determines that a mentally ill individual is insane as that term is used in the constitution of New Mexico, it shall file a certification of such fact with the county clerk of the county wherein the individual is registered.

C. The certification of legal insanity shall include the:

(1) name;

(2) age;

(3) sex;

(4) marital status;

(5) birth place;

(6) birth date;

(7) social security number, if any; and

(8) address."

Section 23

Section 23. Section 1-4-27 NMSA 1978 (being Laws 1969, Chapter 240, Section 83) is amended to read:

"1-4-27. CANCELLATION OF REGISTRATION--DETERMINATION OF FELONY CONVICTION.--

A. For purposes of cancellation of registration, the fact of a felony conviction of a voter may be ascertained by comparison of registration records with the certification of felony conviction filed with the county clerk.

B. When a voter has been convicted of a felony, the clerk of the district court wherein the conviction occurred shall file with the county clerk of the county wherein the convicted felon is registered a certification of the fact.

C. The certification of felony conviction shall include the:

(1) name;

(2) age;

(3) sex;

(4) marital status;

(5) birth place;

(6) birth date;

(7) social security number, if any;

(8) date of conviction; and

(9) address."

Section 24

Section 24. Section 1-4-28 NMSA 1978 (being Laws 1975, Chapter 255, Section 46, as amended) is amended to read:

"1-4-28. CANCELLATION OF REGISTRATION--CERTAIN FAILURE TO VOTE--SUSPENSION--NOTICE.--

A. The failure of a voter to vote in at least one general election or one primary election in a four-year period shall be grounds for cancellation of registration by the board of registration.

B. The secretary of state shall prescribe procedures for ascertaining whether a voter has voted at least once in the last two general elections.

C. After a determination that a voter has apparently not voted, the board of registration shall suspend the certificate of registration for sixty days.

D. The county clerk, upon direction of the board of registration, shall mail a notice to the voter at his residence address shown on the certificate of registration.

E. The suspended certificate of registration shall be canceled unless within the sixty-day suspension period the board of registration receives written notice from the voter that:

(1) he still maintains residence as stated in his certificate of registration;

(2) he did in fact vote in at least one of the last two general or primary elections at a stated polling place; or

(3) he has made or desires to make a change in his registered residence address on his certificate of registration to the address and precinct in which he now resides.

F. No certificate of registration suspended for apparent failure to vote shall be marked or stamped "Canceled" until the expiration of the sixty-day period specified in this section."

Section 25

Section 25. Section 1-4-29 NMSA 1978 (being Laws 1975, Chapter 255, Section 47, as amended) is amended to read:

"1-4-29. BOARD OF REGISTRATION--COUNTY CLERK--FAILURE TO CANCEL--DUTY OF THE SECRETARY OF STATE.--

A. If the board of registration or the county clerk of any county does not cancel registration certificates as required by law, the secretary of state shall investigate the registration records, election returns and other pertinent records of that county and file a petition with the district court for the cancellation of the certificates of those persons as the investigation determines should have been canceled by the board of registration or the county clerk.

B. In such a proceeding, the court shall determine the cost of the investigation, and if it finds that the board of registration or the county clerk did not cancel certificates of registration in the manner provided by law, shall enter judgment against the county for the cost of the investigation."

Section 26

Section 26. Section 1-4-30 NMSA 1978 (being Laws 1969, Chapter 240, Section 86, as amended) is amended to read:

"1-4-30. CANCELLATION OF REGISTRATION--VOTER'S REQUEST.--

A. The county clerk shall cancel a certificate of registration upon the request of a voter only for the following reasons:

(1) when the voter changes his registered residence address to another county within the state; and

(2) when the voter moves to another state.

B. An application by a voter to cancel his registration shall be in writing and subscribed before a registration officer or a person authorized to administer oaths or on a form prescribed by the secretary of state.

C. Upon receipt of the written request for cancellation of registration, the county clerk shall cancel the voter's registration and shall forthwith mail to such person a notice of such cancellation and the date of cancellation.

D. The voter's certificate of registration shall be deemed canceled upon receipt by the county clerk of the written request therefor and when such request is for the reasons specified in Subsection A of this section."

Section 27

Section 27. Section 1-4-31 NMSA 1978 (being Laws 1969, Chapter 240, Section 87, as amended) is amended to read:

"1-4-31. CANCELLATION OF REGISTRATION--COUNTY CLERK.--The county clerk shall cancel registration:

A. only upon written application of the voter for reasons set out by law;

B. only in compliance with the instructions of the board of registration pursuant to the provisions of Section 1-4-28 NMSA 1978;

C. only in compliance with an order of the district court; or

D. only in compliance with the provisions of Section 1-4-24 NMSA 1978."

Section 28

Section 28. Section 1-4-32 NMSA 1978 (being Laws 1969, Chapter 240, Section 88, as amended) is amended to read:

"1-4-32. CANCELLATION OF REGISTRATION--DUTIES OF COUNTY CLERK--RETENTION OF RECORDS.--

A. When a registration is canceled, the county clerk shall remove, endorse and file the original certificate of registration according to procedures prescribed by the secretary of state.

B. Canceled original certificates of registration along with any written application of the voter for cancellation or other pertinent orders or certificates shall be retained for six years and then may be destroyed; provided that such records may be destroyed prior to the expiration of the six-year period with the approval of the state records administrator and upon their being properly microfilmed and stored."

Section 29

Section 29. Section 1-4-39 NMSA 1978 (being Laws 1971, Chapter 195, Section 1, as amended) is amended to read:

"1-4-39. DEPUTY REGISTRATION OFFICERS--CLASSIFICATIONS--DEFINITIONS.--As used in Sections 1-4-1 through 1-4-47 NMSA 1978:

A. "municipal clerk deputy registration officer" means a clerk of a municipality, as defined in the Municipal Code, in the county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

B. "precinct deputy registration officer" means a voter of a precinct in the county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

C. "representative district deputy registration officer" means a voter of a state representative district or portion thereof in a county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

D. "senatorial district deputy registration officer" means a voter of a state senatorial district or portion thereof in a county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

E. "minor political party deputy registration officer" means a voter whose certificate of registration shows him to be affiliated with a minor political party in a county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

F. "special deputy registration officer" means a voter of a county who has been sponsored in writing by an organization and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

G. "organization" means a corporate employer employing one hundred or more persons, the state league of women voters, a civic service organization, the county or state headquarters of any qualified political party, any candidate for state, congressional, presidential or vice presidential office, a member of congress, a state labor council or a state management association;

H. "deputy registration officer" means a voter of a county appointed and qualified as a registration officer by the county clerk and includes the categories of deputy registration officers listed in Subsections A through F and I of this section; and

I. "motor vehicle deputy registration officer" means an employee of the motor vehicle division of the taxation and revenue department selected by the secretary of taxation and revenue and appointed by the county clerk to be a deputy registration officer at the motor vehicle division office or a field office of the division or an employee of an entity on contract with the secretary of taxation and revenue to provide motor vehicle registration and licensure service to the public who is selected by the secretary and appointed by the county clerk to be a deputy registration officer at a division contract field office."

Section 30

Section 30. Section 1-4-40 NMSA 1978 (being Laws 1971, Chapter 195, Section 2, as amended) is amended to read:

"1-4-40. DEPUTY REGISTRATION OFFICERS--PURPOSE--SUBMISSION OF NAMES TO COUNTY CLERK--APPOINTMENT BY COUNTY CLERK--FILLING OF VACANCIES.--

A. It is the purpose of Sections 1-4-40 through 1-4-47 NMSA 1978 to encourage and facilitate the registration of qualified electors, facilitate the change of registered voter information of voters and facilitate the voluntary cancellation of voter registration. Sections 1-4-40 through 1-4-47 NMSA 1978 shall be liberally construed to accomplish that purpose.

B. Names of voters to be considered for appointment under the provisions of this section shall be submitted in writing to the county clerk. The number of deputy registration officers to which the various persons and organizations are entitled and the number of names to be submitted are as follows:

(1) the county chairman of each major political party may at any time submit lists of names of voters affiliated with the party, as shown on the voters' certificates of registration, on the following basis:

(a) one voter for each precinct in the county to be appointed as a precinct deputy registration officer;

(b) two voters for each state representative district or portion thereof within the county to be appointed as representative district deputy registration officers; and

(c) four voters for each state senatorial district or portion thereof within the county to be appointed as senatorial district deputy registration officers;

(2) the county chairman of each minor political party may at any time submit lists of names of not more than fifteen voters affiliated with that minor political party, as shown on their certificates of registration, to be appointed as minor political party deputy registration officers;

(3) a member of congress may submit the names of not more than two voters for each office maintained by a member of congress in a county to be appointed as special deputy registration officers;

(4) any candidate for state, congressional, presidential or vice presidential office may submit the names of not more than two voters for each office maintained by the candidate in a county to be appointed as special deputy registration officers;

(5) the state chairman of any qualified political party may submit the names of not more than two voters for the state office maintained by that party to be appointed as special deputy registration officers;

(6) the county chairman of any qualified political party may submit the names of not more than two voters for the county office maintained by that political party to be appointed as special deputy registration officers;

(7) the state president of the league of women voters may submit the names of not more than fifteen voters in each county to be appointed as special deputy registration officers;

(8) an elected or appointed officer of a corporate employer may submit the names of not more than two voters of the county who are employees of that employer for one office maintained by the employer in a county to be appointed as special deputy registration officers;

(9) the president of a civic organization may submit the names of not more than two voters of a county who are members of that organization to be appointed as special deputy registration officers;

(10) the executive officer of a state central labor council may submit the names of not more than fifteen voters of a county who are members of a labor organization defined in Chapter 7 of Title 29 of the United States Code to be appointed as special deputy registration officers;

(11) the executive officer of a state management association or council may submit the names of not more than fifteen voters of a county who are members of that association or council to be appointed as special deputy registration officers;

(12) the local governing body of an Indian tribe or pueblo may submit the names of not more than five voters of the county in which the tribal lands or any portion thereof lie to be appointed as special deputy registration officers; and

(13) the secretary of taxation and revenue shall submit to the county clerk in each county where a motor vehicle division office, field office or contract field office is located the names of voters to be appointed as motor vehicle deputy registration officers.

C. A county clerk shall appoint the municipal clerk of each municipality in a county as a municipal clerk deputy registration officer. The appointment shall be valid during the person's tenure as municipal clerk unless canceled as provided in the Election Code.

D. A county clerk shall appoint from the lists submitted in accordance with Paragraphs (1) and (2) of Subsection B of this section the authorized number of deputy registration officers. If the clerk fails to act to appoint within fourteen days after the submission of any such list, the persons on the list shall be deemed automatically appointed deputy registration officers.

E. Upon application of an organization therefor, a county clerk shall appoint from the lists submitted in accordance with Paragraphs (3) through (13) of Subsection B of this section the authorized number of special deputy registration officers.

F. If vacancies occur in the number of authorized and appointed deputy registration officers and special deputy registration officers, the county clerk shall notify the person or organization making the original submittal of the vacancy and shall request the person or organization to submit additional names to fill the vacancies. When the names are submitted, the county clerk shall appoint the authorized number to fill the vacancies from the submitted lists.

G. In addition to the special deputy registration officers already provided for in this section, a county clerk shall appoint any person qualified under the Election Code to serve as a special deputy registration officer upon a request in writing to the clerk from such person. A person applying for appointment under this subsection shall include in his written application sufficient information to enable the clerk to make a decision about the applicant's qualifications.

H. All registration officers appointed under this section shall serve without compensation for fulfilling their duties as registration officers.

I. All registration officers appointed under this section shall serve until December 31 of the first odd-numbered year following the date of their appointment or until their successors are appointed and qualified. A notice of expiration of term, signed by the county clerk, shall be immediately mailed to a deputy registration officer whose term has expired. The notice of expiration of term may contain a statement of the person's eligibility for reappointment and the necessary application forms for such reappointment.

J. Appointments of special deputy registration officers appointed for the offices of candidates for state, congressional, presidential and vice presidential offices shall be canceled on the day following the primary or general election when the person ceases to be a candidate. The county clerk shall notify each such special deputy registration officer of the fact of such cancellation."

Section 31

Section 31. Section 1-4-41 NMSA 1978 (being Laws 1969, Chapter 240, Section 97, as amended) is amended to read:

"1-4-41. DEPUTY REGISTRATION OFFICERS--DUTIES AND POWERS OF APPOINTED OFFICER.--

A. When appointed and qualified by the taking of the oath required of county officials, a deputy registration officer shall assist in the preparation of:

(1) the certificate of registration for qualified electors and those persons meeting all the qualifications of an elector except that of age who shall be eighteen years of age on or before the day of the next election; and

(2) the application of a voter to change or cancel his registration.

B. The deputy registration officer may:

(1) assist in the preparation of absentee ballot applications; and

(2) witness the oath on absentee ballot applications and on absentee ballot outer envelopes.

C. The deputy registration officer is authorized to administer all oaths to such persons, but without cost to the qualified elector, the voter and those persons meeting all the qualifications of an elector except that of age and who shall be eighteen years of age on or before the day of the next election.

D. The deputy registration officer may perform his lawful duties in any precinct of the county in which appointed.

E. The original and the voter's copy of certificates of registration completed by the deputy registration officer shall be delivered by the deputy registration officer to the county clerk within ninety-six hours after application of a qualified elector but not later than 5:00 p.m. on the Friday immediately following the close of registration.

F. Failure or refusal of any deputy registration officer to deliver a completed certificate of registration in his possession to the office of the county clerk as required in Subsection E of this section is grounds for automatic termination of his appointment as deputy registration officer by the county clerk.

G. A motor vehicle deputy registration officer shall not perform his registration duties outside of the motor vehicle division office, the division field office or contract field office to which he is assigned, and shall have only the authority and duties specified in Paragraph (1) of Subsection A of this section and Subsections C and E of this section."

Section 32

Section 32. Section 1-5-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 104, as amended) is amended to read:

"1-5-2. DEFINITIONS.--As used in the Election Code:

A. "county" means any county in this state;

B. "county register" means an official file of original certificates of registration of the county or any precinct thereof, arranged in alphabetical order by voter surname and, if for more than one precinct, without regard to precincts;

C. "voter list" means any machine-prepared list of voters;

D. "signature roster" means a copy of a voter list with space provided opposite each voter's name for the voter's signature or witnessed mark;

E. "active data processing media" means punched cards, punched tape, magnetic cards, magnetic discs, magnetic tape or functionally similar devices containing data capable of being read and processed by suitable machinery for the eventual machine preparation of voter lists;

F. "intermediate records" means records on active data processing media;

G. "voter file" means all voter registration information required by law and by the secretary of state which has been extracted from the certificate of registration of each voter in the county, stored on active data processing media and certified by the county clerk as the source of all information required by the Automated Voter Records System Act;

H. "program records" means the necessary detailed program and instructions for carrying out and controlling machine processing of information derived from the voter file. Program records shall exist in written English or coded form and they may exist on active data processing media;

I. "mailing labels" means machine-prepared mailing labels of selected voters arranged in the order in which requested and providing only the name and address of the voter;

J. "special voter lists" means machine-prepared lists of selected voters arranged in the order in which requested and providing no more than the name, gender, address, political party affiliation and precinct of the voter;

K. "statistical data" means information derived from the voter file and includes no more than the precinct, gender, political party affiliation and year of birth;

L. "voter data" means selected information derived from the voter file and includes no more than the voter's name, gender, address, political party affiliation and precinct;

M. "data processor" means a data processing facilit and associated employees and agents thereof contracted to provide data processing services required by the Automated Voter Records System Act;

N. "file maintenance list" means any machine-prepared listing which reflects additions, deletions or changes to the voter file;

O. "precinct voter list" means a voter list arranged in alphabetical order of voter surname within and for each precinct;

P. "county voter list" means a voter list arranged in alphabetical order of voter surname within and for each county;

Q. "unofficial election canvassing file" means the compilation by the county clerk of the results of any election prior to official certification of the election results; and

R. "unofficial election canvassing system" means the automated data processing computer program used to create the unofficial election canvassing file."

Section 33

Section 33. Section 1-5-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 105, as amended) is amended to read:

"1-5-3. ACT IS MANDATORY AND SUPPLEMENTAL TO ELECTION CODE.--

A. Effective January 1, 1984, the Automated Voter Records System Act is mandatory and supplemental to the provisions of the Election Code. The provisions of that act shall be implemented by order of the board of county commissioners of the county in all precincts of a county.

B. The secretary of state shall maintain a current registration list of state voters based on county voter lists and shall prescribe any rules, forms and instructions necessary for the orderly transition to and the efficient implementation of procedures required by the Automated Voter Records System Act. The secretary of state shall maintain a log which shall be public containing all transactions regarding requests for current registration lists of state voters. The log shall indicate the requesting party, the date of the request, the date of fulfilling the request, charges made and any other information deemed advisable by the secretary of state. Requests for registration lists in printed or magnetic form shall be fulfilled within a period of ten working days.

C. All registration records required by the Election Code shall be maintained for each of the precincts in addition to those records required by the Automated Voter
Records System Act, but the procedures of that act shall be used in lieu of others prescribed in the Election Code."

Section 34

Section 34. Section 1-5-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 107, as amended) is amended to read:

"1-5-5. ENTRY OF DATA INTO MACHINE DATA PROCESSING SYSTEM--COUNTY REGISTER--MAINTENANCE.--

A. The county clerk, upon receipt of a proper certificate of registration within the period prescribed for registration, shall immediately enter in the proper spaces thereon the precinct of the voter.

B. All information required is then entered into the voter file and evidenced by the file maintenance list. A new certificate of registration, or change of information to an existing certificate of registration, shall not be inserted into the county register until the county clerk has had all pertinent information necessary for the preparation of voter files and voter lists transcribed from it to a record appropriate for use for machine preparation of such lists.

C. After entry of data into the machine data processing system, the county clerk shall insert each original certificate of registration in its proper order in the county register.

D. A certificate of registration shall not be removed from the county register pursuant to a cancellation of registration until the county clerk has entered into the voter file all deletions and changes and such deletions and changes are evidenced by the file maintenance list."

Section 35

Section 35. Section 1-5-6 NMSA 1978 (being Laws 1969, Chapter 240, Section 108) is amended to read:

"1-5-6. VOTER LISTS--SIGNATURE ROSTERS--MACHINE PREPARED.--The county clerk shall provide for machine preparation of voter lists and signature rosters for any precincts. Such voter lists and signature rosters shall be used at any election for which registration of voters is required in lieu of bound original certificates of registration and poll books."

Section 36

Section 36. Section 1-5-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 110, as amended by Laws 1987, Chapter 249, Section 15 and also by Laws 1987, Chapter 327, Section
3) is amended to read:

"1-5-8. VOTER LISTS--SIGNATURE ROSTERS--NUMBER--DISTRIBUTION.--

A. One copy of the signature roster shall be prepared for each precinct. On the cover of such signature roster shall be printed the words, "Copy for the County Clerk". Upon its preparation and certification as to its accuracy and completeness, the county clerk shall deliver the copy of the signature roster to the precinct board in lieu of the poll book.

B. The county clerk shall prepare three copies of the voter list for each precinct. He shall deliver two of such copies to each precinct board in lieu of bound certificates of registration. One copy of the voter list shall be retained by the county clerk for verification purposes on election day and one copy for the secretary of state shall be marked to verify those voters on the list who voted.

C. Two copies of the county voter list, arranged in alphabetical order, shall be prepared for election day for verification purposes only."

Section 37

Section 37. Section 1-5-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 114, as amended) is amended to read:

"1-5-12. VOTER WHOSE NAME IS NOT ON LIST OR ROSTER.--

A. A voter whose name does not appear on the voter list and signature roster for the precinct in which he offers to vote shall be permitted to vote in such precinct provided the voter meets the requirements specified in the Election Code for voting on a voter's copy of a certificate of registration, or has in his possession a certificate of eligibility bearing the seal and signature of the county clerk stating that the voter's original certificate of registration is in the county register of that county wherein such precinct is located.

B. The election clerks in charge of the signature rosters shall add the voter's name and address in ink to the signature roster on the line immediately following the last entered voter's name, and the voter shall be allowed to cast his ballot provided he has first signed or marked both rosters.

C. The voting machine public counter number or the ballot number for the voter shall be entered on his certificate of eligibility or copy of his certificate of registration. The certificate of eligibility or voter's copy of his certificate of registration

shall be retained by the precinct board and returned to the county clerk with the election returns.

D. Such certificate of eligibility shall be valid for use only in the precinct and for the election and date specified thereon.

E. In a primary election, a voter whose party affiliation is not shown on the certificate of eligibility or copy of his certificate of registration shall not be permitted to receive or cast a ballot. No voter shall be permitted to vote for a candidate of a party different from the party designation shown on his certificate of eligibility or the copy of his certificate of registration.

F. No verbal authorization from the county clerk to allow a person to vote under this section shall be permitted."

Section 38

Section 38. Section 1-5-13 NMSA 1978 (being Laws 1969, Chapter 240, Section 115) is amended to read:

"1-5-13. SIGNATURE ROSTER--USE BY BOARD OF REGISTRATION.--The board of registration shall use the signature roster in lieu of the voter's original certificate of registration to determine when voters have not voted."

Section 39

Section 39. Section 1-5-19 NMSA 1978 (being Laws 1969, Chapter 240, Section 125, as amended) is amended to read:

"1-5-19. REGISTRATION--FORM.--

A. The secretary of state shall prescribe the form and assure that the certificate of registration to be used in any county is compatible with the machine data processing systems.

B. The certificate of registration form shall require the following elements of information concerning the applicant for registration: name, gender, residence, municipality, post office, county, county of former registration, social security number, date of birth, place of birth, political party affiliation, zip code, telephone number at the applicant's option and statement of qualification for voting.

C. Provision shall be made for the usual signature or mark of the applicant, for the signature of the county clerk and for the dates of such signatures.

D. The certificate form may be multipurpose by providing for an indication of whether the certificate of registration is for a new registration, a change in the existing

registration or a cancellation of an existing registration. Provision shall be made on any multipurpose form for entry of any existing registered information for which a change may be requested.

E. The certificate of registration forms shall be serially numbered and shall be furnished promptly and in adequate supply by the secretary of state upon application from the county clerk."

Section 40

Section 40. Section 1-5-20 NMSA 1978 (being Laws 1977, Chapter 222, Section 11) is amended to read:

"1-5-20. REGISTRATION--FILING.--The secretary of state shall prescribe the method of filing and maintaining certificates of registration in any county implementing the Automated Voter Records System Act."

Section 41

Section 41. Section 1-5-29 NMSA 1978 (being Laws 1975, Chapter 255, Section 83, as amended) is amended to read:

"1-5-29. AUTOMATED VOTER RECORDS SYSTEM ADVISORY COMMITTEE--COMPENSATION-- MEETINGS.--

A. Members of the automated voter records system advisory committee, except the director of the bureau of elections, shall be paid per diem and mileage as provided in the Per Diem and Mileage Act for nonsalaried state officers.

B. No less than two meetings shall be called annually by the secretary of state.

C. At the first meeting of each odd-numbered year, the committee shall review the certificate of registration and the automated voter records system format and make recommendations for necessary revisions to the secretary of state."

Section 42

Section 42. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended by Laws 1989, Chapter 66, Section 1 and by Laws 1989, Chapter 105, Section 1 and also by Laws 1989, Chapter 392, Section 11) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION.--

A. Application by a federal qualified elector for an absentee ballot shall be made on the official postcard form prescribed or authorized by the federal government to the county clerk of the county of his residence.

B. Application by a voter for an absentee ballot shall be made only on a form prescribed, printed and furnished by the secretary of state to the county clerk of the county in which he resides. The form shall identify the applicant and contain information to establish his qualification for issuance of an absentee ballot under the Absent Voter Act.

C. Each application for an absentee ballot shall be subscribed by the applicant."

Section 43

Section 43. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended) is amended to read:

"1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--MAKING AND DELIVERY OF BALLOT IN PERSON.--

A. The county clerk shall mark each completed absentee ballot application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register. The county clerk shall then determine if the applicant is a voter, an absent uniformed services voter or an overseas voter.

B. If the applicant has no valid certificate of registration on file in the county and he is not a federal qualified elector or if the applicant states he is a federal qualified elector but his application indicates he is not a federal qualified elector, no absentee ballot shall be issued and the county clerk shall mark the application "rejected" and file the application in a separate file from those accepted.

C. The county clerk shall notify in writing each applicant of the fact of acceptance or rejection of his application and, if rejected, shall explain why the application was rejected.

D. If the applicant is determined to be a voter or a federal qualified elector, the county clerk shall mark the application "accepted" and deliver or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. Acceptance of an application of a federal qualified elector constitutes registration for the election in which the ballot is to be cast. Acceptance of an application from an overseas voter who is not an absent uniformed services voter constitutes a request for changing information on the certificate of registration of any such voter. No absent voter shall be permitted to change his party affiliation during those periods when change of party affiliation is prohibited by the Election Code. Upon delivery or mailing of an absentee ballot to any applicant who is a voter, an appropriate designation shall be made on the

signature line of the signature roster next to the name of the person who has been sent an absentee ballot.

E. If an application for an absentee ballot is delivered in person to the county clerk and is accepted, the county clerk shall deliver the absentee ballot and it shall be marked by the applicant in a voting booth of a type prescribed by the secretary of state in the courthouse, sealed in the proper envelopes and otherwise properly executed and returned to the county clerk or his authorized representative before the applicant leaves the office of the county clerk. The act of marking the absentee ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the county clerk a polling place subject to the requirements of a polling place in the Election Code other than is provided in this subsection. It shall be unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office. Absentee ballots may be marked in person during the regular hours and days of business at the county clerk's office from 8:00 a.m. on the fortieth day preceding the election up until 5:00 p.m. on the Saturday immediately prior to the date of the election. In marking the absentee ballot, the voter may be assisted by one person of the voter's own choice upon the execution with the county clerk of an affidavit for assistance stating therein that the voter meets at least one of the conditions for receiving such assistance as is set forth by the provisions of Section 1-12-12 NMSA 1978.

F. Absentee ballots shall be air mailed to applicants temporarily domiciled inside or outside the continental limits of the United States not later than on the Thursday immediately prior to the date of the election.

G. No absentee ballot shall be delivered or mailed to any person other than the applicant for such ballot.

H. The county clerk shall accept and process with respect to a primary or general election for any federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter if the application is received not less than thirty days before the election. The county clerk shall also accept and process federal write-in absentee ballots from overseas voters in general elections for federal offices in accordance with the provisions of Section 103 of the federal Uniformed and Overseas Citizens Absentee Voting Act."

Section 44

Section 44. Section 1-8-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 152, as amended) is amended to read:

"1-8-2. NOMINATION BY MINOR POLITICAL PARTY--CONVENTION-DESIGNATED NOMINEES.--

A. If the rules and regulations of a minor political party require nomination by political convention:

(1) the chairman and secretary of the state political convention shall certify to the secretary of state the names of their party's nominees for United States senator, United States representative, all elective state offices, legislative offices elected from multi-county districts, all elective judicial officers in the judicial department and all offices representing a district composed of more than one county; and

(2) the chairman and secretary of the county political convention shall certify to the county clerk the names of their party's nominees for elected county offices and for legislative offices elected from a district located wholly within one county or that is composed of only one county.

B. The names certified to the secretary of state shall be filed on the second Tuesday in July in the year of the general election and shall be accompanied by a petition containing a list of signatures and addresses of voters totaling not less than one-half of one percent of the total number of votes cast at the last preceding general election for the office of governor or president of the United States, as the case may be:

(1) in the state for statewide offices; and

(2) in the district for offices other than statewide offices.

The petition shall contain a statement that the voters signing the petition are residents of the state, district, county or area to be represented by the office for which the person being nominated is a candidate.

C. The names certified to the county clerk shall be filed on the second Tuesday in July in the year of the general election and shall be accompanied by a petition containing a list of signatures and addresses of voters totaling not less than one-half of one percent of the total number of votes cast at the last preceding general election for the office of governor or president of the United States, as the case may be:

(1) in the county for countywide offices; and

(2) in the district for offices other than countywide offices.

The petition shall contain a statement that the voters signing the petition are residents of the state, district, county or area to be represented by the office for which the person being nominated is a candidate.

D. Such persons certified as nominees shall be members of that party, as shown by their certificates of registration, at the time their names are certified.

E. No voter shall sign any petition prescribed by this section for more persons than the number of minor party candidates necessary to fill such office at the next ensuing general election."

Section 45

Section 45. Section 1-8-26 NMSA 1978 (being Laws 1975, Chapter 295, Section 12, as amended) is amended to read:

"1-8-26. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--TIME OF FILING.--

A. Declarations of candidacy for statewide office or office of the United States representative shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the first Tuesday in March of each even-numbered year and ending at 5:00 p.m. on the same day.

B. Declarations of candidacy for any other office shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the first Tuesday of April of each even-numbered year and ending at 5:00 p.m. on that same day.

C. No candidate's name shall be placed on the ballot until the candidate has been notified in writing by the proper filing officer that the declaration of candidacy, the petition and the certificate of registration of the candidate on file are in proper order and that the candidate, based on such documents, is qualified to have his name placed on the ballot. The proper filing officer shall mail such notice no later than 5:00 p.m. on the Tuesday following the filing date."

Section 46

Section 46. Section 1-8-29 NMSA 1978 (being Laws 1973, Chapter 228, Section 3, as amended) is amended to read:

"1-8-29. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--FORM.--In making a declaration of candidacy, the candidate shall submit substantially the following form:

"DECLARATION OF CANDIDACY

I, _____, (candidate's name on certificate of registration) being first duly sworn, say that I reside at _____, as shown by my certificate of registration as a voter of Precinct No._____of the county of _____, State of New Mexico;

I am a member of the_____party as shown by my certificate of registration and I have not changed such party affiliation subsequent to the governor's proclamation calling the primary in which I seek to be a candidate;

I desire to become a candidate for the office of _____at the primary election to be held on the date set by law for this year, and if the office be that of a member of the legislature or that of a member of the state board of education, that I actually reside at the address designated on my certificate of voter registration;

I will be eligible and legally qualified to hold this office at the beginning of its term;

If a candidate for any office for which a nominating petition is required, I am submitting with this statement a nominating petition in the form and manner as prescribed by the Primary Election Law; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

_____
(Declarant)

_____
(Mailing Address)

_____
(Residence Address)

Subscribed and sworn to before me this_____day of _____, 19 _____.

_____
(Notary Public)

My commission expires:
_____"."

Section 47

Section 47. Section 1-8-31 NMSA 1978 (being Laws 1973, Chapter 228, Section 5, as amended) is amended to read:

"1-8-31. PRIMARY ELECTION LAW--NOMINATING PETITION--SIGNATURES TO BE COUNTED.--

A. Each signer of a nominating petition shall sign but one petition for the same office unless more than one candidate is to be elected to such office, and in that

case not more than the number of nominating petitions equal to the number of candidates to be elected to the office shall be signed.

B. A signature shall be counted on a nominating petition unless there is evidence presented that the person signing:

(1) is not a voter of the state, district, county or area to be represented by the office for which the person seeking the nomination is a candidate;

(2) has signed more than one petition for the same office, except as provided in Subsection A of this section, or has signed one petition more than once;

(3) is not of the same political party as the candidate named in the nominating petition as shown by the signer's certificate of registration; or

(4) is not the person whose name appears on the nominating petition.

C. The procedures set forth in this section shall be used to validate signatures on any petition required by the Election Code."

Section 48

Section 48. Section 1-8-36.1 NMSA 1978 (being Laws 1981, Chapter 156, Section 1) is amended to read:

"1-8-36.1. PRIMARY ELECTION LAW--WRITE-IN CANDIDATES.--

A. Write-in candidates are permitted in the primary election only for the offices of United States representative, members of the legislature, district judges, district attorneys, state board of education, magistrates and any office voted upon by all voters of the state.

B. A person may be a write-in candidate only for nomination by the major political party with which he is affiliated as shown by his certificate of registration, and such person shall have the qualifications to be a candidate in the primary election for the political party for which he is a write-in candidate.

C. A person desiring to be a write-in candidate for the offices listed in Subsection A of this section in the primary election shall file with the proper filing officer a declaration of intent to be a write-in candidate. Such declaration of intent shall be filed as follows:

(1) before 5:00 p.m. on the seventh day preceding the date for filing a declaration of candidacy for those offices which require a declaration of candidacy to be considered on the primary election ballot; and

(2) before 5:00 p.m. on the fiftieth day preceding the date of the primary election if the declarant is a candidate for statewide office or for United States representative.

D. A write-in vote shall be counted and canvassed only if:

(1) the name written in is the name of a declared write-in candidate and shows two initials and last name; first name, middle initial or name and last name; first and last name; or the full name as it appears on the declaration of intent to be a write-in candidate and misspellings of the above combinations that can be reasonably determined by a majority of the members of the precinct board to identify a declared write-in candidate; and

(2) the name is written in the proper slot on the voting machine or on the proper line provided on an absentee ballot or emergency paper ballot for write-in votes for the office for which the candidate has filed a declaration of intent.

E. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Election Code including the obligations to report under the Campaign Reporting Act except that he shall not be entitled to have his name printed on the ballot.

F. No unopposed write-in candidate shall have his nomination certified unless he receives at least the number of write-in votes in the primary election as he would need signatures on a nominating petition pursuant to the requirements set out in Section 1-8-33 NMSA 1978.

G. A write-in vote shall be cast by writing in the name. As used in this section, "write-in" does not include the imprinting of any name by rubber stamp or similar device or the use of preprinted stickers or labels."

Section 49

Section 49. Section 1-8-45 NMSA 1978 (being Laws 1977, Chapter 322, Section 1, as amended) is amended to read:

"1-8-45. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--DEFINITION.--As used in the Election Code, an independent candidate means a person who:

A. is a candidate without party affiliation for an office to be voted on at a general election or any United States representative special election;

B. except for a candidate for the office of president or vice president, is a person who will be qualified to hold the office for which he is a candidate under the provisions of the constitution of New Mexico and the Election Code;

C. except for a candidate for the office of president or vice president, is a qualified elector registered to vote in New Mexico at the time of filing the declaration of independent candidacy and nominating petition;

D. except for a candidate for the office of president or vice president, has indicated on such person's certificate of registration a declination to designate a party affiliation;

E. has complied with the nomination procedures set forth in the Election Code for independent candidates; and

F. was not a person who appeared as a major party candidate for the same office on the primary election ballot."

Section 50

Section 50. Section 1-8-48 NMSA 1978 (being Laws 1977, Chapter 322, Section 4, as amended) is amended to read:

"1-8-48. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--DECLARATION OF INDEPENDENT CANDIDACY AND NOMINATING PETITION.--

A. Nomination as an independent candidate shall be made by filing a declaration of independent candidacy and a nominating petition with the proper filing officer.

B. In making a declaration of independent candidacy, the candidate for an office other than that of president or vice president shall submit a sworn statement in the following form:

"DECLARATION OF INDEPENDENT CANDIDACY

I, (candidate's name on certificate of registration) being first duly sworn, say that I reside at_____in the county of _____, New Mexico, and that I am a voter of Precinct No._____of the county of _____, State of New Mexico;

I have declined to designate my party affiliation as shown by my certificate of registration and I have not changed such declination subsequent to the date of issuance of the governor's proclamation for the primary election in the year of the general election at which I seek to be a candidate;

I desire to become a candidate for the office of_____at the

general election to be held on the date set by law for this year, and if the office be that of a member of the legislature, that I actually reside within the legislative district for which I declare my candidacy;

I will be eligible and legally qualified to hold this office at the beginning of its term;

If a candidate for any office for which a nominating petition is required, I am submitting with this statement a nominating petition in the form and manner as prescribed by the Election Code; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

_____
(Declarant)

_____
(Mailing Address)

_____
(Residence Address)

Subscribed and sworn to before me this _____
day of _____, 19 _____.

_____
(Notary Public)

My commission expires:
_____".

C. The secretary of state shall prescribe and furnish the form for the declaration of independent candidacy for the office of president and vice president."

Section 51

Section 51. Section 1-9-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 187, as amended) is amended to read:

"1-9-4. LEVER-TYPE VOTING MACHINE--SPECIFICATIONS.--No lever-type voting machine shall be approved by the secretary of state unless:

A. it permits a voter to vote for any person for any office, whether or not the name of the person appears upon a ballot label as a candidate for nomination or election;

B. it permits and requires voting in absolute secrecy and is so constructed that no person can see or know for whom any other person has voted, except a voter who is being assisted as prescribed by the Election Code;

C. it has a protective counter or other device, the register of which cannot be reset, that records the cumulative total number of movements of the operating mechanism;

D. it is provided with a lock or locks, by the use of which, immediately after the polls are closed or the operation of the machine for an election is completed, all movement of the registering mechanism is absolutely prevented;

E. it is constructed of material of good quality, in a neat and workmanlike manner, and is easily and safely transportable;

F. it is capable of adjustment so as to permit each voter at a primary election to vote only for the candidates seeking nomination by the political party shown on the voter's certificate of registration;

G. it is constructed to prevent voting for more than one person for the same office, except where the voter is entitled to vote for more than one person for that office;

H. it permits each voter, at other than primary elections, to vote a straight party ticket in one operation; and

I. it provides a "printout" of voting results."

Section 52

Section 52. Section 1-10-6 NMSA 1978 (being Laws 1977, Chapter 222, Section 29, as amended) is amended to read:

"1-10-6. BALLOTS--NAME TO BE PRINTED--CANDIDATES WITH SIMILAR NAMES.--In the preparation of ballots:

A. the candidate's name shall be printed on the ballot as it appears on the candidate's certificate of registration that is on file in the county clerk's office on the day the governor issues the proclamation for the primary election; and

B. if it appears that the names of two or more candidates for any office to be voted on at the election are the same or are so similar as to tend to confuse the voter as to the candidates' identities, the occupation and post office address of each such candidate shall be printed immediately under the candidate's name on the ballot."

Section 53

Section 53. Section 1-11-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 222, as amended) is amended to read:

"1-11-12. CERTIFYING COUNTY REGISTER.--

A. At least twenty days before a statewide election, general election or primary election, the county clerk shall certify the county voter file as representing the county register.

B. If the original certificate of registration is missing, the county clerk shall make a replacement copy from the information contained in the county voter file. The replacement certificate shall be stamped "REPLACEMENT COPY" and shall be inserted in the appropriate file. The county clerk shall make a list of all replacement copies. The list shall include the name and address of the voter. The county clerk shall certify the list and file it with the district court.

C. The replacement copy shall have the same validity as the certificate of registration that it replaces."

Section 54

Section 54. Section 1-12-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 246, as amended) is amended to read:

"1-12-7. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO VOTE.--

A. No person shall vote in any primary, general or statewide special election unless he is a voter of the precinct in which he offers to vote. A valid original certificate of registration in the county register is prima facie evidence of being a voter in the precinct.

B. No person shall vote in any primary election whose party affiliation is not designated on his original certificate of registration.

C. No voter at any primary election shall be permitted to vote for the candidate of any party other than the party designated on his original certificate of registration at the time the governor issues the primary election proclamation.

D. No person shall vote in any primary, general or statewide special election whose name and certificate of registration number appears on the list of voters purged from the rolls. The list shall be placed with the signature rosters and delivered to the polls with the other election supplies by the county clerk and shall consist of those voters in the precinct purged since the last preceding general election."

Section 55

Section 55. Section 1-12-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 247, as amended) is amended to read:

"1-12-8. CONDUCT OF ELECTION--VOTER'S COPY OR CERTIFICATE VOTING.--

A. Notwithstanding the provisions of Section 1-12-7 NMSA 1978, a person shall be permitted to vote even though his original certificate of registration cannot be found in the county register or even if his name does not appear on the signature roster, provided:

(1) his residence is within the boundaries of the precinct in which he offers to vote;

(2) his name is not on the purged list;

(3) his name is not on the list of persons submitting absentee ballots;

(4) he presents the voter's copy of the certificate of registration which appears on its face to be valid or he presents a certificate of eligibility bearing the seal and signature of the county clerk stating that the voter's duplicate certificate of registration is on file at the county clerk's office and that such voter has not received an absentee ballot nor has he been purged and that he shall be permitted to vote in the precinct and election specified therein, provided that such authorization shall not be given orally by the county clerk; and

(5) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector, currently registered and eligible to vote in that precinct and has not cast a ballot or voted in that election.

B. An election judge shall insert the voter's ballot number or voter number on the public counter on the voter's copy of the certificate of registration or certificate of eligibility and on the executed statement. The voter's copy of the certificate of registration or certificate of eligibility shall be retained by the precinct board and the voter's copy of his certificate of registration or certificate of eligibility, along with the executed statement, shall be returned with the election returns to the county clerk.

C. Knowingly executing a false statement constitutes perjury as provided in the Criminal Code of this state, and voting on the basis of such falsely executed statement constitutes fraudulent voting.

D. To be valid, a voter's copy of the certificate of registration dated after June 30, 1955 shall bear the signature stamp of the county clerk.

E. Within thirty days after the election, the county clerk shall examine each executed statement and investigate the truth of the statements made therein. The county clerk shall also determine the reason why the original certificate of registration of the voter was not in the county register or the signature roster sent to the precinct board

and shall take such actions to avoid similar circumstances requiring the use of the voter's copy of the certificate of registration or certificate of eligibility by voters in future elections."

Section 56

Section 56. Section 1-12-50 NMSA 1978 (being Laws 1977, Chapter 222, Section 53) is amended to read:

"1-12-50. EMERGENCY SITUATIONS--EMERGENCY PAPER BALLOTS--ONE TO A VOTER.--If a voting machine cannot be used in an emergency situation, the election clerk shall give each voter only one of the emergency paper ballots being used in the election. At primary elections, the voter shall be given the emergency paper ballot of the political party designated in his original certificate of registration. The emergency paper ballots shall be numbered consecutively and shall be delivered to incoming voters in consecutive order, beginning with emergency paper ballot number one."

Section 57

Section 57. Section 1-14-8 NMSA 1978 (being Laws 1971, Chapter 249, Section 1, as amended) is amended to read:

"1-14-8. IMPOUNDING BALLOTS--BALLOTS DEFINED.--As used in Sections 1-14-9 through 1-14-12 NMSA 1978, "ballots" includes tally sheets, registration certificates, paper ballots, absentee ballots, statements of canvass, absentee ballot applications and absentee ballot registers, but does not include voting machines."

Section 58

Section 58. Section 1-19-26 NMSA 1978 (being Laws 1979, Chapter 360, Section 2, as amended) is amended to read:

"1-19-26. DEFINITIONS.--As used in the Campaign Reporting Act:

A. "anonymous contribution" means a contribution the contributor of which is unknown to the candidate or his agent or the political committee or its agent who accepts the contribution;

B. "bank account" means an account in a financial institution located in New Mexico;

C. "campaign committee" means two or more persons authorized by a candidate to raise, collect or expend contributions on the candidate's behalf for the purpose of electing him to office;

D. "candidate" means an individual who seeks or considers an office in an election covered by the Campaign Reporting Act and who either has filed a declaration of candidacy or:

(1) for a non-statewide office, has received contributions or made expenditures of one thousand dollars ($1,000) or more or authorized another person or campaign committee to receive contributions or make expenditures of one thousand dollars ($1,000) or more for the purpose of seeking election to the office; or

(2) for a statewide office, has received contributions or made expenditures of two thousand five hundred dollars ($2,500) or more or authorized another person or campaign committee to receive contributions or make expenditures of two thousand five hundred dollars ($2,500) or more for the purpose of seeking election to the office or for candidacy exploration purposes in the years prior to the year of the election;

E. "contribution" means a gift, subscription, loan, advance or deposit of any money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a political purpose, including payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

F. "deliver" or "delivery" means by certified or registered mail, by telecopier, electronic mail or facsimile or by personal service;

G. "election" means any regular, primary, general or statewide special election in New Mexico and includes county and judicial retention elections but excludes municipal, school board and special district elections;

H. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value for a political purpose, including payment of a debt incurred in an election campaign or pre-primary convention, but does not include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

I. "political committee" means two or more persons, other than members of a candidate's immediate family or campaign committee or a husband and wife who make a contribution out of a joint account, who are selected, appointed, chosen, associated, organized or operated primarily for a political purpose and includes political action committees or similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for

a political purpose; provided that a political committee includes a single individual who by his actions represents that he is a political committee;

J. "political purpose" means influencing or attempting to influence an election or pre-primary convention, including a constitutional amendment or other question submitted to the voters;

K. "prescribed form" means a form prepared and prescribed by the secretary of state; and

L. "reporting individual" means every candidate or treasurer of a campaign committee and every treasurer of a political committee who contributes, receives contributions or makes expenditures as defined in the Campaign Reporting Act."

Section 59

Section 59. Section 1-19-28 NMSA 1978 (being Laws 1979, Chapter 360, Section 4, as amended) is amended to read:

"1-19-28. FURNISHING REPORT FORMS--POLITICAL COMMITTEES--CANDIDATES.--

A. The secretary of state annually shall furnish to registered political committees the prescribed form for the reporting of expenditures and contributions and the specific dates the reports are due.

B. At the time of filing a declaration of candidacy by nominating petition or pre-primary convention designation for nomination at a primary election or for an office not requiring a primary election, the proper filing officer shall give the candidate the prescribed reporting forms and the schedule of specific dates for filing the required reports."

Section 60

Section 60. Section 1-20-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 428, as amended) is amended to read:

"1-20-3. REGISTRATION OFFENSES.--Registration offenses consist of performing any of the following acts willfully and with knowledge and intent to deceive any registration officer or to subvert the registration requirements of the law or rights of any qualified elector:

A. signing or offering to sign a certificate of registration when not a qualified elector;

B. falsifying any information on the certificate of registration;

C. soliciting, procuring, aiding, abetting, inducing or attempting to solicit, procure, aid, abet or induce any person to register or attempt to register with the name of any other person, whether real, deceased or fictitious; or

D. destroying the certificate of registration of any qualified elector, or removing such certificate from its proper binder or file, except as provided in the Election Code.

Whoever commits a registration offense is guilty of a fourth degree felony."

Section 61

Section 61. Section 1-21-4 NMSA 1978 (being Laws 1971, Chapter 322, Section 4) is amended to read:

"1-21-4. APPLICATION FOR PRESIDENTIAL BALLOT.--

A. A new resident desiring to vote for presidential officers under the provisions of the Federal Voting Rights Compliance Act shall, at least thirty days prior to the date of a federal election, individually execute in the presence of the county clerk of the county in which he claims residence an application for a presidential ballot for the presidential election.

B. A former resident desiring to vote for presidential officers under the provisions of the Federal Voting Rights Compliance Act shall individually execute an application for a presidential ballot for the presidential election. The application for a presidential ballot shall be made by a former resident on a form obtainable in person or upon written application therefor from the county clerk of the county in which the former resident claimed New Mexico residence prior to his removal to another state. The application for a presidential ballot by a former resident shall be authorization for the county clerk to cancel the former resident's certificate of registration, if such there be."

Section 62

Section 62. Section 1-21-5 NMSA 1978 (being Laws 1971, Chapter 322, Section 5, as amended) is amended to read:

"1-21-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--CASTING OF BALLOT.--

A. If satisfied that the application is proper and that the new resident or former resident is qualified to vote under the Federal Voting Rights Compliance Act, the county clerk shall mark the application "accepted" and shall return the executed original application to the applicant.

B. Acceptance of an application under the provisions of the Federal Voting Rights Compliance Act constitutes registration only for the presidential election in which the presidential ballot is to be cast.

C. The county clerk shall mail the duplicate original of each application accepted under the provisions of the Federal Voting Rights Compliance Act to the appropriate official in the state in which the new resident last resided or in which the former resident now resides.

D. The county clerk shall file, in alphabetical order in his office for six months following each presidential election, the following public records:

(1) a triplicate original of each application of all persons who have applied for a presidential ballot under the provisions of the Federal Voting Rights Compliance Act to vote as new residents or former residents; and

(2) official information received by him from another state indicating that a former resident of New Mexico has made application to vote at a presidential election in another state. Such official information shall be sufficient evidence for the county clerk to cancel the resident's certificate of registration in that county.

E. Notwithstanding any provision of the Election Code, new residents and former residents shall cast their presidential ballots in the same manner as absentee voters except as provided in the Federal Voting Rights Compliance Act.

F. If presidential ballots are available at the time of application in person therefor, the county clerk shall deliver the presidential ballot to the new resident or former resident, and it shall be marked by the applicant in a voting booth in the courthouse, sealed in the proper envelopes and otherwise properly executed, and returned to the county clerk or his authorized representative before the new resident or former resident leaves the office of the county clerk. Presidential ballots may be cast in person at the county clerk's office until 5:00 p.m. on Thursday immediately prior to the date of the presidential election.

G. If presidential ballots are not available at the time of application in person therefor by a new resident or former resident selecting the absentee option, the county clerk shall mail the presidential ballot to the address shown on the new resident's or former resident's application, as applicable.

H. Notwithstanding any provision of the Election Code, presidential ballots shall be mailed to all new residents, former residents, federal qualified electors, federal voters and voters who have qualified and applied therefor not less than seven days immediately prior to a presidential election."

Section 63

Section 63. Section 1-22-8 NMSA 1978 (being Laws 1985, Chapter 168, Section 10, as amended) is amended to read:

"1-22-8. DECLARATION OF CANDIDACY--SWORN STATEMENT OF INTENT--FORM.--In making a declaration of candidacy, the candidate shall submit a sworn statement of intent in substantially the following form:

"DECLARATION OF CANDIDACY--STATEMENT OF INTENT

I, _____, (candidate's name on certificate of registration) being first duly sworn, say that I am a voter of Precinct No._____of the county of _____, State of New Mexico. I reside at _____;

I am a qualified elector of the State of New Mexico residing within_____school district;

I desire to become a candidate for the office of _____, Position No._____at the school district election to be held on the date set by law;

I will be eligible and legally qualified to hold this office at the beginning of its term; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

_____
(Declarant)

_____
(Mailing Address)

_____
(Residence Address)

Subscribed and sworn to before me this_____day of _____, 19 _____.

_____.
(Notary Public)

My commission expires:

_____"."

SB 595

CHAPTER 315

RELATING TO MINING; ENACTING THE NEW MEXICO MINING ACT; CREATING THE MINING COMMISSION; PROVIDING FOR ENFORCEMENT; PROVIDING PENALTIES; MAKING APPROPRIATIONS.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "New Mexico Mining Act".

Section 2

Section 2. PURPOSES.--The purposes of the New Mexico Mining Act include promoting responsible utilization and reclamation of lands affected by exploration, mining or the extraction of minerals that are vital to the welfare of New Mexico.

Section 3

Section 3. DEFINITIONS.--As used in the New Mexico Mining Act:

A. "affected area" means the area outside of the permit area where the land surface, surface water, ground water and air resources are impacted by mining operations within the permit area;

B. "commission" means the mining commission established in the New Mexico Mining Act;

C. "director" means the director of the division or his designee;

D. "division" means the mining and minerals division of the energy, minerals and natural resources department;

E. "existing mining operation" means an extraction operation that produced marketable minerals for a total of at least two years between January 1, 1970 and the effective date of the New Mexico Mining Act;

F. "exploration" means the act of searching for or investigating a mineral deposit, including sinking shafts, tunneling, drilling core and bore holes, digging pits, making cuts and other works for the purpose of extracting samples prior to commencement of development or extraction operations and the building of roads, access ways and other facilities related to such work; however, activities that cause no, or very little, surface disturbance, such as airborne surveys and photographs, use of instruments or devices that are hand carried or otherwise transported over the surface to perform magnetic, radioactive or other tests and measurements, boundary or claim surveying, location work or other work that causes no greater disturbance than is

caused by ordinary lawful use of the area by persons not engaged in exploration are excluded from the meaning of "exploration";

G. "mineral" means a nonliving commodity that is extracted from the earth for use or conversion into a saleable or usable product, but does not include clays, adobe, flagstone, potash, sand, gravel, caliche, borrow dirt, quarry rock used as aggregate for construction, coal, surfacewater or subsurfacewater, geothermal resources, oil and natural gas together with other chemicals recovered with them, commodities, byproduct materials and wastes that are regulated by the nuclear regulatory commission or waste regulated under Subtitle C of the federal Resource Conservation and Recovery Act;

H. "mining" means the process of obtaining useful minerals from the earth's crust or from previously disposed or abandoned mining wastes, including exploration, open-cut mining and surface operation, the disposal of refuse from underground and in situ mining, mineral transportation, concentrating, milling, evaporation, leaching and other processing. "Mining" does not mean the exploration and extraction of potash, sand, gravel, caliche, borrow dirt and quarry rock used as aggregate in construction, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipes, the development or extraction of coal, the extraction of geothermal resources, smelting, refining, cleaning, preparation, transportation or other off-site operations not conducted on permit areas or the extraction, processing or disposal of commodities, byproduct materials or wastes or other activities regulated by the federal nuclear regulatory commission;

I. "new mining operation" means a mining operation that engages in a development or extraction operation after the effective date of the New Mexico Mining Act and that is not an existing mining operation;

J. "permit area" means the geographical area defined in the permit for a new mining operation or for an existing mining operation on which mining operations are conducted or cause disturbance; and

K. "reclamation" means the employment during and after a mining operation of measures designed to mitigate the disturbance of affected areas and permit areas and to the extent practicable, provide for the stabilization of a permit area following closure that will minimize future impact to the environment from the mining operation and protect air and water resources.

Section 4

Section 4. INTERIM PROGRAM--LIMITATIONS.--

A. Nothing in the New Mexico Mining Act shall supersede current or future requirements and standards of any other applicable federal or state law.

B. After the effective date of the New Mexico Mining Act and until the commission adopts regulations necessary to carry out the provisions of the New Mexico Mining Act, county mining laws or ordinances shall apply to mining within their jurisdictions in New Mexico.

Section 5

Section 5. MINING OPERATION SITE ASSESSMENT.--

A. After the effective date of the New Mexico Mining Act, the operator of a new mining operation may operate that new mining operation until the operator is either granted or denied a permit for a new mining operation provided that the operator submits to the director on or before June 30, 1994 a site assessment pursuant to the New Mexico Mining Act or a notice of intent to close. On or before June 30, 1994, an existing mining operation shall submit to the dirctor a site assessment pursuant to the New Mexico Mining Act.

B. The mining operation site assessment for new and existing mining operations shall describe in detail the mining operation's existing permits and regulatory requirements pursuant to the standards for mining operations pursuant to existing state and federal environmental standards and regulations. To the extent that they are applicable, the permit applicant may incorporate documents on file with state agencies. The mining operation site assessment shall include:

(1) identification of a proposed permit area for the mining operation;

(2) a description of the location and quality of surface and ground water at or adjacent to the mining operation and an analysis of the mining operation's impact on that surface and ground water;

(3) a description of the geologic regime eneath and adjacent to the mining operation;

(4) a description of the piles and other accumulations of waste, tailings and other materials and an analysis of their impact on the hydrologic balance, drainages and air quality;

(5) an analysis of the mining operation's impact on local communities;

(6) a description of wildlife and wildlife habitat at and surrounding the mining operation and an analysis of the mining operation's impact on that wildlife and wildlife habitat; and

(7) for existing mining operations, a description of the design limits for each unit, including waste units, impoundments and stockpiles and leach piles.

C. A new mining operation that files a notice of intent to close shall comply with the requirements for reclamation of new mining operations established in the New Mexico Mining Act and regulations adopted pursuant to that act.

D. The operator or owner of a new or existing mining operation or exploration shall submit to the director, within thirty days of the effective date of the New Mexico Mining Act, written information stating the name and business address of the operator and owner of the new or existing mining operation or exploration, the address where official notices and other documents may be served and an agent for service of process. The operator or owner shall provide notification to the director of any change in the information required by this subsection. Updated information shall be provided promptly by the operator or owner to the director.

E. In lieu of a site assessment under this section, following adoption of the regulations, the operator or owner of an existing mining operation that has completed all reclamation measures may apply to the director for an inspection of the reclaimed areas to determine whether the completed reclamation satisfies the requirements of the New Mexico Mining Act and the substantive requirements for reclamation pursuant to the applicable regulatory standards. If the director determines that those requirements are met, the operator or owner shall be released from further requirements under the New Mexico Mining Act.

Section 6

Section 6. MINING COMMISSION--CREATED--MEMBERS.--

A. The "mining commission" is created. The commission shall consist of seven voting members, including:

(1) the director of the bureau of mines and mineral resources of the New Mexico institute of mining and technology or an academic from a mining-related field to be appointed for a four-year term by the governor with the advice and consent of the senate;

(2) the secretary of environment or his designee;

(3) the state engineer or his designee;

(4) the commissioner of public lands or his designee;

(5) the director of the department of game and fish or his designee; and

(6) two members of the public and an alternate for each, all to be appointed by the governor with the advice and consent of the senate. The public members shall be chosen to represent and to balance environmental and mining

interests while minimizing conflicts of interest. No more than one of the public members and one of the alternates appointed may belong to the same political party. When the initial appointments are made, one of the public members and his alternate will be designated to serve for two-year terms, after which all public members shall serve for four years. An alternate member may vote only in the absence of the public member for whom he is the alternate.

B. The chairman of the soil and water conservation commission and the director of the agricultural experiment station of New Mexico state university or their designees shall be nonvoting ex-officio members to the commission.

C. The commission shall elect a chairman and other necessary officers and keep records of its proceedings.

D. The commission shall convene upon the call of the chairman or a majority of its members.

E. A majority of the voting members of the commission shall be a quorum for the transaction of business. However, no action of the commission shall be valid unless concurred upon by at least four of the members present.

F. No member of the commission, with the exception of one of the public members and his alternate, shall receive, or shall have received during the previous two years, more than ten percent of his income directly or indirectly from permit holders or applicants for permits. Each member of the commission shall, upon acceptance of his appointment and prior to the performance of any of his duties, file a statement of disclosure with the secretary of state stating:

(1) the amount of money or other valuable consideration received, whether provided directly or indirectly, from persons subject to or who appear before the commission;

(2) the identity of the source of money or other valuable consideration; and

(3) whether the money or other valuable consideration was in excess of ten percent of his gross personal income in either of the preceding two years.

G. No commissioner with any financial interest affected or potentially affected by a permit action may participate in proceedings related to that permit action.

Section 7

Section 7. COMMISSION--DUTIES.--The commission shall:

A. within one year of the effective date of the New Mexico Mining Act, adopt and file reasonable regulations, consistent with the purposes and intent of the New Mexico Mining Act, necessary to implement that act, including regulations that:

(1) consider the economic and environmental effects of their implementation;

(2) require permitting of all new and existing mining operations and exploration; and

(3) require annual reporting of production information to the commission, which shall be kept confidential if otherwise required by law;

B. adopt regulations for new mining operations that allow the director to select a qualified expert who may:

(1) review and comment to the director on the adequacy of baseline data gathered prior to submission of the permit application for use in the permit application process;

(2) recommend to the director additional baseline data that may be necessary in the review of the proposed mining activity;

(3) recommend to the director methodology guidelines to be followed in the collection of all baseline data; and

(4) review and comment on the permit application;

C. adopt regulations that require and provide for the issuance and renewal of permits for new and existing mining operations and exploration and that establish schedules to bring existing mining operations into compliance with the requirements of the New Mexico Mining Act; provided the term of a permit for a new mining operation shall not exceed twenty years and the term of renewals of permits for new mining operations shall not exceed ten years;

D. adopt regulations that provide for permit modifications. The commission shall establish criteria to determine which permit modifications may have significant environmental impact. Modifications that the director determines will have significant environmental impact shall require public notice and an opportunity for public hearing pursuant to Subsection K of this section. A permit modification to the permit for an existing mining operation shall be obtained for each new discrete processing, leaching, excavation, storage or stockpile unit located within the permit area of an existing mining operation and not identified in the permit of an existing mining operation, and for each expansion of such a unit identified in the permit for an existing mining operation that exceeds the design limits specified in the permit. The regulations shall require that

permit modifications for such units be approved if the director determines that the unit will:

(1) comply with the regulations regarding permit modifications;

(2) incorporate the requirements of Paragraphs (1), (2), (4), (5) and (6) of Subsection H of this section; and

(3) be sited and constructed in a manner that facilitates, to the maximum extent practicable, contemporaneous reclamation consistent with the closeout plan;

E. adopt regulations that require new and existing mining operations to obtain and maintain permits for standby status. A permit for standby status shall be issued for a maximum term of five years; provided that upon application the director may renew a permit for standby status for no more than three additional five-year terms. The regulations shall require that before a permit for standby status is issued or renewed an owner or operator shall:

(1) identify the projected term of standby status for each unit of the new or existing mining operation;

(2) take measures that reduce, to the extent practicable, the formation of acid and other toxic drainage to prevent releases that cause federal or state environmental standards to be exceeded;

(3) meet applicable federal and state environmental standards and regulations during the period of standby status;

(4) stabilize waste and storage units, leach piles, impoundments and pits during the term of standby status;

(5) comply with applicable requirements of the New Mexico Mining Act and the regulations adopted pursuant to that act; and

(6) provide an analysis of the economic viability of each unit proposed for standby status;

F. establish by regulation closeout plan requirements for existing mining operations that incorporate site-specific characteristics, including consideration of disturbances from previous mining operations, and that take into account the mining method utilized;

G. establish by regulation a procedure for the issuance of a permit for an existing mining operation and for modifications of that permit to incorporate approved closeout plans or portions of closeout plans and financial assurance requirements for

performance of the closeout plans. The permit shall describe the permit area of the existing mining operation and the design limits of units of the existing mining operation based upon the site assessment submitted by the operator. The permit shall contain a schedule for completion of a closeout plan. The permit shall thereafter be modified to incorporate the approved closeout plan or portions of the closeout plan once financial assurance has been provided for completion of the closeout plan or the approved portions of the closeout plan. The permit may be modified for new mining units, expansions beyond the design limits of a unit at an existing mining operation or standby status;

H. establish by regulation permit and reclamation requirements for new mining operations that incorporate site-specific characteristics. These requirements shall, at a minimum:

(1) require that new mining operations be designed and operated using the most appropriate technology and the best management practices;

(2) assure protection of human health and safety, the environment, wildlife and domestic animals;

(3) include backfilling or partial backfilling only when necessary to achieve reclamation objectives that cannot be accomplished through other mitigation measures;

(4) require approval by the director that the permit area will achieve a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure unless conflicting with the approved post-mining land use;

(5) require that new mining operations be designed in a manner that incorporates measures to reduce, to the extent practicable, the formation of acid and other toxic drainage that may otherwise occur following closure to prevent releases that cause federal or state standards to be exceeded;

(6) require that nonpoint source surface releases of acid or other toxic substances shall be contained within the permit area;

(7) require that all waste, waste management units, pits, heaps, pads and any other storage piles are designed, sited and constructed in a manner that facilitates, to the maximum extent practicable, contemporaneous reclamation and are consistent with the new mining operation's approved reclamation plan; and

(8) where sufficient topsoil is present, take measures to preserve it from erosion or contamination and assure that it is in a usable condition for sustaining vegetation when needed;

I. adopt regulations that establish a permit application process for new mining operations that includes:

(1) disclosure of ownership and controlling interests in the new mining operation or submission of the applicant's most recent form 10K required by the federal securities exchange commission;

(2) a statement of all mining operations within the United States owned, operated or directly controlled by the applicant, owner or operator and by persons or entities that directly control the applicant and the names and the addresses of regulatory agencies with jurisdiction over the environmental aspects of those operations and that could provide a compliance history for those operations and over the preceding ten years. The operator shall assist the applicant in obtaining compliance history information;

(3) a description of the type and method of mining and the engineering techniques proposed;

(4) the anticipated starting and termination dates of each phase of the new mining operation and the number of acres of land to be affected;

(5) the names of all affected watersheds, the location of any perennial, ephemeral or intermittent surface stream or tributary into which surface or pit drainage will be discharged or may possibly be expected to reach and the location of any spring within the permit area and the affected area;

(6) a determination of the probable hydrologic consequences of the new mining operation and reclamation, both on and off the permit area, with respect to the hydrologic regime, quantity and quality of surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions;

(7) cross-sections or plans of the permit area depicting:

(a) the nature and depth of the various formations of overburden;

(b) the location of subsurface water, if encountered, and its quality;

(c) the nature and location of any ore body to be mined;

(d) the location of aquifers and springs;

(e) the estimated position and flow of the water table;

(f) the proposed location of waste rock, tailings, stockpiles, heaps, pads and topsoil preservation areas; and

(g) premining vegetation and wildlife habitat features present at the site;

(8) the potential for geochemical alteration of overburden, the ore body and other materials present within the permit area;

(9) a reclamation plan that includes a detailed description of the proposed post-mining land use and how that use is to be achieved; and

(10) premining baseline data as required by regulations adopted by the commission;

J. adopt regulations to coordinate the roles of permitting agencies involved in regulating activities related to new and existing mining operations and exploration, including regulatory requirements to avoid duplicative and conflicting administration of the permitting process and other requirements;

K. except for regulations enacted pursuant to Subsection L of this section, adopt regulations that ensure that the public and permitting agencies receive notice of each application for issuance, renewal or revision of a permit for a new or existing mining operation, for standby status, or exploration, a variance or an application for release of financial assurance and any inspection prior to the release of financial assurance, including a provision that no action shall be taken on any application until an opportunity for a public hearing, held in the locality of the operation, is provided and that all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. These regulations shall require at a minimum that the applicant for issuance, renewal or revisions of a permit or a variance or an application for release of financial assurance and any inspection prior to release of financial assurance shall provide to the director proof that notice of the application has been:

(1) provided by certified mail to the owners of record, as shown by the most recent property tax schedule, of all properties within one-half mile of the property on which the mining operation is located or is proposed to be located;

(2) provided by certified mail to all municipalities and counties within a ten-mile radius of the property on which the mining operation is or will be located;

(3) published once in a newspaper of general circulation in each county in which the property on which the mining operation is or will be located; provided that this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the

general public the most effective notice and, when appropriate, shall be printed in both English and Spanish;

(4) posted in at least four publicly accessible and conspicuous places, including the entrance to the new or existing mining operation if that entrance is publicly accessible and conspicuous; and

(5) mailed to all persons who have made a written request to the director for notice;

L. adopt regulations to provide for permits, without notice and hearing, to address mining operations that have minimal impact on the environment; provided that such permits shall require general plans and shall otherwise reduce the permitting requirements of the New Mexico Mining Act;

M. establish by regulation a schedule of annual administrative and permit fees, which shall equal and not exceed the estimated costs of administration, implementation, enforcement, investigation and permitting pursuant to the provisions of the New Mexico Mining Act. The size of the operation, anticipated inspection frequency and other factors deemed relevant by the commission shall be considered in the determination of the fees. The fees established pursuant to this subsection shall be deposited in the mining act fund;

N. establish by regulation a continuing process of review of mining and reclamation practices in New Mexico that provides for periodic review and amendment of regulations and procedures to provide for the protection of the environment and consider the economic effects of the regulations;

O. adopt regulations governing the provision of variances issued by the director, stating the procedures for seeking a variance, including provisions for public notice and an opportunity for a hearing in the locality where the variance will be operative, the limitations on provision of variances, requiring the petitioner to present sufficient evidence to prove that failure to grant a variance will impose an undue economic burden, and that granting the variance will not result in a significant threat to human health, safety or the environment;

P. provide by regulation that, prior to the issuance of any permit for a new mining operation pursuant to the provisions of the New Mexico Mining Act, the permit applicant or operator:

(1) shall provide evidence to the director that other applicable state and federal permits required to be obtained by the new or existing mining operation either have been or will be issued before the activities subject to those permits begin; and

(2) shall provide to the director a written determination from the secretary of environment stating that the permit applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality and other environmental standards if carried out as described;

Q. require by regulation that the applicant file with the director, prior to the issuance of a permit, financial assurance. The amount of the financial assurance shall be sufficient to assure the completion of the performance requirements of the permit, including closure and reclamation, if the work had to be performed by the director or a third party contractor and shall include periodic review to account for any inflationary increases and anticipated changes in reclamation or closure costs. The regulations shall specify that financial requirements shall neither duplicate nor be less comprehensive than the federal financial requirements. The form and amount of the financial assurance shall be subject to the approval of the director as part of the permit application; provided, financial assurance does not include any type or variety of self-guarantee or self-insurance;

R. require by regulation that the permittee may file an application with the director for the release of all or part of the permittee's financial assurance. The permittee shall not file an application for release of financial assurance more than once per year for each mining operation. The application shall describe the reclamation measures completed and shall contain an estimate of the costs of reclamation measures that have not been completed. Prior to release of any portion of the permittee's financial assurance, the director shall conduct an inspection and evaluation of the reclamation work involved. The director shall notify persons who have requested advance notice of the inspection. Interested members of the public shall be allowed to be present at the inspection of the reclamation work by the director.

(1) The director may release in whole or in part the financial assurance if the reclamation covered by the financial assurance has been accomplished as required by the New Mexico Mining Act; provided that the director shall retain financial assurance at least equal to the approved estimated costs of completing reclamation measures that have not been completed; and provided further that for revegetated areas, the director shall retain the amount of financial assurance necessary for a third party to reestablish vegetation for a period of twelve years after the last year of augmented seeding, fertilizing, irrigation or other work, unless a post-mining land use is achieved that is inconsistent with the further need for revegetation. For new mining operations only, no part of the financial assurance necessary for a third party to reestablish vegetation shall be released so long as the lands to which the release would be applicable are contributing suspended solids above background levels to streamflow of intermittent and perennial streams.

(2) A person with an interest that is or will be adversely affected by release of the financial assurance may file, with the director within thirty days of the date of the inspection, written objections to the proposed release from financial assurance. If

written objections are filed and a hearing is requested, the director shall inform all the interested parties of the time and place of the hearing at least thirty days in advance of the public hearing, and hold a public hearing in the locality of the new or existing mining operation or exploration operation proposed for release from financial asurance. The date, time and location of the public hearing shall be advertised by the director in a newspaper of general circulation in the locality for two consecutive weeks, and all persons who have submitted a written request in advance to the director to receive notices of hearings shall be provided notice at least thirty days prior to the hearing;

S. establish coordinated procedures that avoid duplication for the inspection, monitoring and sampling of air, soil and water and enforcement of applicable requirements of the New Mexico Mining Act, regulations adopted pursuant to that act and permit conditions for new and existing mining operations and exploration. The regulations shall require, at a minimum:

(1) inspections by the director occurring on an irregular basis averaging not less than one inspection per month when the mining operation is conducting significant reclamation activities and one on-site inspection per calendar quarter at all other times and on a schedule to be established by the commission for mining operations having a minimal impact on the environment and exploration operations covered by each permit;

(2) inspections shall occur without prior notice to the permittee or his agents or employees except for necessary on-site meetings with the permittee;

(3) when the director determines that a condition or practice exists that violates a requirement of the New Mexico Mining Act, a regulation adopted pursuant to that act or a permit issued under that act, which condition, practice or violation also creates an imminent danger to the health or safety of the public or will cause significant imminent environmental harm, the director shall immediately order a cessation of the new or existing mining operation or the exploration operation or the portion of that operation relevant to the condition, practice or violation. The cessation order shall remain in effect until the director determines that the condition, practice or violation has been abated or until modified, vacated or terminated by the director or the commission;

(4) when the director determines that an owner or operator is in violation of a requirement of the New Mexico Mining Act, a regulation adopted pursuant to that act or a permit issued pursuant to that act but the violation does not create an imminent danger to the health or safety of the public or will not cause significant imminent environmental harm, the director shall issue a notice to the owner or operator fixing a reasonable time, not to exceed sixty days, for the abatement of the violation. If, upon expiration of the period of time as originally fixed or subsequently extended for good cause shown, the director finds that the violation has not been abated, he shall immediately order a cessation of new or existing mining operations or exploration

operations or the portion thereof relevant to the violation. The cessation order shall remain in effect until the director determines that the violation has been abated; and

(5) when the director determines that a pattern of violations of the requirements of the New Mexico Mining Act or of the regulations adopted pursuant to that act or the permit required by that act exists or has existed and, if the director also finds that such violations are caused by the unwarranted failure of the owner or operator to comply with the requirements of that act, regulation or permit or that such violations are willfully caused by the owner or operator, the director shall immediately issue an order to the owner or operator to show cause as to why the permit should not be suspended or revoked;

T. provide for the transfer of a permit to a successor operator, providing for release of the first operator from obligations under the permit, including financial assurance, following the approved assumption of such obligations and financial assurance by the successor operator;

U. adopt regulations providing that the owner or operator of an existing mining operation or a new mining operation who has completed some reclamation measures prior to the effective date of the regulations adopted pursuant to the New Mexico Mining Act may apply for an inspection of those reclamation measures and a release from further requirements pursuant to that act for the reclaimed areas if, after an inspection, the director determines that the reclamation measures satisfy the requirements of that act and the substantive requirements for reclamation pursuant to the applicable regulatory standards; and

V. develop and adopt other regulations necessary and appropriate to carry out the purposes and provisions of the New Mexico Mining Act.

Section 8

Section 8. REGULATIONS--ADOPTION PROCESS.--

A. No regulation shall be adopted, amended or repealed without a public hearing before the commission or a hearing officer appointed by the commission.

B. Any person may recommend or propose regulations to the commission for adoption, amendment or repeal. The commission shall determine within sixty days of submission of a proposed regulation whether to hold a hearing. If the commission determines not to hold a hearing, the determination shall be subject to review under Section 16 of the New Mexico Mining Act.

C. The public hearing shall be held in Santa Fe, and a verbatim record shall be maintained of all proceedings. Notice of the subject, time and place of the hearing, the manner in which interested persons may present their views and the

method by which copies of the proposed regulation or amendment may be obtained shall be:

(1) published at least thirty days prior to the hearing date in a newspaper of general circulation in the state and in the New Mexico register, if published; and

(2) mailed at least thirty days prior to the hearing date to all persons who have made a written request to the commission for advance notice of hearings.

D. The commission shall allow all interested persons a reasonable opportunity to submit arguments and to examine witnesses testifying at the hearing.

E. A person appearing or represented at the hearing shall, upon a written request, be given written notice of the commission's action on the proposed adoption, amendment or repeal of regulation.

F. No regulation, its amendment or repeal shall be effective except as provided by the Public Records Act.

Section 9

Section 9. DIRECTOR--DUTIES.--The director shall:

A. exercise all powers of enforcement and administration arising under the New Mexico Mining Act not otherwise expressly delegated to the commission, execute and administer the commission's regulations and coordinate the review and issuance of permits for new and existing mining operations and exploration with all other state or federal permit processes applicable to the proposed operations;

B. enter into agreements with appropriate federal and state agencies for coordinating the review and issuance of all necessary permits to conduct new and existing mining operations and exploration in New Mexico;

C. create an advisory committee, the membership of which shall balance the interests of affected government entities, the mining industry, environmental groups, regulatory agencies and other persons as determined by the director to represent a constituency that will be affected by the provisions of the New Mexico Mining Act;

D. confer and cooperate with the secretary of environment in administering the New Mexico Mining Act, in developing proposed regulations and obtain the concurrence of the secretary of environment regarding areas of the regulations that have an impact upon programs administered by the department of environment;

E. approve a permit area and design limits for new and existing mining operations and exploration following submission of the site assessment, where applicable and prior to issuing a permit. The director shall incorporate the permit area and design limits into the permit issued;

F. review at least twelve months of baseline data and other information submitted by the applicant for a permit for a new mining operation, before the permit is approved or denied; and

G. prepare an environmental evaluation, before a permit for a new mining operation is approved or denied, which shall include an analysis of the reasonably foreseeable impacts of proposed activities on the premining and post-mining environment and the local community, including other past, present and reasonably foreseeable future actions, regardless of the agency or persons that undertake the other action or whether the actions are on private, state or federal land. The director may contract with, and the applicant shall pay for, a third party to prepare the analysis and assessment.

Section 10

Section 10. CONFIDENTIALITY.--If the operator designates as confidential an exploration map, financial information, information concerning the grade or location of ore reserves or trade secret information, the director shall maintain the information as confidential and not subject to public records or disclosure laws; provided that if a request is made for public review of the information, the director shall notify the operator and provide a reasonable opportunity for substantiation of the claim that public disclosure of the information could harm the competitive position of the operator. If the claim of confidentiality is not substantiated to the satisfaction of the director, the information shall be released.

Section 11

Section 11. EXISTING MINING OPERATIONS--CLOSEOUT PLAN REQUIRED.--

A. An owner or operator of an existing mining operation shall submit a permit application to the director by December 31, 1994. The permit application shall contain all information required by regulation of the commission, including a proposed compliance schedule for submission of a closeout plan within the shortest time practicable. The director shall approve or deny the permit application within six months after it has been deemed complete.

B. The owner or operator of an existing mining operation shall submit a closeout plan in accordance with the compliance schedule in the permit. The compliance schedule in the permit shall require submission of a closeout plan by December 31, 1995 unless the operator shows good cause for a further extension of

time. The director shall approve a modification of a permit for an existing mining operation incorporating a closeout plan or portion of a closeout plan if:

(1) the closeout plan and permit application is complete;

(2) the closeout plan permit fee has been paid and the financial assurance is adequate and has been provided;

(3) the closeout plan specifies incremental work to be done within specific time frames that, if followed, will reclaim the physical environment of the permit area to a condition that allows for the reestablishment of a self-sustaining ecosystem on the permit area following closure, appropriate for the life zone of the surrounding areas unless conflicting with the approved post-mining land use; provided that for purposes of this section, upon a showing that achieving a post-mining land use or self-sustaining ecosystem is not technically or economically feasible or is environmentally unsound, the director may waive the requirement to achieve a self-sustaining ecosystem or post-mining land use for an open pit or waste unit if measures will be taken to ensure that the open pit or waste unit will meet all applicable federal and state laws, regulations and standards for air, surfacewater and ground water protection following closure and will not pose a current or future hazard to public health or safety; and

(4) the secretary of environment has provided a written determination in the form prescribed in
Paragraph (2) of Subsection P of Section 7 of the New Mexico Mining Act.

C. An approval granted pursuant to this section may be revoked or suspended by order of the director for violation of a provision of the approved closeout plan or permit for the existing mining operation, an approval condition, a regulation of the commission or a provision of the New Mexico Mining Act.

Section 12

Section 12. NEW MINING OPERATIONS--MINING OPERATION PERMIT REQUIRED.--

A. After the effective date of the New Mexico Mining Act, except as provided in Section 5 of that act, no person shall conduct a new mining operation without a permit issued by the director. Applications for permits for new mining operations operating pursuant to Section 5 of the New Mexico Mining Act shall be received by the director by December 31, 1995. The director may grant one extension for the submission of a permit application for a new mining operation for six months for good cause shown. Prior to receiving a permit for a new mining operation, an applicant shall submit an applicatio that complies with the New Mexico Mining Act and regulation of the commission, including at a minimum, one year of baseline data as required by regulation.

B. The director shall issue the permit for a new mining operation if the director finds that:

(1) the permit application is complete;

(2) the permit application fee has been paid and the financial assurance is adequate and has been provided;

(3) reclamation in accordance with the proposed reclamation plan is economically and technically feasible;

(4) the mining operation is designed to meet without perpetual care all applicable environmental requirements imposed by the New Mexico Mining Act and regulations adopted pursuant to that act and other laws following closure; and

(5) the applicant, the operator or owner or any persons or entities directly controlled by the applicant, operator, owner or any persons or entities that directly control the applicant, operator or owner:

(a) are not currently in violation of the terms of another permit issued by the division or in violation of any substantial environmental law or substantive environmental regulation at a mining operation in the United States, which violation is unabated and is not the subject of appeal, and have not forfeited or had forfeited financial assurance required for any mining, reclamation or exploration permit in the United States; provided that a violation that occurred prior to the initiation of a legal relationship between the permit applicant and the violator shall not be considered for purposes of this paragraph; and

(b) have not demonstrated a pattern of willful violations of the New Mexico Mining Act or other New Mexico environmental statutes; provided that a violation that occurred prior to the initiation of a legal relationship between the permit applicant and the violator shall not be considered for purposes of this paragraph.

C. The permit for a new mining operation may be revoked or suspended by order of the director for violation of its terms or conditions, a regulation of the commission or a provision of the New Mexico Mining Act.

Section 13

Section 13. EXPLORATION PERMIT.--

A. After December 31, 1994, a person shall not engage in exploration operations in New Mexico without first obtaining a permit to conduct exploration from the director. In order to be approved by December 31, 1994, the application for a permit to conduct exploration shall be submitted by September 1, 1994. A permit to conduct exploration shall not be issued for a period of more than one year from the date of issue

and is renewable from year to year upon application. An application for renewal of a permit to conduct exploration shall be filed within thirty days preceding the expiration of the current permit. A permit to conduct exploration shall not be renewed if the applicant for renewal is in violation of any provision of the New Mexico Mining Act.

B. A person shall not be issued a permit to conduct exploration if that person's failure to comply with the provisions of the New Mexico Mining Act, the regulations adopted pursuant to that act or a permit issued under that act has resulted in the forfeiture of financial assurance.

C. An applicant for a permit to conduct exploration shall not be issued a permit to conduct exploration until he:

(1) pays a permit fee for exploration;

(2) agrees to reclaim any surface area damaged by the applicant during exploration operations in accordance with a reclamation plan submitted to and approved by the director; and

(3) certifies that he is not in violation of any other obligation under the New Mexico Mining Act or the regulations adopted pursuant to that act.

D. The application for a permit to conduct exploration shall include an exploration map in sufficient detail to locate the area to be explored and to determine whether environmental problems would be encountered. The commission shall establish regulations to determine the precise nature of and requirements for the exploration map. The application shall state what type of exploration and excavation techniques will be employed in disturbing the land during exploration operations.

E. Prior to the issuance of a permit to conduct exploration, the applicant shall provide to the division financial assurance in a form and amount as determined by the director pursuant to Section 7 of the New Mexico Mining Act. The financial assurance shall be released only in accordance with the provisions of that act.

F. In the event that the holder of a permit to conduct exploration desires to mine the permit area to conduct exploration and he has fulfilled all of the requirements for a permit for new mining operations, the director shall allow postponement of the reclamation of the acreage explored if that acreage is incorporated into the complete reclamation plan submitted with the application for a permit for a new mining operation. Land affected by exploration or excavation under a permit for exploration and not covered by the reclamation plan shall be reclaimed in a manner acceptable to the director within two years after the completion of exploration or abandonment of the site.

Section 14

Section 14. CITIZENS SUITS.--

A. A person having an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with the New Mexico Mining Act. Such action may be brought against:

(1) the department of environment, the energy, minerals and natural resources department or the
commission alleging a violation of the New Mexico Mining Act or of a rule, regulation, order or permit issued pursuant to that act;

(2) a person who is alleged to be in violation of a rule, regulation, order or permit issued pursuant to the New Mexico Mining Act; or

(3) the department of environment, the energy, minerals and natural resources department or the commission alleging a failure to perform any nondiscretionary act or duty under the New Mexico Mining Act; provided, however, that no action pursuant to this section shall be commenced if the department of environment, the energy, minerals and natural resources department or the commission has commenced and is diligently prosecuting a civil action in a court of this state or an administrative enforcement proceeding to require compliance with that act. In an administrative or court action commenced by the department of environment, the energy, minerals and natural resources department or the commission, a person whose interest may be adversely affected and who has provided notice pursuant to Subsection B of this section prior to the initiation of the action may intervene as a matter of right.

B. No action shall be commenced pursuant to this section prior to sixty days after the plaintiff has given written notice to the department of environment, the energy, minerals and natural resources department, the commission, the attorney general and the alleged violator of the New Mexico Mining Act; provided, however, when the violation or order complained of constitutes an immediate threat to the health or safety of the plaintiff or would immediately and irreversibly impair a legal interest of the plaintiff, an action pursuant to this section may be brought immediately after notification of the proper parties.

C. An action brought pursuant to this section alleging a violation of the New Mexico Mining Act or the regulations adopted pursuant to that act other than suits against the department of environment, the energy, minerals and natural resources department or the commission shall be brought in the judicial district in which the mining operation complained of is located. Suits against the department of environment, the energy, minerals and natural resources department or the commission shall be brought in the district court of Santa Fe.

D. In an action brought pursuant to this section, the department of environment, the energy, minerals and
natural resources department or the commission, if not a party, may intervene.

E. The court, in issuing a final order in an action brought pursuant to this section, may award costs of litigation, including attorneys' and expert witness fees, to a party, whenever the court determines such award is appropriate. The court may, if a temporary injunction or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the rules of civil procedure.

Section 15

Section 15. ADMINISTRATIVE REVIEW.--

A. Any order, penalty assessment or issuance or denial of a permit by the director pursuant to the New Mexico Mining Act shall become final unless a person who is or may be adversely affected by the order, penalty assessment or issuance or denial of a permit files, within sixty days from the date of notice of the order, penalty assessment or issuance or denial of a permit, a written petition to the commission for review of the order, penalty assessment or issuance or denial of a permit by the director.

B. The commission shall set a hearing no sooner than thirty days and no later than sixty days from the date of receipt of the petition.

C. Evidence in support of, or to challenge, the action of the director shall be heard by the commission or by a hearing officer appointed by the commission.

D. A verbatim record of the hearing shall be made and preserved by the commission or the hearing officer.

E. A recommendation based on the record shall be made by the hearing officer and presented to the commission. The commission shall issue findings of fact and a final decision in the proceedings.

F. The chairman of the commission may issue subpoenas to compel attendance of witnesses and for documents relevant to the action to be heard before the commission. The Rules of Civil Procedure for the District Courts shall govern discovery procedures in commission hearings.

Section 16

Section 16. JUDICIAL REVIEW.--

A. Any person who is or may be affected by a regulation of the commission may appeal the action of the
commission by filing a notice of appeal with the court of appeals within thirty days from the filing date of the regulation with the state records center. All appeals of regulations shall be taken on the record made at the public hearing on the regulation.

B. A party, intervenor or any other person upon a showing of good cause for not appearing at the public hearing on a regulation may appeal a decision of the commission adopting, amending or repealing regulations by filing a written notice of appeal with the court of appeals within forty-five days after entry of the commission's decision. Copies of the notice of appeal shall be served at the time of filing, either personally or by certified mail, upon all parties to the proceeding before the commission.

C. Any person who is or may be affected by a final action of the commission other than a regulation may appeal the action of the commission by filing a notice of appeal with the district court for the first judicial district within thirty days from the date of the commission's action. The appeal shall be taken on the record made before the commission.

D. The notice of appeal shall include a concise statement of the facts upon which jurisdiction is based, facts showing that the appellant is aggrieved, the grounds upon which the appellant is appealing and the relief that the appellant is seeking.

E. The appellant shall certify in his notice of appeal that a sufficient number of transcripts of the record of the hearing from which the appeal is taken shall have been made by the commission, at his expense, including three copies, which shall remain with the commission.

F. Upon appeal the court shall set aside the regulation, order or other action only if it is found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law.

Section 17

Section 17. CIVIL PENALTIES.--

A. Civil penalties may be assessed by the director or the commission for violations of the New Mexico Mining Act, including a violation of a regulation of the commission, an order of the director, a permit condition and the order resulting from a hearing.

B. Civil penalties assessed by the director or the commission shall be imposed pursuant to regulations adopted by the commission. Any penalty assessed shall not exceed ten thousand dollars ($10,000) per day of noncompliance for each violation.

C. Circumstances to be considered by the commission or the director in determining the amount of the penalty to be assessed shall be the seriousness of the violation, efforts to comply with the requirements of the New Mexico Mining Act, recent history of violations and other relevant factors as determined by the commission and regulations adopted by the commission.

D. Any penalty imposed by the director may be appealed to the commission, and any order of the commission concerning a penalty may be appealed de novo to the district court within thirty days from issuance of the order imposing the penalty.

Section 18

Section 18. CRIMINAL PENALTIES.--

A. Any person who knowingly or willfully violates the New Mexico Mining Act, regulations adopted by the commission or a condition of a permit issued pursuant to the New Mexico Mining Act or fails or refuses to comply with a final decision or order of the commission or the director is guilty of a misdemeanor and is subject to a fine not to exceed ten thousand dollars ($10,000) per day of violation or imprisonment of up to one year, or both.

B. Cases seeking criminal penalties shall be brought in the district court in Santa Fe.

C. Circumstances to be considered by the district court in determining the sentence shall be the seriousness of the violation, the efforts taken to comply with the requirements of the New Mexico Mining Act and the recent history of violations of the defendant.

Section 19

Section 19. FUNDS CREATED.--

A. There is created within the state treasury the "mining act fund". All money received by the state from permit applicants, permit holders, the federal government, other state agencies or legislative appropriations shall be delivered to the state treasurer and deposited in the fund. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources. Money in the fund is appropriated to the energy, minerals and natural resources department to carry out the purposes of the New Mexico Mining Act. Any unexpended or unencumbered balance remaining in the mining act fund at the end of a fiscal year shall not revert to the general fund but shall remain and accrue to the benefit of the mining act fund.

B. There is created within the state treasury the "inactive or abandoned non-coal mine reclamation fund". All money received from administrative or court-imposed penalties shall be delivered to the state treasurer and deposited in the fund. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources. Money in the fund is appropriated to the energy, minerals and natural resources department to conduct reclamation activities on abandoned or inactive non-coal mining areas. Any unexpended or unencumbered balance remaining in the inactive or abandoned non-coal mine reclamation fund at the end of a fiscal year shall not revert to the general fund but shall remain and accrue to the benefit of the inactive or abandoned non-coal mine reclamation fund.

Section 20

Section 20. REMEDY.--Nothing in the New Mexico Mining Act shall limit any right that any person or class of persons may have pursuant to any statute or common law to seek enforcement of the New Mexico Mining Act and the regulations adopted pursuant to that act, or to seek any other relief. HB 556

CHAPTER 316

RELATING TO ELECTIONS; AMENDING PROVISIONS OF THE ELECTION CODE PERTAINING TO THE REGISTRATION OF VOTERS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 1-1-7.1 NMSA 1978 (being Laws 1979, Chapter 378, Section 1, as amended) is amended to read:

"1-1-7.1. RESIDENCE FOR PURPOSE OF CANDIDACY AND SIGNING OF PETITIONS--RULE FOR DETERMINING.--For the purpose of determining the residence of a person desiring to be a candidate for the nomination or election to an office under the provisions of the Election Code or for the purpose of determining the residence of any signer of a petition required by the Election Code, permanent residence shall be resolved in favor of that place shown on the person's certificate of registration as his permanent residence, provided the person resides on the premises."

Section 2

Section 2. Section 1-1-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 7, as amended) is amended to read:

"1-1-8. ELECTION RETURNS.--As used in the Election Code, "election returns" means the certificate of the precinct board showing the total number of votes cast for each candidate, or for or against each proposed constitutional amendment or other question, and may include statements of canvass, signature rosters, poll books, tally books, machine printed returns and, in any canvass of returns for county candidates, the original certificates of registration in the possession of the county clerk, together with the copies of certificates of registration in the office of the county clerk."

Section 3

Section 3. A new section of the Election Code, Section 1-2-3.1 NMSA 1978, is enacted to read:

"1-2-3.1. SECRETARY OF STATE--MULTIPURPOSE REGISTRATION FORM.--The secretary of state shall prescribe the form of a multipurpose certificate of registration, which shall be printed in English and Spanish. The certificate of registration form shall be clear and understandable to the average person and shall include brief but sufficient instructions to enable the qualified elector to complete the form. The certificate of registration form shall replace the affidavit of registration."

Section 4

Section 4. Section 1-2-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 32, as amended) is amended to read:

"1-2-12. PRECINCT BOARD--NUMBER FOR EACH PRECINCT--BIPARTISAN.--

A. When absentee ballots are counted, the precinct board shall consist of:

(1) a presiding judge;

(2) two election judges who shall be of different political parties; and

(3) two election clerks who shall be of different political parties.

B. When one voting machine is to be used in a precinct, the precinct board shall consist of:

(1) a presiding judge;

(2) two election judges who shall be of different political parties; and

(3) one election clerk who shall be of a different political party than the presiding judge.

C. When two voting machines are to be used in a precinct, the precinct board shall consist of:

(1) a presiding judge;

(2) two election judges who shall be of different political parties; and

(3) two election clerks who shall be of different political parties.

D. When three voting machines are used in a precinct, the precinct board shall consist of:

(1) a presiding judge;

(2) two election judges who shall be of different political parties; and

(3) three election clerks, not more than two of whom shall belong to the same political party.

E. If the county clerk determines that additional election clerks are needed in a precinct, the clerk may appoint such additional election clerks as he deems necessary; provided, however, that such appointments shall be made in the manner that provides for representation from all major political parties.

F. In addition to the members of the precinct board provided for in this section, the county clerk may appoint an additional election clerk for the purpose of making changes in the certificate of registration of any voter who has voted in that election at the polling place."

Section 5

Section 5. Section 1-4-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 61) is amended to read:

"1-4-3. REGISTRATION DECLARED PERMANENT.--The registration of a qualified elector is permanent for all purposes during the life of such person unless and until his certificate of registration is canceled for any cause specified in the Election Code."

Section 6

Section 6. Section 1-4-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 63, as amended) is amended to read:

"1-4-5. METHOD OF REGISTRATION.--

A. A qualified elector may apply to a registration officer for registration.

B. The registration officer shall fill out each of the blanks on the original and the voter's copy of the certificate of registration by typing or printing in ink. Carbon paper may be used between the original and the voter's copy.

C. The qualified elector shall subscribe a certificate of registration.

(1) A person shall sign his original certificate of registration using his given name, middle name or initial and last name.

(2) If any qualified elector seeking to register is unable to read and write either the English or Spanish language or is unable to read or write because of some physical disability, the certificate of such person shall be filled out by a registration officer, and the name of the qualified elector so registering shall be subscribed by the making of his mark.

D. When properly executed by the registration officer, the original and the voter's copy of the certificate of registration shall be presented, either in person or by mail by the qualified elector or by the registration officer, to the county clerk of the county in which the qualified elector resides.

E. Only when the certificate of registration is properly filled out, subscribed by the qualified elector and accepted for filing by the county clerk as evidenced by his signature or stamp and the date of acceptance thereon shall it constitute an official public record of the registration of the qualified elector."

Section 7

Section 7. A new section of the Election Code, Section 1-4-5.1 NMSA 1978, is enacted to read:

"1-4-5.1. METHOD OF REGISTRATION--FORM.--

A. A qualified elector may also apply for registration by mail or in the office of the county clerk.

B. Certificate of registration forms may be requested from the secretary of state or any county clerk in person, by telephone or by mail for oneself or for others.

C. A qualified elector who wishes to register to voe shall fill out completely and sign the certificate of registration. The qualified elector may seek the assistance of any person in completing the certificate of registration.

D. Completed certificates of registration may be mailed or presented in person by the registrant or any other person to the secretary of state or presented in

person by the registrant or any other person to the county clerk of the county in which the registrant resides.

E. If the registrant wishes to vote in the next election, the completed and signed certificate of registration shall be delivered or mailed and postmarked at least twenty-eight days before the election.

F. Upon receipt of a certificate of registration, the secretary of state shall send the certificate to the county clerk in the county where the qualified elector resides.

G. Only when the certificate of registration is properly filled out, signed by the qualified elector and accepted for filing by the county clerk as evidenced by his signature or stamp and the date of acceptance thereon and when notice has been received by the registrant, shall it constitute an official public record of the registration of the qualified elector.

H. The secretary of state shall prescribe the form of the certificate of registration, which shall be a postpaid mail-in format and shall be printed in Spanish and English. The certificate of registration form shall be clear and understandable to the average person and shall include brief but sufficient instructions to enable the qualified elector to complete the form without assistance."

Section 8

Section 8. Section 1-4-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 65) is amended to read:

"1-4-7. REGISTRATION BY TEMPORARY ABSENTEES.--A qualified elector who is temporarily out of his county of residence or out of New Mexico, may, upon request to the county clerk of his county of residence, obtain the prescribed certificate of registration form. After the certificate of registration has been subscribed, the qualified elector shall return it to the county clerk of his county of residence by mail. Upon receipt of the completed certificate of registration, the county clerk shall ascertain if such certificate of registration is to be filed or rejected in accordance with the Election Code."

Section 9

Section 9. Section 1-4-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 66, as amended) is amended to read:

"1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF REGISTRATION--CLOSE OF REGISTRATION.--

A. The county clerk shall receive certificates of registration at all times during normal working hours, except that he shall close registration at 5:00 p.m. on the

twenty-eighth day immediately preceding any election at which the registration books are to be furnished to the precinct board.

B. Registration shall be reopened on the Monday following the election.

C. For purposes of a municipal or school election, the registration period for those precincts within the municipality or school district is closed at 5:00 p.m. on the twenty-eighth day immediately preceding the municipal or school election and is opened again on the Monday following the election.

D. During the period when registration is closed, the county clerk shall receive certificates of registration and other documents pertaining thereto but shall not file the certificate of registration in the registration book until the Monday following the election at which time a copy shall be mailed to the registrant at the address shown on the certificate of registration.

E. When the twenty-eighth day prior to any election referred to in this section is a Saturday, Sunday or legal holiday, registration shall be closed at 5:00 p.m. of the next succeeding regular business day for the office of the county clerk.

F. The county clerk shall accept for filing any certificate of registration that is hand delivered or received in the mail before 5:00 p.m. on the Friday immediately following the close of registration."

Section 10

Section 10. Section 1-4-11 NMSA 1978 (being Laws 1969, Chapter 240, Section 67, as amended) is amended to read:

"1-4-11. DUTIES OF COUNTY CLERK--UPON RECEIPT OF CERTIFICATES.--

A. Upon receipt of a complete certificate of registration, if in proper form, the county clerk shall determine if the qualified elector applying for registration is already registered in the registration records of the county. If the qualified elector is not already registered in the county and if the certificate of registration is received within the time allowed by law for filing certificates of registration in the county clerk's office, the county clerk shall sign or stamp, in the space provided therefor on each copy of the certificate, his name and the date the certificate was accepted for filing in the county registration records. A copy of the certificate of registration shall be handed or mailed to the voter and to no other person.

B. If the qualified elector is already registered in the county as shown by his original certificate of registration currently on file in the county registration records, the county clerk shall not accept the new certificate of registration unless it is filed pursuant to Sections 1-4-13, 1-4-15, 1-4-17 or 1-4-18 NMSA 1978. He shall stamp or write the word "rejected" on the new certificate of registration and hand or mail it to the

voter with an explanation why the new certificate of registration was rejected and what remedial action, if any, the voter must
take to bring his registration up to date."

Section 11

Section 11. Section 1-4-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 68, as amended) is amended to read:

"1-4-12. DUTIES OF COUNTY CLERK--FILING OF CERTIFICATES.--

A. Certificates of registration, if in proper form, shall be processed and filed by the county clerk as follows:

(1) the voter's copy of the certificate shall be delivered or mailed to the voter; and

(2) the original certificate shall be filed alphabetically by surname and inserted into the county register pursuant to Section 1-5-5 NMSA 1978.

B. The county clerk shall, on Monday of each week, process all certificates of registration, which are in proper form, that were received in his office up to 5:00 p.m. on the preceding Friday.

C. Original certificates of registration and their contents are public records."

Section 12

Section 12. Section 1-4-13 NMSA 1978 (being Laws 1969, Chapter 240, Section 69, as amended) is amended to read:

"1-4-13. CHANGE OF NAME--CORRECTING ERROR.--

A. Any voter who changes his name or discovers an error in his certificate of registration may have the name on his certificate changed or the error corrected by filing an application to change the certificate of registration.

B. The application to change the certificate of registration shall show the name by which the qualified elector previously registered, his change of name or correction of error and a request that the change be shown on his certificate of registration. The application shall be subscribed by the voter. When completed, the application shall be filed with the county clerk and retained for six years in a file established for that purpose.

C. The county clerk shall note the change of name or correction of error on the voter's certificate of registration."

Section 13

Section 13. Section 1-4-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 70, as amended) is amended to read:

"1-4-14. CERTIFICATE OF REGISTRATION--REPLACEMENT OF LOST COPY.--If any certificate of registration is lost, the county clerk upon application of the voter shall make a replacement copy thereof from the certificates in his office. The application for replacement of a lost copy of the certificate shall be retained for six years by the county clerk in a file established for that purpose. The certificate issued pursuant to the application shall be stamped "Replacement Copy"."

Section 14

Section 14. Section 1-4-15 NMSA 1978 (being Laws 1969, Chapter 240, Section 71, as amended) is amended to read:

"1-4-15. REGISTRATION--CHANGE OF PARTY AFFILIATION.--

A. A voter may change his designated party affiliation by executing an application for change of party affiliation.

B. A voter who has previously declined to designate a party affiliation but who desires to designate a party affiliation shall make an original designation of party affiliation by executing an application for designation of party affiliation.

C. The application for change of party affiliation shall show the name of the voter, his address, his present party affiliation, if previously designated, and the party with which he desires to affiliate. The application shall be subscribed by the voter before a registration officer.

D. When properly executed, the application shall be filed with the county clerk and retained for six years in a file established for that purpose. The county clerk shall note the change of, or original designation of, party affiliation on the voter's certificate of registration."

Section 15

Section 15. Section 1-4-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 72, as amended) is amended to read:

"1-4-16. REGISTRATION--WHEN PARTY AFFILIATION SHALL NOT BE MADE.--

A. No designation of party affiliation shall be made or changed on an existing certificate of registration at any time during which registration is closed.

B. Every person appearing as a candidate on the primary or general election ballot shall be a candidate only under the name and party affiliation designation appearing on his existing certificate of registration on file in the county clerk's office on the date of the governor's proclamation of a primary election."

Section 16

Section 16. Section 1-4-17 NMSA 1978 (being Laws 1969, Chapter 240, Section 73, as amended) is amended to read:

"1-4-17. REGISTRATION--CHANGE OF RESIDENCE WITHIN SAME COUNTY.--

A. A voter who has changed his residence within the same county shall complete a certificate of registration to change his registered residence address.

B. No change of registered residence address shall be made in any period during which registration is closed; however, the county clerk may accept applications for such change but shall not process them until the registration period is open.

C. The application for change of registered residence shall be filed with the county clerk, and the previous registration shall be retained for six years in a file established for that purpose."

Section 17

Section 17. Section 1-4-18 NMSA 1978 (being Laws 1969, Chapter 240, Section 74, as amended) is amended to read:

"1-4-18. CHANGE OF REGISTERED RESIDENCE TO ANOTHER COUNTY.--When a voter changes his registered residence address from one county in this state to another county in this state, he shall complete a certificate of registration and file it with the appropriate county clerk; provided, he shall not register in the county of new residence without first canceling his registration in the county of previous residence."

Section 18

Section 18. Section 1-4-19 NMSA 1978 (being Laws 1969, Chapter 240, Section 75, as amended) is amended to read:

"1-4-19. REGISTRATION--TRANSFER UPON CREATION OR CHANGE OF PRECINCTS--NOTICE TO VOTERS.--

A. When a new precinct is created or the boundaries of an existing precinct are changed, the board of county commissioners shall notify the county clerk of such action.

B. Upon receipt of the notice, the county clerk shall reflect such change on the voter file and mail to each affected voter a notice of the creation or change of precinct."

Section 19

Section 19. Section 1-4-23 NMSA 1978 (being Laws 1969, Chapter 240, Section 79, as amended) is amended to read:

"1-4-23. CANCELLATION OF REGISTRATION--BOARD OF REGISTRATION--GROUNDS-- WHEN.--Beginning on the third Monday of March of each odd-numbered year, the board of registration shall cancel, or if applicable, suspend and cancel, certificates of registration for certain failure of the voter to vote."

Section 20

Section 20. Section 1-4-24 NMSA 1978 (being Laws 1969, Chapter 240, Section 80, as amended) is amended to read:

"1-4-24. CANCELLATION OF REGISTRATION--COUNTY CLERK--GROUNDS.--The county clerk shall cancel certificates of registration for the following reasons:

A. death of the voter;

B. legal insanity of the voter; or

C. a felony conviction of the voter."

Section 21

Section 21. Section 1-4-25 NMSA 1978 (being Laws 1969, Chapter 240, Section 81, as amended) is amended to read:

"1-4-25. CANCELLATION OF REGISTRATION--DETERMINATION OF DEATH.--

A. For purposes of cancellation of registration, the death of a voter shall be ascertained by obituary notices, probate records or by comparison of registration records with periodic certified lists of deceased residents filed with the county clerk.

B. The state registrar of vital statistics shall file with the county clerk of the proper county for use by the board of registration periodic certified lists of deceased residents over the age of eighteen years regardless of the place of death.

C. The periodic certified list of deceased residents shall show the:

(1) name;

(2) age;

(3) sex;

(4) marital status;

(5) birth place;

(6) birth date;

(7) social security number, if any;

(8) address; and

(9) place and date of death of the deceased resident."

Section 22

Section 22. Section 1-4-26 NMSA 1978 (being Laws 1969, Chapter 240, Section 82) is amended to read:

"1-4-26. CANCELLATION OF REGISTRATION--DETERMINATION OF INSANITY.--

A. For purposes of cancellation of registration, the legal insanity of a voter shall be ascertained by comparison of registration records with the certification of legal insanity filed by the court with the county clerk.

B. When in proceedings held pursuant to law, the district court determines that a mentally ill individual is insane as that term is used in the constitution of New Mexico, it shall file a certification of such fact with the county clerk of the county wherein the individual is registered.

C. The certification of legal insanity shall include the:

(1) name;

(2) age;

(3) sex;

(4) marital status;

(5) birth place;

(6) birth date;

(7) social security number, if any; and

(8) address."

Section 23

Section 23. Section 1-4-27 NMSA 1978 (being Laws 1969, Chapter 240, Section 83) is amended to read:

"1-4-27. CANCELLATION OF REGISTRATION--DETERMINATION OF FELONY CONVICTION.--

A. For purposes of cancellation of registration, the fact of a felony conviction of a voter may be ascertained by comparison of registration records with the certification of felony conviction filed with the county clerk.

B. When a voter has been convicted of a felony, the clerk of the district court wherein the conviction occurred shall file with the county clerk of the county wherein the convicted felon is registered a certification of the fact.

C. The certification of felony conviction shall include the:

(1) name;

(2) age;

(3) sex;

(4) marital status;

(5) birth place;

(6) birth date;

(7) social security number, if any;

(8) date of conviction; and

(9) address."

Section 24

Section 24. Section 1-4-28 NMSA 1978 (being Laws 1975, Chapter 255, Section 46, as amended) is amended to read:

"1-4-28. CANCELLATION OF REGISTRATION--CERTAIN FAILURE TO VOTE--SUSPENSION--NOTICE.--

A. The failure of a voter to vote in at least one general election or one primary election in a four-year period shall be grounds for cancellation of registration by the board of registration.

B. The secretary of state shall prescribe procedures for ascertaining whether a voter has voted at least once in the last two general elections.

C. After a determination that a voter has apparently not voted, the board of registration shall suspend the certificate of registration for sixty days.

D. The county clerk, upon direction of the board of registration, shall mail a notice to the voter at his residence address shown on the certificate of registration.

E. The suspended certificate of registration shall be canceled unless within the sixty-day suspension period the board of registration receives written notice from the voter that:

(1) he still maintains residence as stated in his certificate of registration;

(2) he did in fact vote in at least one of the last two general or primary elections at a stated polling
place; or

(3) he has made or desires to make a change in his registered residence address on his certificate of registration to the address and precinct in which he now resides.

F. No certificate of registration suspended for apparent failure to vote shall be marked or stamped "Canceled" until the expiration of the sixty-day period specified in this section."

Section 25

Section 25. Section 1-4-29 NMSA 1978 (being Laws 1975, Chapter 255, Section 47, as amended) is amended to read:

"1-4-29. BOARD OF REGISTRATION--COUNTY CLERK--FAILURE TO CANCEL--DUTY OF THE SECRETARY OF STATE.--

A. If the board of registration or the county clerk of any county does not cancel registration certificates as required by law, the secretary of state shall investigate the registration records, election returns and other pertinent records of that county and file a petition with the district court for the cancellation of the certificates of those persons as the investigation determines should have been canceled by the board of registration or the county clerk.

B. In such a proceeding, the court shall determine the cost of the investigation, and if it finds that the board of registration or the county clerk did not cancel certificates of registration in the manner provided by law, shall enter judgment against the county for the cost of the investigation."

Section 26

Section 26. Section 1-4-30 NMSA 1978 (being Laws 1969, Chapter 240, Section 86, as amended) is amended to read:

"1-4-30. CANCELLATION OF REGISTRATION--VOTER'S REQUEST.--

A. The county clerk shall cancel a certificate of registration upon the request of a voter only for the following reasons:

(1) when the voter changes his registered residence address to another county within the state; and

(2) when the voter moves to another state.

B. An application by a voter to cancel his registration shall be in writing and subscribed before a registration officer or a person authorized to administer oaths or on a form prescribed by the secretary of state.

C. Upon receipt of the written request for cancellation of registration, the county clerk shall cancel the voter's registration and shall forthwith mail to such person a notice of such cancellation and the date of cancellation.

D. The voter's certificate of registration shall be deemed canceled upon receipt by the county clerk of the written request therefor and when such request is for the reasons specified in Subsection A of this section."

Section 27

Section 27. Section 1-4-31 NMSA 1978 (being Laws 1969, Chapter 240, Section 87, as amended) is amended to read:

"1-4-31. CANCELLATION OF REGISTRATION--COUNTY CLERK.--The county clerk shall cancel registration:

A. only upon written application of the voter for reasons set out by law;

B. only in compliance with the instructions of the board of registration pursuant to the provisions of Section 1-4-28 NMSA 1978;

C. only in compliance with an order of the district court; or

D. only in compliance with the provisions of Section 1-4-24 NMSA 1978."

Section 28

Section 28. Section 1-4-32 NMSA 1978 (being Laws 1969, Chapter 240, Section 88, as amended) is amended to read:

"1-4-32. CANCELLATION OF REGISTRATION--DUTIES OF COUNTY CLERK--RETENTION OF RECORDS.--

A. When a registration is canceled, the county clerk shall remove, endorse and file the original certificate of registration according to procedures prescribed by the secretary of state.

B. Canceled original certificates of registration along with any written application of the voter for cancellation or other pertinent orders or certificates shall be retained for six years and then may be destroyed; provided
that such records may be destroyed prior to the expiration of the six-year period with the approval of the state records administrator and upon their being properly microfilmed and stored."

Section 29

Section 29. Section 1-4-39 NMSA 1978 (being Laws 1971, Chapter 195, Section 1, as amended) is amended to read:

"1-4-39. DEPUTY REGISTRATION OFFICERS--CLASSIFICATIONS--DEFINITIONS.--As used in Sections 1-4-1 through 1-4-47 NMSA 1978:

A. "municipal clerk deputy registration officer" means a clerk of a municipality, as defined in the Municipal Code, in the county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

B. "precinct deputy registration officer" means a voter of a precinct in the county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

C. "representative district deputy registration officer" means a voter of a state representative district or portion thereof in a county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

D. "senatorial district deputy registration officer" means a voter of a state senatorial district or portion thereof in a county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

E. "minor political party deputy registration officer" means a voter whose certificate of registration shows him to be affiliated with a minor political party in a county and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

F. "special deputy registration officer" means a voter of a county who has been sponsored in writing by an organization and appointed as a deputy registration officer by the county clerk and qualified to perform the duties of a deputy registration officer;

G. "organization" means a corporate employer employing one hundred or more persons, the state league of women voters, a civic service organization, the county or state headquarters of any qualified political party, any candidate for state, congressional, presidential or vice presidential office, a member of congress, a state labor council or a state management association;

H. "deputy registration officer" means a voter of a county appointed and qualified as a registration officer by the county clerk and includes the categories of deputy registration officers listed in Subsections A through F and I of this section; and

I. "motor vehicle deputy registration officer" means an employee of the motor vehicle division of the taxation and revenue department selected by the secretary of taxation and revenue and appointed by the county clerk to be a deputy registration officer at the motor vehicle division office or a field office of the division or an employee of an entity on contract with the secretary of taxation and revenue to provide motor vehicle registration and licensure service to the public who is selected by the secretary and appointed by the county clerk to be a deputy registration officer at a division contract field office."

Section 30

Section 30. Section 1-4-40 NMSA 1978 (being Laws 1971, Chapter 195, Section 2, as amended) is amended to read:

"1-4-40. DEPUTY REGISTRATION OFFICERS--PURPOSE--SUBMISSION OF NAMES TO COUNTY CLERK--APPOINTMENT BY COUNTY CLERK--FILLING OF VACANCIES.--

A. It is the purpose of Sections 1-4-40 through 1-4-47 NMSA 1978 to encourage and facilitate the registration of qualified electors, facilitate the change of registered voter information of voters and facilitate the voluntary cancellation of voter registration. Sections 1-4-40 through 1-4-47 NMSA 1978 shall be liberally construed to accomplish that purpose.

B. Names of voters to be considered for appointment under the provisions of this section shall be submitted in writing to the county clerk. The number of deputy registration officers to which the various persons and organizations are entitled and the number of names to be submitted are as follows:

(1) the county chairman of each major political party may at any time submit lists of names of voters affiliated with the party, as shown on the voters' certificates of registration, on the following basis:

(a) one voter for each precinct in the county to be appointed as a precinct deputy registration officer;

(b) two voters for each state representative district or portion thereof within the county to be appointed as representative district deputy registration officers; and

(c) four voters for each state senatorial district or portion thereof within the county to be appointed as senatorial district deputy registration officers;

(2) the county chairman of each minor political party may at any time submit lists of names of not more than fifteen voters affiliated with that minor political party, as shown on their certificates of registration, to be appointed as minor political party deputy registration officers;

(3) a member of congress may submit the names of not more than two voters for each office maintained by a member of congress in a county to be appointed as special deputy registration officers;

(4) any candidate for state, congressional, presidential or vice presidential office may submit the names of not more than two voters for each office maintained by the candidate in a county to be appointed as special deputy registration officers;

(5) the state chairman of any qualified political party may submit the names of not more than two voters for the state office maintained by that party to be appointed as special deputy registration officers;

(6) the county chairman of any qualified political party may submit the names of not more than two voters for the county office maintained by that political party to be appointed as special deputy registration officers;

(7) the state president of the league of women voters may submit the names of not more than fifteen voters in each county to be appointed as special deputy registration officers;

(8) an elected or appointed officer of a corporate employer may submit the names of not more than two voters of the county who are employees of that employer for one office maintained by the employer in a county to be appointed as special deputy registration officers;

(9) the president of a civic organization may submit the names of not more than two voters of a county who are members of that organization to be appointed as special deputy registration officers;

(10) the executive officer of a state central labor council may submit the names of not more than fifteen voters of a county who are members of a labor organization defined in Chapter 7 of Title 29 of the United States Code to be appointed as special deputy registration officers;

(11) the executive officer of a state management association or council may submit the names of not more than fifteen voters of a county who are members of that association or council to be appointed as special deputy registration officers;

(12) the local governing body of an Indian tribe or pueblo may submit the names of not more than five voters of the county in which the tribal lands or any portion thereof lie to be appointed as special deputy registration officers; and

(13) the secretary of taxation and revenue shall submit to the county clerk in each county where a motor vehicle division office, field office or contract field office is located the names of voters to be appointed as motor vehicle deputy registration officers.

C. A county clerk shall appoint the municipal clerk of each municipality in a county as a municipal clerk deputy registration officer. The appointment shall be valid during the person's tenure as municipal clerk unless canceled as provided in the Election Code.

D. A county clerk shall appoint from the lists submitted in accordance with Paragraphs (1) and (2) of Subsection B of this section the authorized number of deputy registration officers. If the clerk fails to act to appoint within fourteen days after the submission of any such list, the persons on the list shall be deemed automatically appointed deputy registration officers.

E. Upon application of an organization therefor, a county clerk shall appoint from the lists submitted in
accordance with Paragraphs (3) through (13) of Subsection B of this section the authorized number of special deputy registration officers.

F. If vacancies occur in the number of authorized and appointed deputy registration officers and special deputy registration officers, the county clerk shall notify the person or organization making the original submittal of the vacancy and shall request the person or organization to submit additional names to fill the vacancies. When the names are submitted, the county clerk shall appoint the authorized number to fill the vacancies from the submitted lists.

G. In addition to the special deputy registration officers already provided for in this section, a county clerk shall appoint any person qualified under the Election Code to serve as a special deputy registration officer upon a request in writing to the clerk from such person. A person applying for appointment under this subsection shall include in his written application sufficient information to enable the clerk to make a decision about the applicant's qualifications.

H. All registration officers appointed under this section shall serve without compensation for fulfilling their duties as registration officers.

I. All registration officers appointed under this section shall serve until December 31 of the first odd-numbered year following the date of their appointment or until their successors are appointed and qualified. A notice of expiration of term, signed by the county clerk, shall be immediately mailed to a deputy registration officer whose term has expired. The notice of expiration of term may contain a statement of the person's eligibility for reappointment and the necessary application forms for such reappointment.

J. Appointments of special deputy registration officers appointed for the offices of candidates for state, congressional, presidential and vice presidential offices shall be canceled on the day following the primary or general election when the person ceases to be a candidate. The county clerk shall notify each such special deputy registration officer of the fact of such cancellation."

Section 31

Section 31. Section 1-4-41 NMSA 1978 (being Laws 1969, Chapter 240, Section 97, as amended) is amended to read:

"1-4-41. DEPUTY REGISTRATION OFFICERS--DUTIES AND POWERS OF APPOINTED OFFICER.--

A. When appointed and qualified by the taking of the oath required of county officials, a deputy registration officer shall assist in the preparation of:

(1) the certificate of registration for qualified electors and those persons meeting all the qualifications of an elector except that of age who sall be eighteen years of age on or before the day of the next election; and

(2) the application of a voter to change or cancel his registration.

B. The deputy registration officer may:

(1) assist in the preparation of absentee ballot applications; and

(2) witness the oath on absentee ballot applications and on absentee ballot outer envelopes.

C. The deputy registration officer is authorized to administer all oaths to such persons, but without cost to the qualified elector, the voter and those persons meeting all the qualifications of an elector except that of age and who shall be eighteen years of age on or before the day of the next election.

D. The deputy registration officer may perform his lawful duties in any precinct of the county in which appointed.

E. The original and the voter's copy of certificates of registration completed by the deputy registration officer shall be delivered by the deputy registration officer to the county clerk within ninety-six hours after application of a qualified elector but not later than 5:00 p.m. on the Friday immediately following the close of registration.

F. Failure or refusal of any deputy registration officer to deliver a completed certificate of registration in his possession to the office of the county clerk as required in Subsection E of this section is grounds for automatic termination of his appointment as deputy registration officer by the county clerk.

G. A motor vehicle deputy registration officer shall not perform his registration duties outside of the motor vehicle division office, the division field office or contract field office to which he is assigned, and shall have only the authority and duties specified in Paragraph (1) of Subsection A of this section and Subsections C and E of this section."

Section 32

Section 32. Section 1-5-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 104, as amended) is amended to read:

"1-5-2. DEFINITIONS.--As used in the Election Code:

A. "county" means any county in this state;

B. "county register" means an official file of original certificates of registration of the county or any precinct thereof, arranged in alphabetical order by voter surname and, if for more than one precinct, without regard to precincts;

C. "voter list" means any machine-prepared list of voters;

D. "signature roster" means a copy of a voter list with space provided opposite each voter's name for the voter's signature or witnessed mark;

E. "active data processing media" means punched cards, punched tape, magnetic cards, magnetic discs, magnetic tape or functionally similar devices containing data capable of being read and processed by suitable machinery for the eventual machine preparation of voter lists;

F. "intermediate records" means records on active data processing media;

G. "voter file" means all voter registration information required by law and by the secretary of state which has been extracted from the certificate of registration of each voter in the county, stored on active data processing media and certified by the county clerk as the source of all information required by the Automated Voter Records System Act;

H. "program records" means the necessary detailed program and instructions for carrying out and controlling machine processing of information derived from the voter file. Program records shall exist in written English or coded form and they may exist on active data processing media;

I. "mailing labels" means machine-prepared mailing labels of selected voters arranged in the order in which requested and providing only the name and address of the voter;

J. "special voter lists" means machine-prepared lists of selected voters arranged in the order in which requested and providing no more than the name, gender, address, political party affiliation and precinct of the voter;

K. "statistical data" means information derived from the voter file and includes no more than the precinct, gender, political party affiliation and year of birth;

L. "voter data" means selected information derived from the voter file and includes no more than the voter's name, gender, address, political party affiliation and precinct;

M. "data processor" means a data processing facility and associated employees and agents thereof contracted to provide data processing services required by the Automated Voter Records System Act;

N. "file maintenance list" means any machine-prepared listing which reflects additions, deletions or changes to the voter file;

O. "precinct voter list" means a voter list arranged in alphabetical order of voter surname within and for each precinct;

P. "county voter list" means a voter list arranged in alphabetical order of voter surname within and for each county;

Q. "unofficial election canvassing file" means the compilation by the county clerk of the results of any election prior to official certification of the election results; and

R. "unofficial election canvassing system" means the automated data processing computer program used to create the unofficial election canvassing file."

Section 33

Section 33. Section 1-5-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 105, as amended) is amended to read:
"1-5-3. ACT IS MANDATORY AND SUPPLEMENTAL TO ELECTION CODE.--

A. Effective January 1, 1984, the Automated Voter Records System Act is mandatory and supplemental to the provisions of the Election Code. The provisions of that act shall be implemented by order of the board of county commissioners of the county in all precincts of a county.

B. The secretary of state shall maintain a current registration list of state voters based on county voter lists and shall prescribe any rules, forms and instructions necessary for the orderly transition to and the efficient implementation of procedures required by the Automated Voter Records System Act. The secretary of state shall maintain a log which shall be public containing all transactions regarding requests for current registration lists of state voters. The log shall indicate the requesting party, the date of the request, the date of fulfilling the request, charges made and any other information deemed advisable by the secretary of state. Requests for registration lists in printed or magnetic form shall be fulfilled within a period of ten working days.

C. All registration records required by the Election Code shall be maintained for each of the precincts in addition to those records required by the Automated Voter Records System Act, but the procedures of that act shall be used in lieu of others prescribed in the Election Code."

Section 34

Section 34. Section 1-5-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 107, as amended) is amended to read:

"1-5-5. ENTRY OF DATA INTO MACHINE DATA PROCESSING SYSTEM--COUNTY REGISTER--MAINTENANCE.--

A. The county clerk, upon receipt of a proper certificate of registration within the period prescribed for registration, shall immediately enter in the proper spaces thereon the precinct of the voter.

B. All information required is then entered into the voter file and evidenced by the file maintenance list. A new certificate of registration, or change of information to an existing certificate of registration, shall not be inserted into the county register until the county clerk has had all pertinent information necessary for the preparation of voter files and voter lists transcribed from it to a record appropriate for use for machine preparation of such lists.

C. After entry of data into the machine data processing system, the county clerk shall insert each original certificate of registration in its proper order in the county register.

D. A certificate of registration shall not be removed from the county register pursuant to a cancellation of registration until the county clerk has entered into the voter file all deletions and changes and such deletions and changes are evidenced by the file maintenance list."

Section 35

Section 35. Section 1-5-6 NMSA 1978 (being Laws 1969, Chapter 240, Section 108) is amended to read:

"1-5-6. VOTER LISTS--SIGNATURE ROSTERS--MACHINE PREPARED.--The county clerk shall provide for machine preparation of voter lists and signature rosters for any precincts. Such voter lists and signature rosters shall be used at any election for which registration of voters is required in lieu of bound original certificates of registration and poll books."

Section 36

Section 36. Section 1-5-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 110, as amended by Laws 1987, Chapter 249, Section 15 and also by Laws 1987, Chapter 327, Section 3) is amended to read:

"1-5-8. VOTER LISTS--SIGNATURE ROSTERS--NUMBER--DISTRIBUTION.--

A. One copy of the signature roster shall be prepared for each precinct. On the cover of such signature roster shall be printed the words, "Copy for the County Clerk". Upon its preparation and certification as to its accuracy and completeness, the county clerk shall deliver the copy of the signature roster to the precinct board in lieu of the poll book.

B. The county clerk shall prepare three copies of the voter list for each precinct. He shall deliver two of such copies to each precinct board in lieu of bound certificates of registration. One copy of the voter list shall be retained by the county clerk for verification purposes on election day and one copy for the secretary of state shall be marked to verify those voters on the list who voted.

C. Two copies of the county voter list, arranged in alphabetical order, shall be prepared for election day for verification purposes only."

Section 37

Section 37. Section 1-5-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 114, as amended) is amended to read:

"1-5-12. VOTER WHOSE NAME IS NOT ON LIST OR ROSTER.--

A. A voter whose name does not appear on the voter list and signature roster for the precinct in which he offers to vote shall be permitted to vote in such precinct provided the voter meets the requirements specified in the Election Code for voting on a voter's copy of a certificate of registration, or has in his possession a certificate of eligibility bearing the seal and signature of the county clerk stating that the voter's original certificate of registration is in the county register of that county wherein such precinct is located.

B. The election clerks in charge of the signature rosters shall add the voter's name and address in ink to the signature roster on the line immediately following the last entered voter's name, and the voter shall be allowed to cast his ballot provided he has first signed or marked both rosters.

C. The voting machine public counter number or the ballot number for the voter shall be entered on his certificate of eligibility or copy of his certificate of registration. The certificate of eligibility or voter's copy of his certificate of registration shall be retained by the precinct board and returned to the county clerk with the election returns.

D. Such certificate of eligibility shall be valid for use only in the precinct and for the election and date specified thereon.

E. In a primary election, a voter whose party affiliation is not shown on the certificate of eligibility or copy of his certificate of registration shall not be permitted to receive or cast a ballot. No voter shall e permitted to vote for a candidate of a party different from the party designation shown on his certificate of eligibility or the copy of his certificate of registration.

F. No verbal authorization from the county clerk to allow a person to vote under this section shall be permitted."

Section 38

Section 38. Section 1-5-13 NMSA 1978 (being Laws 1969, Chapter 240, Section 115) is amended to read:

"1-5-13. SIGNATURE ROSTER--USE BY BOARD OF REGISTRATION.--The board of registration shall use the signature roster in lieu of the voter's original certificate of registration to determine when voters have not voted."

Section 39

Section 39. Section 1-5-19 NMSA 1978 (being Laws 1969, Chapter 240, Section 125, as amended) is amended to read:

"1-5-19. REGISTRATION--FORM.--

A. The secretary of state shall prescribe the form and assure that the certificate of registration to be used in any county is compatible with the machine data processing systems.

B. The certificate of registration form shall require the following elements of information concerning the applicant for registration: name, gender, residence, municipality, post office, county, county of former registration, social security number, date of birth, place of birth, political party affiliation, zip code, telephone number at the applicant's option and statement of qualification for voting.

C. Provision shall be made for the usual signature or mark of the applicant, for the signature of the county clerk and for the dates of such signatures.

D. The certificate form may be multipurpose by providing for an indication of whether the certificate of registration is for a new registration, a change in the existing registration or a cancellation of an existing registration. Provision shall be made on any multipurpose form for entry of any existing registered information for which a change may be requested.

E. The certificate of registration forms shall be serially numbered and shall be furnished promptly and in adequate supply by the secretary of state upon application from the county clerk."

Section 40

Section 40. Section 1-5-20 NMSA 1978 (being Laws 1977, Chapter 222, Section 11) is amended to read:

"1-5-20. REGISTRATION--FILING.--The secretary of state shall prescribe the method of filing and maintaining certificates of registration in any county implementing the Automated Voter Records System Act."

Section 41

Section 41. Section 1-5-29 NMSA 1978 (being Laws 1975, Chapter 255, Section 83, as amended) is amended to read:

"1-5-29. AUTOMATED VOTER RECORDS SYSTEM ADVISORY COMMITTEE--COMPENSATION --MEETINGS.--

A. Members of the automated voter records system advisory committee, except the director of the bureau of elections, shall be paid per diem and mileage as provided in the Per Diem and Mileage Act for nonsalaried state officers.

B. No less than two meetings shall be called annually by the secretary of state.

C. At the first meeting of each odd-numbered year, the committee shall review the certificate of registration and the automated voter records system format and make recommendations for necessary revisions to the secretary of state."

Section 42

Section 42. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended by Laws 1989, Chapter 66, Section 1 and by Laws 1989, Chapter 105, Section 1 and also by Laws 1989, Chapter 392, Section 11) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION.--

A. Application by a federal qualified elector for an absentee ballot shall be made on the official postcard form prescribed or authorized by the federal government to the county clerk of the county of his residence.

B. Application by a voter for an absentee ballot shall be made only on a form prescribed, printed and furnished by the secretary of state to the county clerk of

the county in which he resides. The form shall identify the applicant and contain information to establish his qualification for issuance of an absentee ballot under the Absent Voter Act.

C. Each application for an absentee ballot shall be subscribed by the applicant."

Section 43

Section 43. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended) is amended to read:

"1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--MAKING AND DELIVERY OF BALLOT IN PERSON.--

A. The county clerk shall mark each completed absentee ballot application with the date and time of receipt in the clerk's office and enter the required information in the absentee ballot register. The county clerk shall then determine if the applicant is a voter, an absent uniformed services voter or an overseas voter.

B. If the applicant has no valid certificate of registration on file in the county and he is not a federal qualified elector or if the applicant states he is a federal qualified elector but his application indicates he is not a federal qualified elector, no absentee ballot shall be issued and the county clerk shall mark the application "rejected" and file the application in a separate file from those accepted.

C. The county clerk shall notify in writing each applicant of the fact of acceptance or rejection of his application and, if rejected, shall explain why the application was rejected.

D. If the applicant is determined to be a voter or a federal qualified elector, the county clerk shall mark the application "accepted" and deliver or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. Acceptance of an application of a federal qualified elector constitutes registration for the election in which the ballot is to be cast. Acceptance of an application from an overseas voter who is not an absent uniformed services voter constitutes a request for changing information on the certificate of registration of any such voter. No absent voter shall be permitted to change his party affiliation during those periods when change of party affiliation is prohibited by the Election Code. Upon delivery or mailing of an absentee ballot to any applicant who is a voter, an appropriate designation shall be made on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot.

E. If an application for an absentee ballot is delivered in person to the county clerk and is accepted, the county clerk shall deliver the absentee ballot and it shall be marked by the applicant in a voting booth of a type prescribed by the secretary

of state in the courthouse, sealed in the proper envelopes and otherwise properly executed and returned to the county clerk or his authorized representative before the applicant leaves the office of the county clerk. The act of marking the absentee ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the county clerk a polling place subject to the requirements of a polling place in the Election Code other than is provided in this subsection. It shall be unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office. Absentee ballots may be marked in person during the regular hours and days of business at the county clerk's office from 8:00 a.m. on the fortieth day preceding the election up until 5:00 p.m. on the Saturday immediately prior to the date of the election. In marking the absentee ballot, the voter may be assisted by one person of the voter's own choice upon the execution with the county clerk of an affidavit for assistance stating therein that the voter meets at least one of the conditions for receiving such assistance as is set forth by the provisions of Section 1-12-12 NMSA 1978.

F. Absentee ballots shall be air mailed to applicants temporarily domiciled inside or outside the continental limits of the United States not later than on the Thursday immediately prior to the date of the election.

G. No absentee ballot shall be delivered or mailed to any person other than the applicant for such ballot.

H. The county clerk shall accept and process with respect to a primary or general election for any federal office, any otherwise valid voter registration application from an absent uniformed services voter or overseas voter if the application is received not less than thirty days before the election. The county clerk shall also accept and process federal write-in absentee ballots from overseas voters in general elections for federal offices in accordance with the provisions of Section 103 of the federal Uniformed and Overseas Citizens Absentee Voting Act."

Section 44

Section 44. Section 1-8-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 152, as amended) is amended to read:

"1-8-2. NOMINATION BY MINOR POLITICAL PARTY--CONVENTION-DESIGNATED NOMINEES.--

A. If the rules and regulations of a minor political party require nomination by political convention:

(1) the chairman and secretary of the state political convention shall certify to the secretary of state the names of their party's nominees for United States senator, United States representative, all elective state offices, legislative offices elected

from multi-county districts, all elective judicial officers in the judicial department and all offices representing a district composed of more than one county; and

(2) the chairman and secretary of the county political convention shall certify to the county clerk the names of their party's nominees for elected county offices and for legislative offices elected from a district located wholly within one county or that is composed of only one county.

B. The names certified to the secretary of state shall be filed on the second Tuesday in July in the year of the general election and shall be accompanied by a petition containing a list of signatures and addresses of voters totaling not less than one-half of one percent of the total number of votes cast at the last preceding general election for the office of governor or president of the United States, as the case may be:

(1) in the state for statewide offices; and

(2) in the district for offices other than statewide offices.

The petition shall contain a statement that the voters signing the petition are residents of the state, district, county or area to be represented by the office for which the person being nominated is a candidate.

C. The names certified to the county clerk shall be filed on the second Tuesday in July in the year of the general election and shall be accompanied by a petition containing a list of signatures and addresses of voters totaling not less than one-half of one percent of the total number of votes cast at the last preceding general election for the office of governor or president of the United States, as the case may be:

(1) in the county for countywide offices; and

(2) in the district for offices other than countywide offices.

The petition shall contain a statement that the voters signing the petition are residents of the state, district, county or area to be represented by the office for which the person being nominated is a candidate.

D. Such persons certified as nominees shall be members of that party, as shown by their certificates of registration, at the time their names are certified.

E. No voter shall sign any petition prescribed by this section for more persons than the number of minor party candidates necessary to fill such office at the next ensuing geneal election."

Section 45

Section 45. Section 1-8-26 NMSA 1978 (being Laws 1975, Chapter 295, Section 12, as amended) is amended to read:

"1-8-26. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--TIME OF FILING.--

A. Declarations of candidacy for statewide office or office of the United States representative shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the first Tuesday in March of each even-numbered year and ending at 5:00 p.m. on the same day.

B. Declarations of candidacy for any other office shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the first Tuesday of April of each even-numbered year and ending at 5:00 p.m. on that same day.

C. No candidate's name shall be placed on the ballot until the candidate has been notified in writing by the proper filing officer that the declaration of candidacy, the petition and the certificate of registration of the candidate on file are in proper order and that the candidate, based on such documents, is qualified to have his name placed on the ballot. The proper filing officer shall mail such notice no later than 5:00 p.m. on the Tuesday following the filing date."

Section 46

Section 46. Section 1-8-29 NMSA 1978 (being Laws 1973, Chapter 228, Section 3, as amended) is amended to read:

"1-8-29. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--FORM.--In making a declaration of candidacy, the candidate shall submit substantially the following form:

"DECLARATION OF CANDIDACY

I, _____, (candidate's name on certificate of registration) being first duly sworn, say that
I reside at _____, as shown by my certificate of registration as a voter of Precinct No._____of the county of _____, State of New Mexico;

I am a member of the_____party as shown by my certificate of registration and I have not changed such party affiliation subsequent to the governor's proclamation calling the primary in which I seek to be a candidate;

I desire to become a candidate for the office of_____at the primary election to be held on the date set by law for this year, and if the office be that

of a member of the legislature or that of a member of the state board of education, that I actually reside at the address designated on my certificate of voter registration;

I will be eligible and legally qualified to hold this office at the beginning of its term;

If a candidate for any office for which a nominating petition is required, I am submitting with this statement a nominating petition in the form and manner as prescribed by the Primary Election Law; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

_____
(Declarant)

_____
(Mailing Address)

_____
(Residence Address)

Subscribed and sworn to before me this _____ day of

_____, 19 _____.

_____
(Notary Public)

My commission expires:

_____"."

Section 47

Section 47. Section 1-8-31 NMSA 1978 (being Laws 1973, Chapter 228, Section 5, as amended) is amended to read:

"1-8-31. PRIMARY ELECTION LAW--NOMINATING PETITION--SIGNATURES TO BE COUNTED.--

A. Each signer of a nominating petition shall sign but one petition for the same office unless more than one candidate is to be elected to such office, and in that case not more than the number of nominating petitions equal to the number of candidates to be elected to the office shall be signed.

B. A signature shall be counted on a nominating petition unless there is evidence presented that the person signing:

(1) is not a voter of the state, district, county or area to be represented by the office for which the person seeking the nomination is a candidate;

(2) has signed more than one petition for the same office, except as provided in Subsection A of this section, or has signed one petition more than once;

(3) is not of the same political party as the candidate named in the nominating petition as shown by the signer's certificate of registration; or

(4) is not the person whose name appears on the nominating petition.

C. The procedures set forth in this section shall be used to validate signatures on any petition required by the Election Code."

Section 48

Section 48. Section 1-8-36.1 NMSA 1978 (being Laws 1981, Chapter 156, Section 1) is amended to read:

"1-8-36.1. PRIMARY ELECTION LAW--WRITE-IN CANDIDATES.--

A. Write-in candidates are permitted in the primary election only for the offices of United States representative, members of the legislature, district judges, district attorneys, state board of education, magistrates and any office voted upon by all voters of the state.

B. A person may be a write-in candidate only for nomination by the major political party with which he is affiliated as shown by his certificate of registration, and such person shall have the qualifications to be a candidate in the primary election for the political party for which he is a write-in candidate.

C. A person desiring to be a write-in candidate for the offices listed in Subsection A of this section in the primary election shall file with the proper filing officer a declaration of intent to be a write-in candidate. Such declaration of intent shall be filed as follows:

(1) before 5:00 p.m. on the seventh day preceding the date for filing a declaration of candidacy for those offices which require a declaration of candidacy to be considered on the primary election ballot; and

(2) before 5:00 p.m. on the fiftieth day preceding the date of the primary election if the declarant is a candidate for statewide office or for United States representative.

D. A write-in vote shall be counted and canvassed only if:

(1) the name written in is the name of a declared write-in candidate and shows two initials and last name; first name, middle initial or name and last name; first and last name; or the full name as it appears on the declaration of intent to be a write-in candidate and misspellings of the above combinations that can be reasonably determined by a majority of the members of the precinct board to identify a declared write-in candidate; and

(2) the name is written in the proper slot on the voting machine or on the proper line provided on an absentee ballot or emergency paper ballot for write-in votes for the office for which the candidate has filed a declaration of intent.

E. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Election Code including the obligations to report under the Campaign Reporting Act except that he shall not be entitled to have his name printed on the ballot.

F. No unopposed write-in candidate shall have his nomination certified unless he receives at least the number of write-in votes in the primary election as he would need signatures on a nominating petition pursuant to the requirements set out in Section 1-8-33 NMSA 1978.

G. A write-in vote shall be cast by writing in the name. As used in this section, "write-in" does not include the imprinting of any name by rubber stamp or similar device or the use of preprinted stickers or labels."

Section 49

Section 49. Section 1-8-45 NMSA 1978 (being Laws 1977, Chapter 322, Section 1, as amended) is amended to read:

"1-8-45. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--DEFINITION.--As used in the Election Code, an independent candidate means a person who:

A. is a candidate without party affiliation for an office to be voted on at a general election or any United States representative special election;

B. except for a candidate for the office of president or vice president, is a person who will be qualified to hold the office for which he is a candidate under the provisions of the constitution of New Mexico and the Election Code;

C. except for a candidate for the office of president or vice president, is a qualified elector registered to vote in New Mexico at the time of filing the declaration of independent candidacy and nominating petition;

D. except for a candidate for the office of president or vice president, has indicated on such person's certificate of registration a declination to designate a party affiliation;

E. has complied with the nomination procedures set forth in the Election Code for independent candidates; and

F. was not a person who appeared as a major party candidate for the same office on the primary election ballot."

Section 50

Section 50. Section 1-8-48 NMSA 1978 (being Laws 1977, Chapter 322, Section 4, as amended) is amended to read:

"1-8-48. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--DECLARATION OF INDEPENDENT CANDIDACY AND NOMINATING PETITION.--

A. Nomination as an independent candidate shall be made by filing a declaration of independent candidacy and a nominating petition with the proper filing officer.

B. In making a declaration of independent candidacy, the candidate for an office other than that of president or vice president shall submit a sworn statement in the following form:

"DECLARATION OF INDEPENDENT CANDIDACY

I,_____(candidate's name on certificate of registration) being first duly sworn, say that I reside at _____in the county of _____, New Mexico, and that I am a voter of Precinct No._____of the county of _____, State of New Mexico;

I have declined to designate my party affiliation as shown by my certificate of registration and I have not changed such declination subsequent to the date of issuance of the governor's proclamation for the primary election in the year of the

general election at which I seek to be a candidate;

I desire to become a candidate for the office of_____at the general election to be held on the date set by law for this year, and if the office be that of a member of the legislature, that I actually reside within the legislative district for which I declare my candidacy;

I will be eligible and legally qualified to hold this office at the beginning of its term;

If a candidate for any office for which a nominating petition is required, I am submitting with this statement a nominating petition in the form and manner as prescribed by the Election Code; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

_____
(Declarant)

_____
(Mailing Address)

_____
(Residence Address)

Subscribed and sworn to before me this_____day of _____, 19 _____.

_____
(Notary Public)

My commission expires:

_____".

C. The secretary of state shall prescribe and furnish the form for the declaration of independent candidacy for the office of president and vice president."

Section 51

Section 51. Section 1-9-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 187, as amended) is amended to read:

"1-9-4. LEVER-TYPE VOTING MACHINE--SPECIFICATIONS.--No lever-type voting machine shall be approved by the secretary of state unless:

A. it permits a voter to vote for any person for any office, whether or not the name of the person appears upon a ballot label as a candidate for nomination or election;

B. it permits and requires voting in absolute secrecy and is so constructed that no person can see or know for whom any other person has voted, except a voter who is being assisted as prescribed by the Election Code;

C. it has a protective counter or other device, the register of which cannot be reset, that records the cumulative total number of movements of the operating mechanism;

D. it is provided with a lock or locks, by the use of which, immediately after the polls are closed or the operation of the machine for an election is completed, all movement of the registering mechanism is absolutely prevented;

E. it is constructed of material of good quality, in a neat and workmanlike manner, and is easily and safely transportable;

F. it is capable of adjustment so as to permit each voter at a primary election to vote only for the
candidates seeking nomination by the political party shown on the voter's certificate of registration;

G. it is constructed to prevent voting for more than one person for the same office, except where the voter is entitled to vote for more than one person for that office;

H. it permits each voter, at other than primary elections, to vote a straight party ticket in one operation; and

I. it provides a "printout" of voting results."

Section 52

Section 52. Section 1-10-6 NMSA 1978 (being Laws 1977, Chapter 222, Section 29, as amended) is amended to read:

"1-10-6. BALLOTS--NAME TO BE PRINTED--CANDIDATES WITH SIMILAR NAMES.--In the preparation of ballots:

A. the candidate's name shall be printed on the ballot as it appears on the candidate's certificate of registration that is on file in the county clerk's office on the day the governor issues the proclamation for the primary election; and

B. if it appears that the names of two or more candidates for any office to be voted on at the election are the same or are so similar as to tend to confuse the voter as to the candidates' identities, the occupation and post office address of each such candidate shall be printed immediately under the candidate's name on the ballot."

Section 53

Section 53. Section 1-11-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 222, as amended) is amended to read:

"1-11-12. CERTIFYING COUNTY REGISTER.--

A. At least twenty days before a statewide election, general election or primary election, the county clerk shall certify the county voter file as representing the county register.

B. If the original certificate of registration is missing, the county clerk shall make a replacement copy from the information contained in the county voter file. The replacement certificate shall be stamped "REPLACEMENT COPY" and shall be inserted in the appropriate file. The county clerk shall make a list of all replacement copies. The list shall include the name and address of the voter. The county clerk shall certify the list and file it with the district
court.

C. The replacement copy shall have the same validity as the certificate of registration that it replaces."

Section 54

Section 54. Section 1-12-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 246, as amended) is amended to read:

"1-12-7. CONDUCT OF ELECTION--PERSONS NOT PERMITTED TO VOTE.--

A. No person shall vote in any primary, general or statewide special election unless he is a voter of the precinct in which he offers to vote. A valid original certificate of registration in the county register is prima facie evidence of being a voter in the precinct.

B. No person shall vote in any primary election whose party affiliation is not designated on his original certificate of registration.

C. No voter at any primary election shall be permitted to vote for the candidate of any party other than the party designated on his original certificate of registration at the time the governor issues the primary election proclamation.

D. No person shall vote in any primary, general or statewide special election whose name and certificate of registration number appears on the list of voters purged from the rolls. The list shall be placed with the signature rosters and delivered to the polls with the other election supplies by the county clerk and shall consist of those voters in the precinct purged since the last preceding general election."

Section 55

Section 55. Section 1-12-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 247, as amended) is amended to read:

"1-12-8. CONDUCT OF ELECTION--VOTER'S COPY OR CERTIFICATE VOTING.--

A. Notwithstanding the provisions of Section 1-12-7 NMSA 1978, a person shall be permitted to vote even though his original certificate of registration cannot be found in the county register or even if his name does not appear on the signature roster, provided:

(1) his residence is within the boundaries of the precinct in which he offers to vote;

(2) his name is not on the purged list;

(3) his name is not on the list of persons submitting absentee ballots;

(4) he presents the voter's copy of the certificate of registration which appears on its face to be valid or he presents a certificate of eligibility bearing the seal and signature of the county clerk stating that the voter's duplicate certificate of registration is on file at the county clerk's office and that such voter has not received an absentee ballot nor has he been purged and that he shall be permitted to vote in the precinct and election specified therein, provided that such authorization shall not be given orally by the county clerk; and

(5) he executes a statement swearing or affirming to the best of his knowledge that he is a qualified elector, currently registered and eligible to vote in that precinct and has not cast a ballot or voted in that election.

B. An election judge shall insert the voter's ballot number or voter number on the public counter on the voter's copy of the certificate of registration or certificate of eligibility and on the executed statement. The voter's copy of the certificate of registration or certificate of eligibility shall be retained by the precinct board and the voter's copy of his certificate of registration or certificate of eligibility, along with the executed statement, shall be returned with the election returns to the county clerk.

C. Knowingly executing a false statement constitutes perjury as provided in the Criminal Code of this state, and voting on the basis of such falsely executed statement constitutes fraudulent voting.

D. To be valid, a voter's copy of the certificate of registration dated after June 30, 1955 shall bear the signature stamp of the county clerk.

E. Within thirty days after the election, the county clerk shall examine each executed statement and investigate the truth of the statements made therein. The county clerk shall also determine the reason why the original certificate of registration of the voter was not in the county register or the signature roster sent to the precinct board and shall take such actions to avoid similar circumstances requiring the use of the voter's copy of the certificate of registration or certificate of eligibility by voters in future elections."

Section 56

Section 56. Section 1-12-50 NMSA 1978 (being Laws 1977, Chapter 222, Section 53) is amended to read:

"1-12-50. EMERGENCY SITUATIONS--EMERGENCY PAPER BALLOTS--ONE TO A VOTER.--If a voting machine cannot be used in an emergency situation, the election clerk shall give each voter only one of the emergency paper ballots being used in the election. At primary elections, the voter shall be given the emergency paper ballot of the political party designated in his original certificate of registration. The emergency paper ballots shall be numbered consecutively and shall be delivered to incoming voters in consecutive order, beginning with emergency paper ballot number one."

Section 57

Section 57. Section 1-14-8 NMSA 1978 (being Laws 1971, Chapter 249, Section 1, as amended) is amended to read:

"1-14-8. IMPOUNDING BALLOTS--BALLOTS DEFINED.--As used in Sections 1-14-9 through 1-14-12 NMSA 1978, "ballots" includes tally sheets, registration certificates, paper ballots, absentee ballots, statements of canvass, absentee ballot applications and absentee ballot registers, but does not include voting machines."

Section 58

Section 58. Section 1-20-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 428, as amended) is amended to read:

"1-20-3. REGISTRATION OFFENSES.--Registration offenses consist of performing any of the following acts willfully and with knowledge and intent to deceive any registration officer or to subvert the registration requirements of the law or rights of any qualified elector:

A. signing or offering to sign a certificate of registration when not a qualified elector;

B. falsifying any information on the certificate of registration;

C. soliciting, procuring, aiding, abetting, inducing or attempting to solicit, procure, aid, abet or induce any person to register or attempt to register with the name of any other person, whether real, deceased or fictitious; or

D. destroying the certificate of registration of any qualified elector, or removing such certificate from its
proper binder or file, except as provided in the Election Code.

Whoever commits a registration offense is guilty of a fourth degree felony."

Section 59

Section 59. Section 1-21-4 NMSA 1978 (being Laws 1971, Chapter 322, Section 4) is amended to read:

"1-21-4. APPLICATION FOR PRESIDENTIAL BALLOT.--

A. A new resident desiring to vote for presidential officers under the provisions of the Federal Voting Rights Compliance Act shall,at least thirty days prior to the date of a federal election, individually execute in the presence of the county clerk of the county in which he claims residence an application for a presidential ballot for the presidential election.

B. A former resident desiring to vote for presidential officers under the provisions of the Federal Voting Rights Compliance Act shall individually execute an application for a presidential ballot for the presidential election. The application for a presidential ballot shall be made by a former resident on a form obtainable in person or upon written application therefor from the county clerk of the county in which the former resident claimed New Mexico residence prior to his removal to another state. The application for a presidential ballot by a former resident shall be authorization for the county clerk to cancel the former resident's certificate of registration, if such there be."

Section 60

Section 60. Section 1-21-5 NMSA 1978 (being Laws 1971, Chapter 322, Section 5, as amended) is amended to read:

"1-21-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--CASTING OF BALLOT.--

A. If satisfied that the application is proper and that the new resident or former resident is qualified to vote under the Federal Voting Rights Compliance Act, the county clerk shall mark the application "accepted" and shall return the executed original application to the applicant.

B. Acceptance of an application under the provisions of the Federal Voting Rights Compliance Act constitutes registration only for the presidential election in which the presidential ballot is to be cast.

C. The county clerk shall mail the duplicate original of each application accepted under the provisions of the Federal Voting Rights Compliance Act to the appropriate official in the state in which the new resident last resided or in which the former resident now resides.

D. The county clerk shall file, in alphabetical order in his office for six months following each presidential election, the following public records:

(1) a triplicate original of each application of all persons who have applied for a presidential ballot under the provisions of the Federal Voting Rights Compliance Act to vote as new residents or former residents; and

(2) official information received by him from another state indicating that a former resident of New Mexico has made application to vote at a presidential election in another state. Such official information shall be sufficient evidence for the county clerk to cancel the resident's certificate of registration in that county.

E. Notwithstanding any provision of the Election Code, new residents and former residents shall cast their presidential ballots in the same manner as absentee voters except as provided in the Federal Voting Rights Compliance Act.

F. If presidential ballots are available at the time of application in person therefor, the county clerk shall deliver the presidential ballot to the new resident or former resident, and it shall be marked by the applicant in a voting booth in the courthouse, sealed in the proper envelopes and otherwise properly executed, and returned to the county clerk or his authorized representative before the new resident or former resident leaves the office of the county clerk. Presidential ballots may be cast in person at the county clerk's office until 5:00 p.m. on Thursday immediately prior to the date of the presidential election.

G. If presidential ballots are not available at the time of application in person therefor by a new resident or former resident selecting the absentee option, the county clerk shall mail the presidential ballot to the address shown on the new resident's or former resident's application, as applicable.

H. Notwithstanding any provision of the Election Code, presidential ballots shall be mailed to all new
residents, former residents, federal qualified electors, federal voters and voters who have qualified and applied therefor not less than seven days immediately prior to a presidential election."

Section 61

Section 61. Section 1-22-8 NMSA 1978 (being Laws 1985, Chapter 168, Section 10, as amended) is amended to read:

"1-22-8. DECLARATION OF CANDIDACY--SWORN STATEMENT OF INTENT--FORM.--In making a declaration of candidacy, the candidate shall submit a sworn statement of intent in substantially the following form:

"DECLARATION OF CANDIDACY--STATEMENT OF INTENT

I, _____, (candidate's name on certificate of registration) being first duly sworn, say that I am a voter of Precinct No._____ of the county of _____, State of New Mexico. I reside at_____;

I am a qualified elector of the State of New Mexico residing within_____school district;

I desire to become a candidate for the office of_____, Position No._____at the school district election to be held on the date set by law;

I will be eligible and legally qualified to hold this office at the beginning of its term; and

I make the foregoing affidavit under oath, knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

_____
(Declarant)

_____
(Mailing Address)

_____
(Residence Address)

Subscribed and sworn to before me this_____day of _____, 19 _____.

_____.
(Notary Public)

My commission expires:

_____"."

HB 1013

CHAPTER 317

RELATING TO THE ENVIRONMENT; PROVIDING FOR COMPLIANCE WITH THE FEDERAL SAFE DRINKING WATER ACT; IMPOSING A WATER CONSERVATION FEE; PROVIDING FOR ADMINISTRATION OF A PUBLIC WATER SUPPLY PROGRAM; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. COMPLIANCE WITH THE FEDERAL SAFE DRINKING WATER ACT--PURPOSE.

--The purpose of this act is to provide:

A. an incentive for conservation of water, the state's most precious resource; and

B. funding for certain locations in the state to comply with the federal Safe Drinking Water Act in which the United States congress mandated that the United States environmental protection agency establish drinking water standards for eighty-three contaminants, require filtration and disinfection for all public water supply systems, increase enforcement authority, establish public notification requirements, implement a lead ban and add drinking water standards for twenty-five contaminants every three years.

Section 2

Section 2. A new section of the Environmental Improvement Act is enacted to read:

"WATER CONSERVATION FEE--IMPOSITION--DEFINITIONS.--

A. There is imposed on every person who operates a public water supply system a water conservation fee in an amount equal to one and one-half cents ($.05) per thousand gallons of water sold on which the fee imposed by this subsection has not been paid.

B. The "water conservation fund" is created in the state treasury and shall be administered by the department of environment. The fund shall consist of water conservation fees collected pursuant to this section. Balances in the fund at the end of

any fiscal year shall revert to the general fund but shall accrue to the credit of the fund. Earnings on the fund shall be credited to the fund.

C. Money in the water conservation fund is appropriated to the department of environment for administration of a public water supply program to:

(1) test public water supplies for the contaminants required to be tested pursuant to the provisions of Section 1412 of the federal Safe Drinking Water Act and finalized through July 1, 1992, and collect chemical compliance samples as required by those provisions of the federal act;

(2) perform vulnerability assessments which will be used to assess a public water supply's susceptibility to those contaminants; and

(3) implement new requirements of the Utility Operators Certification Act and provide training for all public water supply operators.

D. The taxation and revenue department shall provide by regulation for the manner and form of collection of the water conservation fee. All water conservation fees collected by the taxation and revenue department shall be deposited in the water conservation fund.

E. The fee imposed by this section shall be administered in accordance with the provisions of the Tax Administration Act, and shall be paid to the taxation and revenue department by each person who operates a public water supply system in the manner required by the department on or before the twenty-fifth day of the month following the month in which the water is produced.

F. Each operator of a public water supply system shall register and comply with the provisions of Section 7-1-12 NMSA 1978 and furnish such information as may be required by the taxation and revenue department.

G. As used in this section:

(1) "person" means any individual or legal entity and also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or an agency, department or instrumentality thereof; and

(2) "public water supply system" means a system that provides piped water to the public for human consumption and that has at least fifteen service connections or regularly services an average of at least twenty-five individuals at least sixty days per year.

H. The effective date of Subsection A of this section is July 1, 1993."

Section 2

Section 2. A new section of the Environmental Improvement Act is enacted to read:

"WATER CONSERVATION FEE--IMPOSITION--DEFINITIONS.--

A. There is imposed on every person who operates a public water supply system; a water conservation fee in an amount equal to three cents ($.03) per thousand gallons of water produced on which the fee imposed by this subsection has not been paid.

B. The "water conservation fund" is created in the state treasury and shall be administered by the department of environment. The fund shall consist of water conservation fees collected pursuant to this section. Balances in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the credit of the fund. Earnings on the fund shall be credited to the fund.

C. Money in the water conservation fund is appropriated to the department of environment for administration of a public water supply program to:

(1) test public water supplies for the contaminants required to be tested pursuant to the provisions of Section 1412 of the federal Safe Drinking Water Act and finalized through July 1, 1992, and collect chemical compliance samples as required by those provisions of the federal act;

(2) perform vulnerability assessments which will be used toassess a public water supply's susceptibility to those contaminants; and

(3) implement new requirements of the Utility Operators Certification Act and provide training for all public water supply operators.

D. The taxation and revenue department shall provide by regulation for the manner and form of collection of the water conservation fee. All water conservation fees collected by the taxation and revenue department shall be deposited in the water conservation fund.

E. The fee imposed by this section shall be administered in accordance with the provisions of the Tax Administration Act, and shall be paid to the taxation and revenue department by each person who operates a public water supply system in the manner required by the department on or before the twenty-fifth day of the month following the month in which the water is produced.

F. Each operator of a public water supply system shall register and comply with the provisions of Section 7-1-12 NMSA 1978 and furnish such information as may be required by the taxation and revenue department.

G. As used in this section:

(1) "person" means any individual or legal entity and also means, to the extent permitted by law,

any federal, state or other governmental unit or subdivision or an agency, department or instrumentality thereof; and

(2) "public water supply system" means a system that provides piped water to the public forhuman consumption and that has at least fifteen service connections or regularly services an average of at least twenty-five individuals at least sixty days per year."

Section 3

Section 3. APPROPRIATION.--

A. Two million dollars ($2,000,000) is appropriated from the general fund operating reserve to the department of environment for expenditure in the eighty-second fiscal year for administering the public water supply program, including:

(1) testing all public water supplies for the contaminants required to be tested for pursuant to the provisions of section 1412 of the federal Safe Drinking Water Act and finalized through July 17, 1992;

(2) performing vulnerability assessments which will be used to assess a public water supply's susceptibility to the contaminants and thereby reduce the sampling frequency;

(3) collecting chemical compliance samples required pursuant to the provisions of section 1412 of the federal Safe Drinking Water Act for all public water supplies; and

(4) implementing new requirements of the Utility Operators Certification Act and providing training for all public water supply operators.

B. No later than June 30, 1994, the department of environment shall transfer from the water conservation fund to the general fund operating reserve an amount equal to the appropriation in Subsection A of this section.

Section 4

Section 4. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. SB 391

CHAPTER 318

RELATING TO CORPORATIONS; REMOVING THE REQUIREMENT FOR AFFIDAVITS FROM MEMBERS OF THE BOARD OF DIRECTORS; PROVIDING FOR

RETROACTIVE APPLICATION; AMENDING AND REPEALING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 53-4-5 NMSA 1978 (being Laws 1939, Chapter 164, Section 5, as amended) is amended to read:

"53-4-5. ARTICLES OF INCORPORATION--CONTENTS.--Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least three of them, if natural persons, and by the presidents and secretaries, if associations, before an officer authorized to take acknowledgments. Within the limitations set forth in Chapter 53, Article 4 NMSA 1978, the articles shall contain:

A. a statement as to the purpose for which the association is formed;

B. the name of the association, which shall include the word "cooperative";

C. the term of existence of the association, which may be perpetual;

D. the location and address of the principal office of the association;

E. the names and addresses of the incorporators of the association;

F. the names and addresses of the directors who shall manage the affairs of the association for the first year, unless sooner changed by the members;

G. a statement of whether the association is organized with or without shares and the number of shares or memberships subscribed for;

H. if organized with shares, the amount of authorized capital, the number and types of shares and the par value thereof, which may be placed at any figure, and the rights, preferences and restrictions of each type of share;

I. the minimum number of shares that must be owned in order to qualify for membership;

J. the maximum amount or percentage of capital that may be owned or controlled by any member; and

K. the method by which any surplus, upon dissolution of the association, shall be distributed in conformity with the requirements of Section 53-4-36 NMSA 1978 for division of such surplus.

The articles may also contain any other provisions not inconsistent with Chapter 53, Article 4 NMSA 1978."

Section 2

Section 2. Section 53-8-31 NMSA 1978 (being Laws 1975, Chapter 217, Section 31, as amended) is amended to read:

"53-8-31. ARTICLES OF INCORPORATION.--

A. The articles of incorporation shall set forth:

(1) the name of the corporation;

(2) the period of duration, which may be perpetual;

(3) the purpose for which the corporation is organized;

(4) any provisions not inconsistent with law which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;

(5) the address of its initial registered office and the name of its initial registered agent at such address;

(6) the number of directors constituting the initial board of directors and the names and addresses of the persons who have consented to serve as the initial directors; and

(7) the name and address of each incorporator.

B. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers
enumerated in the Nonprofit Corporation Act.

C. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling."

Section 3

Section 3. Section 53-12-2 NMSA 1978 (being Laws 1967, Chapter 81, Section 50, as amended) is amended to read:

"53-12-2. ARTICLES OF INCORPORATION.--

A. The articles of incorporation shall set forth:

(1) the name of the corporation;

(2) the period of duration, if other than perpetual;

(3) the purpose for which the corporation is organized, which may include the transaction of any lawful business for which corporations may be incorporated under the Business Corporation Act;

(4) the aggregate number of shares which the corporation shall have authority to issue and, if the shares are to be divided into classes, the number of shares of each class;

(5) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;

(6) if the corporation is to issue the shares of any preferred or special class in series, the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as they are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(7) any provision limiting or denying to shareholders the preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares;

(8) the address of its initial registered office and the name of its initial registered agent at the address;

(9) the number of directors constituting the initial board of directors and the names and addresses of the persons who have consented to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualify; and

(10) the name and address of each incorporator.

B. In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(1) the direction of the management of the business and the regulation of the affairs of the corporation;

(2) the definition, limitation and regulation of the powers of the corporation, the directors and the shareholders, or any class of the shareholders, including restrictions on the transfer of shares;

(3) the minimum consideration for any authorized shares or class of shares; and

(4) any provision which under the Business Corporation Act is required or permitted to be set forth in the bylaws.

C. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in the Business Corporation Act.

D. The articles of incorporation may set forth any provision which the incorporators elect to set forth for the regulation of the internal affairs of the corporation.

E. The articles of incorporation may provide that a director shall not be personally liable to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director unless:

(1) the director has breached or failed to perform the duties of the director's office in compliance with Subsection B of Section 53-11-35 NMSA 1978; and

(2) the breach or failure to perform constitutes:

(a) negligence, willful misconduct or recklessness in the case of a director who has either an ownership interest in the corporation or receives in his capacity as a director or as an employee of the corporation compensation of more than two thousand dollars ($2,000) from the corporation in any calendar year; or

(b) willful misconduct or recklessness in the case of a director who does not have an ownership interest in the corporation and does not receive in his capacity as director or as an employee of the corporation compensation of more than two thousand dollars ($2,000) from the corporation in any calendar year.

Such a provision in the articles of incorporation shall, however, only eliminate the liability of a director for action taken as a director or any failure to take action as a director at meetings of the board of directors or of a committee of the board of directors or by virtue of action of the directors without a meeting pursuant to Section 53-11-43 NMSA 1978, on or after the date when such provision in the articles of incorporation becomes effective."

Section 4

Section 4. Section 53-17-5 NMSA 1978 (being Laws 1967, Chapter 81, Section 107, as amended) is amended to read:

"53-17-5. APPLICATION FOR CERTIFICATE OF AUTHORITY.--

A. A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the commission, which application shall set forth:

(1) the name of the corporation and the state or country under the laws of which it is incorporated;

(2) if the name of the corporation does not contain the word "corporation", "company", "incorporated" or "limited" or does not contain an abbreviation of one of these words, the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state;

(3) the date of incorporation and the period of duration of the corporation;

(4) the address of the principal office of the corporation in the state or country under the laws of which it is incorporated and the address of the principal office of the corporation;

(5) the address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at such address;

(6) the purpose of the corporation which it proposes to pursue in the transaction of business in this state;

(7) the names and respective addresses of the directors and officers of the corporation who have consented to serve;

(8) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes and by series, if any, within a class;

(9) a statement of the aggregate number of issued shares, itemized by class and by series, if any, within each class;

(10) an estimate expressed in dollars of:

(a) the gross amount of business which will be transacted by it during its current fiscal year at or from places of business located in the state;

(b) the gross amount of business which will be transacted by it during such year, wherever transacted;

(c) the value of all property to be owned by it and located in the state during such year; and

(d) the value of all property to be owned by it during such year, wherever located; and

(11) additional information necessary or appropriate in order to enable the commission to determine whether the corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees and franchise taxes payable.

B. The application shall be made on forms prescribed by the commission and shall be executed in duplicate by the corporation by its president or vice president and by its secretary or an assistant secretary and verified by one of the officers signing the application."

Section 5

Section 5. Section 53-2-10 NMSA 1978 (being Laws 1991, Chapter 170, Section 1) is amended to read:

"53-2-10. PRIVATE REMEDY.--

A. Any person who suffers any loss of money or property as a result of being designated a director of a corporation without giving his consent may bring an action against the designating corporation to recover actual damages or one thousand dollars ($1,000), whichever is greater.

B. The court may award attorneys' fees and costs to the party injured as a result of the director designation if he prevails. The court may award attorneys' fees to the corporation charged if the court finds that the action brought against the corporation was groundless.

C. The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state."

Section 6

Section 6. REPEAL.--Sections 53-4-18.3, 53-5-10, 53-8-18.1, 53-12-6 and 53-17-21 NMSA 1978 (being Laws 1991, Chapter 170, Sections 3, 4, 6, 8 and 10) are repealed. SB 640

CHAPTER 319

RELATING TO SOLID WASTE; CREATING THE SOLID WASTE AUTHORITY ACT.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "Solid Waste Authority Act".

Section 2

Section 2. LEGISLATIVE DECLARATION.--It is declared as a matter of legislative determination that:

A. the organization of the authority hereby created having the purposes, powers, duties, privileges, immunities, rights, liabilities and disabilities provided in the Solid Waste Authority Act will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants thereof and of the state;

B. the acquisition, improvement, maintenance and operation of any solid waste management-related project authorized in that act is in the public interest and constitutes a part of the established and permanent policy of the state;

C. the authority hereby organized shall be a body corporate and politic, a quasi-municipal corporation and a political subdivision of the state;

D. the notice provided for in the Solid Waste Authority Act for each hearing and action to be taken is reasonably calculated to inform any person of interest in any proceedings under that act which may directly and adversely affect his legally protected interests;

E. for the accomplishment of these purposes, the provisions of that act shall be broadly construed;

F. nothing in the Solid Waste Authority Act shall be construed to supersede or affect any provision of the Solid Waste Act or any regulations adopted pursuant to that act; and

G. any authority created by the Solid Waste Authority Act is specifically prohibited from exercising any regulatory or enforcement powers or any permitting or site approval as mandated by the Solid Waste Act.

Section 3

Section 3. DECISION OF BOARD OR GOVERNING BODY FINAL.--The action and decision of the board as to all matters passed upon by it in relation to any action,

matter or thing provided in the Solid Waste Authority Act shall be final and conclusive unless arbitrary, capricious or fraudulent.

Section 4

Section 4. DEFINITIONS.--Except where the context otherwise requires, as used in the Solid Waste Authority Act:

A. "acquisition" or "acquire" means the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, grant from the federal government, any public body or person, endowment, bequest, devise, condemnation, transfer, assignment, option to purchase, other contract or other acquirement, or any combination thereof, of facilities, other property, any project or an interest therein authorized by the Solid Waste Authority Act;

B. "authority" means the solid waste authority;

C. "board" means the board of directors of the authority;

D. "chairman" means the chairman of the board and president of the authority;

E. "condemnation" or "condemn" means the acquisition by the exercise of the power of eminent domain of property for any facilities, other property, project or an interest therein authorized by the Solid Waste Authority Act. The authority may exercise in the state the power of eminent domain, either within or without the authority and, in the manner provided by law for the condemnation of private property for public use, may take any property necessary to carry out any of the objects or purposes of that act. In the event the construction of any facility or project authorized by that act, or any part thereof, makes necessary the removal and relocation of any public utilities, whether on private or public right of way, the authority shall reimburse the owner of the public utility facility for the expense of removal and relocation, including the cost of any necessary land or rights in land;

F. "cost" or "cost of the project" means all, or any part designated by the board, of the cost of any facilities, project or interest therein being acquired and of all or any property, rights, easements, privileges, agreements and franchises deemed by the authority to be necessary or useful and convenient therefor or in connection therewith, which cost, at the option of the board, may include all or any part of the incidental costs pertaining to the project, including without limiting the generality of the foregoing, preliminary expenses advanced by any municipality, county or other public body from funds available for use therefor in the making of surveys, preliminary plans, estimates of cost, other preliminaries, the costs of appraising, printing, employing engineers, architects, fiscal agents, attorneys at law, clerical help, other agents or employees, the costs of capitalizing interest or any discount on securities, of inspection, of any administrative, operating and other expenses of the authority prior to the levy and

collection of taxes, and of reserves for working capital, operation, maintenance or replacement expenses or for payment or security of principal of or interest on any securities, the costs of making, publishing, posting, mailing and otherwise giving any notice in connection with the project, the taking of options, the issuance of securities, the filing or recordation of instruments, the levy and collection of taxes and installments thereof, the costs of reimbursements by the authority to any public body, the federal government or any person of any money theretofore expended for or in connection with any facility or project and all other expenses necessary or desirable and appertaining to any project, as estimated or otherwise ascertained by the board;

G. "director" means a member of the board;

H. "disposal" or "dispose" means the sale, destruction, razing, loan, lease, gift, grant, transfer, assignment, mortgage, option to sell, other contract or other disposition, or any combination thereof, of facilities, other property, any project or an interest therein authorized by the Solid Waste Authority Act;

I. "engineer" means any engineer in the permanent employ of the authority or any independent competent engineer or firm of such engineers employed by the authority in connection with any facility, property, project or power authorized by the Solid Waste Authority Act;

J. "equipment" or "equip" means the furnishing of all necessary or desirable, related or appurtenant, facilities, or any combination thereof, appertaining to any facilities, property, project or interest therein authorized by the Solid Waste Authority Act;

K. "facility" means any of the solid waste facilities or other property appertaining to the solid waste system of the authority;

L. "federal government" means the United States or any agency, instrumentality or corporation thereof;

M. "federal securities" means the bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States;

N. "governing body" means the city council, city commission, board of county commissioners, board of trustees, board of directors or other legislative body of the public body proceeding under the Solid Waste Authority Act, in which body the legislative powers of the public body are vested;

O. "improvement" or "improve" means the extension, widening, lengthening, betterment, alteration, reconstruction, repair or other improvement, or any combination thereof of facilities, other property, project or any interest therein authorized by the Solid Waste Authority Act;

P. "municipality" means any incorporated city, town or village in the state, whether incorporated or governed under a general act, special legislative act or special charter of any type. "Municipal" pertains to municipality;

Q. "person" means any human being, association, partnership, firm or corporation, excluding a public body and excluding the federal government;

R. "president" means the president of the authority and the chairman of the board;

S. "project" means any structure, facility, undertaking or system that the authority is authorized to acquire, improve, equip, maintain or operate. A project may consist of all kinds of personal and real property. A project shall appertain to the solid waste system that the authority is authorized and directed to provide within and without the authority's boundaries;

T. "property" means real property and personal property;

U. "publication" or "publish" means publication in at least the one newspaper designated as the authority's official newspaper and published in the authority in the English language at least once a week and of general circulation in the authority. Except as otherwise specifically provided or necessarily implied, "publication" or "publish" also means publication for at least once a week for three consecutive weeks by three weekly insertions, the first publication being at least fifteen days prior to the designated time or event, unless otherwise so stated. It is not necessary that publication be made on the same day of the week in each of the three calendar weeks, but not less than fourteen days shall intervene between the first publication and the last publication, and publication shall be complete on the day of the last publication. Any publication required shall be verified by the affidavit of the publisher and filed with the secretary;

V. "public body" means the state or any agency, instrumentality or corporation thereof or any municipality, county, school district, other type district or any other political subdivision of the state, excluding the authority and excluding the federal government;

W. "qualified elector" means a person qualified to vote in general elections in the state, who is a resident of the authority at the time of any election held under the provisions of the Solid Waste Authority Act or at any other time in reference to which the term "qualified elector" is used;

X. "real property" means:

(1) land, including land under water;

(2) buildings, structures, fixtures and improvements on land;

(3) any property appurtenant to or used in connection with land; and

(4) every estate, interest, privilege, easement, franchise and right in land, legal or equitable, including without limiting the generality of the foregoing, rights of way, terms for years and liens, charges or encumbrances by way of judgment, mortgage or otherwise and the indebtedness secured by such liens;

Y. "secretary" means the secretary of the authority;

Z. "secretary of state" means the secretary of the state of New Mexico;

AA. "securities" means any notes, warrants, bonds, temporary bonds or interim debentures or other obligations of the authority or any public body appertaining to any project or interest therein authorized by the Solid Waste Authority Act;

BB. "state" means the state of New Mexico or any agency, instrumentality or corporation thereof;

CC. "street" means any street, avenue, boulevard, alley, highway or other public right of way used for any vehicular traffic;

DD. "taxes" means general ad valorem taxes pertaining to any project authorized by the Solid Waste Authority Act; and

EE. "treasurer" means the treasurer of the authority.

Section 5

Section 5. CREATION OF A SOLID WASTE AUTHORITY--BOARD.--Any county or contiguous counties and any municipality or municipalities desiring to create a solid waste authority board for the purposes of petitioning to the county special district commission pursuant to the Special District Procedures Act for the creation of a solid waste authority may, by joint resolution, agree to the creation of a solid waste authority board. Each county or contiguous counties or any municipality or municipalities having adopted such a resolution shall make appointments to said boards as follows:

A. The county chairman, with the advice and consent of the county commissioners, shall appoint three members;

B. The mayor or chief elected executive officer of each municipality shall appoint two members each;

C. In the event that there are an even number of board members appointed, those board members having been appointed as provided above shall select one additional board member. After taking oath and filing bonds, the board shall choose

one of its members as chairman of the board and president of the authority, and shall elect a secretary and a treasurer of the board and of the authority, who may or may not be members of the board. The secretary and treasurer may be one person. Such board shall adopt a seal and the secretary shall keep, in a well-bound book, a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection by all owners of real property in the authority as well as to all other interested parties.

Section 6

Section 6. OATHS AND BONDS OF BOARD MEMBERS.--Whenever a board has been appointed or elected, as hereinafter provided, the members of the board shall qualify by filing with the clerk of the court their oaths of office and corporate surety bonds at the expense of the authority in an amount not to exceed one thousand dollars ($1,000) each, the form thereof to be fixed and approved by the board, conditioned for the faithful performance of their duties as directors. The interim board as appointed pursuant to Section 5 of the Solid Waste Authority Act shall serve until an election is held as provided hereinafter.

Section 7

Section 7. PETITION FOR CREATION OF SOLID WASTE AUTHORITY.--

A. The organization of a solid waste authority shall be initiated by the interim board appointed pursuant to Section 6 of the Solid Waste Authority Act by filing a petition, duly adopted by the solid waste authority board and filed with the county special district commission as provided in the Special District Procedures Act.

B. The petition shall set forth:

(1) the name of the proposed district consisting of a chosen name preceding the words "solid waste authority";

(2) a general description of the improvements to be constructed or installed within and for the authority;

(3) an estimated overall cost of the proposed improvements to be constructed or installed within and for the authority;

(4) an estimated time table for the completion of all intended improvements;

(5) the need for the creation of the district and the construction or installation of improvements, stating the nature and extent of the anticipated use of the improvements by persons presently residing on land within the authority, and the nature and extent of the anticipated use of the improvements due to future development;

(6) a general description of the boundaries of the authority or the territory to be included within the authority, with such certainty as to enable a property owner to determine whether or not his property is within the authority;

(7) the salary, if any, that the members of the board shall receive for their services; and

(8) a request for the organization of the authority.

C. No petition duly adopted by the solid waste authority board and submitted to the county special district commission shall be declared void on account of alleged defects, but the county special district commission may at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or in any other particular.

Section 8

Section 8. HEARING ON PETITION.--

A. At any time after the filing of the petition for the organization of an authority and before the day fixed for the hearing for the county special district commission on said petition, the owner of any taxable property within the proposed authority may file a petition with the county special district commission stating the reasons why the property should not be included in the authority and requesting that the property be excluded from it. The petition shall be verified and shall describe the property sought to be excluded. The county special district commission shall hear the petition and all objections to it at the time of the hearing before the county special district commission on the petition for organization of the solid waste authority and said county special district commission shall determine whether the property should be excluded or included in the authority.

B. The county special district commission may deny the petition or may order the petition to be modified if the county special district commission, after hearing on the petition, finds that:

(1) the proposed solid waste authority and improvements therein cannot conform with state regulations;

(2) the solid waste authority improvements cannot be implemented within a reasonable time taking into consideration the applications for state and federal grants;

(3) there is a lacking or actual or impending need for the solid waste improvements proposed; or

(4) the boundaries of the proposed authority contain land that has no actual or impending need for a solid waste authority or cannot be reasonably expected to utilize the solid waste authority improvements.

Section 9

Section 9. DECISION OF THE SPECIAL DISTRICT COMMISSION.--The decision of the county special district commission shall be in accordance with Section 4-53-10 NMSA 1978; provided, however, that the county special district commission shall have the authority to modify the boundaries of the proposed solid waste authority and shall, in any decision approving the solid waste authority include a legal description of the boundaries of the authority.

Section 10

Section 10. FILING SPECIAL DISTRICT COMMISSION ORDER.--Within thirty days after the solid waste authority has been declared created by the county special district commission, the county special district commission shall transmit to the county clerk in each county in which the authority is located, copies of the findings and the opinion of the county special district commission approving the solid waste authority. The same shall be filed in the same manner as articles of incorporation are now required to be filed under the general laws concerning corporations; and the clerk of the court in each county shall receive a fee of one dollar ($1.00) for filing preserving the same.

Section 11

Section 11. DISTRICTING THE AUTHORITY.--

A. The interim board shall, within one hundred eighty days of the filing of the decision of the county special district commission with the county clerk, and after public hearing, adopt by resolution a districting plan which causes the area within the authority to be divided into seven geographical districts numbered one through seven and each district shall elect one representative. Each representative represening a district shall reside in and be elected by
qualified voters of that district only.

B. In establishing authority districts, the interim appointed board shall consider the following principles which, in the event of any conflict among them, shall be considered in the following order:

(1) the districts shall contain as nearly as possible substantially the same population based on the most recent federal census;

(2) communities of interest, including those based upon ethnic and economic factors, shall be preserved whenever reasonable within a single district; and

(3) the districts shall be formed of compact, contiguous territories and the total length of all district boundaries shall be as short as possible.

C. Redistricting shall occur upon any change in the authority's boundaries.

Section 12

Section 12. BOARD OF DIRECTORS.--The governing body of the authority is a board of directors consisting of seven qualified electors of the authority. All powers, rights, privileges and duties vested in or imposed upon the authority are exercised and performed by and through the board of directors; provided that the exercise of any executive, administrative and ministerial powers may be, by the board, delegated and redelegated to officers and employees of the authority. Except for the first directors appointed as provided for in Section 5 of the Solid Waste Authority Act or elected as provided in Section 13 of the Solid Waste Authority Act and except for any director chosen to fill an unexpired term, the term of each director commences on the first day of January next following a general election in the state and runs for six years. Each director, subject to such exceptions, shall serve a six-year term ending on the first day of January next following a general election, and each director shall serve until his successor has been duly chosen and qualified.

Section 13

Section 13. ELECTION OF DIRECTORS.--Each biennial nonpartisan election of directors shall be conducted at the time of the general election under the direction of the county clerk and in accordance with the election laws of New Mexico. Any other election of the authority, including an election to seek approval for the issuance of bonds, shall be conducted at any time approved by the board in accordance with the election laws of New Mexico.

Section 14

Section 14. ELECTION RESOLUTION.--The board shall call any election by resolution adopted at least one hundred eighty days prior to the election. The resolution shall recite the objects and purposes of the election and the date upon which the election shall be held.

Section 15

Section 15. CONDUCT OF ELECTION.--An election held pursuant to the Solid Waste Authority Act shall be conducted in the manner provided by the laws of the state for the conduct of general elections.

Section 16

Section 16. NOTICE OF ELECTION.--Notice of such election shall be given by publication. No other notice of an election held under the Solid Waste Authority Act need be given unless otherwise provided by the board.

Section 17

Section 17. POLLING PLACES.--All polling places shall be within the area included within the authority.

Section 18

Section 18. ELECTION SUPPLIES.--The secretary shall provide to the county clerk or clerks such supplies and assistance as necessary to conduct elections authorized by the Solid Waste Authority Act.

Section 19

Section 19. ELECTION RETURNS.--The authority shall appoint an authority precinct board at the authority's expense for each polling place. For authority elections held at the time of the general election, the authority shall be provided space in the polling places where the general election is being conducted. Paper ballots shall be used in the conduct of any authority election, and the authority precinct board shall conduct the election as provided in the Election Code where paper ballots are used. The separate authority precinct board shall certify the results of the election in that precinct to the secretary within twelve hours after the close of the polls. The secretary shall canvass the results of the authority election as certified by each of the separate authority precinct boards and shall declare the results of the election at any regular or special meeting held not less than five days following the date of the election. Except as otherwise provided, any proposal submitted at any election held pursuant to the Solid Waste Authority Act shall not carry unless the proposal has been approved by a majority of the qualified electors of the authority voting on the proposal.

Section 20

Section 20. FILLING VACANCIES ON BOARD.--Any vacancy on the board shall be filled by appointment by the remaining members of the board, the appointee to act until the next biennial election when the vacancy shall be filled by election. Any vacancy on the appointed board shall be filled in the same manner as original appointments, the appointee to act until the next election.

Section 21

Section 21. CHANGING AUTHORITY'S BOUNDARIES.--The elected board has the authority to petition the county special district commission to change the authority's

boundaries. The county special district commission's decision shall be made in accordance with Sections 8, 9 and 10 of the Solid Waste Authority Act.

Section 22

Section 22. BOARD'S ADMINISTRATIVE POWERS.--The board may exercise the following powers:

A. fix the time and place at which its regular meetings will be held within the authority and provide for the calling and holding of special meetings;

B. adopt and amend or otherwise modify bylaws and rules for procedure;

C. select one director as chairman of the board and president of the authority, and another director as chairman pro tem of the board and president pro tem of the authority, and choose a secretary and a treasurer of the board and authority, each of which two positions may be filled by a person who is, or is not, a director, and both of which positions may, or may not, be filled by one person;

D. prescribe by resolution a system of business administration and create all necessary offices and establish and re-establish the powers, duties and compensation of all officers and employees;

E. require and fix the amount of all official bonds necessary or desirable and convenient in the opinion of the board for the protection of the funds and property of the authority, subject to the provisions of Section 13 of the Solid Waste Authority Act;

F. prescribe a method of auditing and allowing or rejecting claims and demands;

G. provide a method for the letting of contracts on a fair and competitive basis for the construction of works, any facility or any project or any interest therein or the performance or furnishing of labor, materials or supplies as required in that act;

H. designate an official newspaper published in the authority in the English language and direct additional publication in any newspaper where it deems that the public necessity may so require; and

I. make and pass resolutions and orders on behalf of the authority not repugnant to the provisions of the Solid Waste Authority Act, necessary or proper for the government and management of the affairs of the authority, for the execution of the powers vested in the authority and for carrying into effect the provisions of that act.

Section 23

Section 23. RECORDS OF BOARD.--On all resolutions and orders, the roll shall be called, and the ayes and nays shall be recorded. All resolutions and orders, as soon as may be after their passage, shall be recorded in a book kept for that purpose and be authenticated by the signature of the presiding officer of the board and the secretary. Every legislative act of the board of a general or permanent nature shall be by resolution. The book of resolutions and orders is a public record. A record shall also be made of all other proceedings of the board, minutes of all meetings, certificates, contracts, bonds given by officers, employees and any other agents of the authority, and all corporate acts, which record is also a public record. The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the authority in a permanent record, which is also a public record. Any permanent record of the authority shall be open for inspection by any qualified elector thereof, by any other interested person or by any representative of the federal government or any public body. All records are subject to audit as provided by law for political subdivisions.

Section 24

Section 24. MEETINGS OF BOARD.--All meetings of the board shall be open to the public. No business of the board shall be transacted except at a regular or special meeting at which a quorum consisting of at least three-fifths of the total membership of the board is present. Any action of the board requires the affirmative vote of a majority of the directors present and voting. A smaller number of directors than a quorum may adjourn from time to time and may compel the attendance of absent members in the manner and under such penalties as the board may provide.

Section 25

Section 25. COMPENSATION OF DIRECTORS.--Directors shall receive no compensation for their services as a director. Directors may be reimbursed for expenses incurred by them on authority business with approval of the board.

Section 26

Section 26. INTEREST IN CONTRACTS AND PROPERTY DISQUALIFICATIONS.--No director or officer, employee or agent of the authority may be interested in any contract or transaction with the authority except in his official representative capacity or as provided, except for any contract of employment with the authority. Neither the holding of any office nor employment in the government of any public body or the federal government nor the owning of any property within the state, within or without the authority, may be deemed a disqualification for membership on the board or employment by the authority, or a disqualification for compensation for services as an officer, employee or agent of the authority, except as provided in Section 22 of the Solid Waste Authority Act.

Section 27

Section 27. POWERS OF THE AUTHORITY.--The authority may exercise the following duties, privileges, immunities, rights, liabilities and disabilities appertaining to a public body politic and corporate and constituting a quasi-municipal corporation and political subdivision of the state established as an instrumentality exercising public and essential governmental and proprietary functions to provide for the public health, safety and general welfare:

A. perpetual existence and succession;

B. adopt, have and use a corporate seal and alter the same at pleasure;

C. sue and be sued and be a party to suits, actions and proceedings;

D. commence, maintain, intervene in, defend, compromise, terminate by settlement or otherwise and otherwise participate in and assume the cost and expense of any and all actions and proceedings now or hereafter begun and appertaining to the authority, its board, its officers, agents or employees, or any of the authority's duties, privileges, immunities, rights, liabilities and disabilities, or the authority's solid waste system, other property of the authority or any project;

E. enter into contracts and agreements, including but not limited to contracts with the federal government, the state and any other public body;

F. borrow money and issue securities evidencing any loan to or amount due by the authority, provide for and secure the payment of any securities and the rights of the holders of those securities and purchase, hold and dispose of securities, as provided in the Solid Waste Authority Act;

G. refund any loan or obligation of the uthority and issue refunding securities to evidence such loan or obligation without any election;

H. purchase, trade, exchange, encumber and otherwise acquire, maintain and dispose of property and interests in that property;

I. subject to an election as provided in the Solid Waste Authority Act, levy and cause to be collected general ad valorem taxes on all property subject to property taxation within the authority; provided that the total tax levy, excluding any levy for the payment of any debt of the authority authorized pursuant to the Solid Waste Authority Act, for any fiscal year shall not exceed an aggregate total of three mills, or any lower amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon this tax levy, for each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code, by certifying, on or before the fifteenth day of July in each year in which the board determines, after approval by the qualified electors pursuant to the Solid Waste Authority Act, to levy a tax, to the board of county commissioners within each county wherein the authority has any territory, the rate so fixed, with directions that, at the time and in the manner required by law for levying

taxes for other purposes, such body having authority to levy taxes shall levy the tax upon the net taxable value of all property subject to property taxation within the authority;

J. hire and retain officers, agents, employees, engineers, attorneys and any other persons, permanent or temporary, necessary or desirable to effect the purposes of the Solid Waste Authority Act, defray any expenses incurred thereby in connection with the authority and acquire office space, equipment, services, supplies, fire and extended coverage insurance, use and occupancy insurance, workers' compensation insurance, property damage insurance, public liability insurance for the authority and its officers, agents and employees and other types of insurance, as the board may determine; provided, however, that no provision in that act authorizing the acquisition of insurance shall be construed as waiving any immunity of the authority or any director, officer or agent thereof and otherwise existing under the laws of the state;

K. condemn property for public use;

L. acquire, improve, equip, hold, operate, maintain and dispose of a solid waste system, wholly within the authority, or partially within and partially without the authority, and wholly within, wholly without or partially within and partially without any public body all or any part of the area of which is situated within the authority;

M. pay or otherwise defray the cost of any project;

N. pay or otherwise defray and contract so to pay or defray, for any term not exceeding fifty years, without an election, except as otherwise provided in the Solid Waste Authority Act, the principal of, any interest on and any other charges appertaining to, any securities or other obligations of the federal government, any public body or person incurred in connection with any such property so acquired by the authority;

O. establish and maintain facilities within or without the authority, across or along any public street, highway, bridge, viaduct or other public right-of-way or in, upon, under or over any vacant public lands, which public lands are now or may become the property of the state, or across any stream of water or water course, without first obtaining a franchise from the municipality, county or other public body having jurisdiction over the same; provided that the authority shall cooperate with any public body having such jurisdiction, shall promptly restore any such street, highway, bridge, viaduct or other public right-of-way to its former state of usefulness as nearly as may be and shall not use the same in such manner as to impair completely or unnecessarily the usefulness thereof;

P. deposit any money of the authority, subject to the limitations in Article 8, Section 4 of the constitution of New Mexico, in any banking institution within or without the state and secured in such manner and subject to such terms and conditions as the board may determine, with or without the payment of any interest on any such deposit;

Q. invest any surplus money in the authority treasury, including such money in any sinking or reserve fund established for the purpose of retiring any securities of the authority, not required for the immediate necessities of the authority, in its own securities or in federal securities, by direct purchase of any issue of such securities, or part thereof, at the original sale of the same, or by the subsequent purchase of such securities;

R. sell any such securities thus purchased and held, from time to time;

S. reinvest the proceeds of any such sale in other securities of the authority or in federal securities, as provided in Subsection Q of this section;

T. sell in season from time to time such securities thus purchased and held, so that the proceeds may be applied to the purposes for which the money with which such securities were originally purchased was placed in the treasury of the authority;

U. accept contributions or loans from the federal government for the purpose of financing the planning, acquisition, improvement, equipment, maintenance and operation of any enterprise in which the authority is authorized to engage and enter into contracts and cooperate with and accept cooperation and participation from the federal government for these purposes;

V. enter into joint operating or service contracts and agreements, acquisition, improvement, equipment or disposal contracts or other arrangements, for any term not exceeding fifty years, with the federal government, any public body or any person concerning solid waste facilities, or any project, whether acquired by the authority or by the federal government, any public body or any person, and accept grants and contributions from the federal government, any public body or any person in connection therewith;

W. enter into and perform when determined by the board to be in the public interest and necessary for the protection of the public health, contracts and agreements, for any term not exceeding fifty years, with the federal government, any public body or any person for the provision and operation by the authority of solid waste facilities;

X. enter into and perform, without any election, contracts and agreements with the federal government, any public body or any person for or concerning the planning, construction, lease or other acquisition, improvement, equipment, operation, maintenance, disposal, and the financing of any project, including but not necessarily limited to any contract or agreement for any term not exceeding fifty years;

Y. enter upon any land, make surveys, borings, soundings and examinations for the purposes of the authority, locate the necessary works of any project and roadways and other rights-of-way appertaining to any project authorized in

the Solid Waste Authority Act; and acquire all property necessary or convenient for the acquisition, improvement or equipment of such works;

Z. cooperate with and act in conjunction with the state, or any of its engineers, officers, boards, commissions or departments, or with the federal government or any of its engineers, officers, boards, commissions or departments, or with any other public body or any person in the acquisition, improvement or equipment of any project or for any works, acts or purposes provided for in the Solid Waste Authority Act, and adopt and carry out any definite plan or system of work for any such purpose;

AA. cooperate with the federal government or any public body by an agreement therewith by which the authority may:

(1) acquire and provide, without cost to the cooperating entity, the land, easements and rights-of-way necessary for the acquisition, improvement or equipment of the solid waste system or any project;

(2) hold and save harmless the cooperating entity free from any claim for damages arising from the acquisition, improvement, equipment, maintenance and operation of the solid waste system or any project; and

(3) maintain and operate any project in accordance with regulations prescribed by the cooperating entity;

BB. carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies and inspections pertaining to solid waste facilities, and any project, both within and without the authority, and for this purpose the authority has the right of access through its authorized representative to all lands and premises within the state;

CC. have the right to provide from revenues or other available funds an adequate fund for the improvement and equipment of the authority's solid waste system or of any parts of the works and properties of the authority;

DD. make and keep records in connection with any project or otherwise concerning the authority;

EE. arbitrate any differences arising in connection with any project or otherwise concerning the authority;

FF. have the management, control and supervision of all the business and affairs appertaining to any project herein authorized, or otherwise concerning the authority, and of the acquisition, improvement, equipment, operation and maintenance of any such project;

GG. prescribe the duties of officers, agents, employees and other persons and fix their compensation;

HH. enter into contracts of indemnity and guaranty, in such form as may be approved by the board, relating to or connected with the performance of any contract or agreement which the authority is empowered to enter into under the provisions of the Solid Waste Authority Act or of any other law of the state;

II. provide, by any contract for any term not exceeding fifty years, or otherwise, without an election:

(1) for the joint use of personnel, equipment and facilities of the authority and any public body, including without limitation public buildings constructed by or under the supervision of the board of the authority or the governing body of the public body concerned, upon such terms and agreements and within such areas within the authority as may be determined, for the promotion and protection of health, comfort, safety, life, welfare and property of the inhabitants of the authority and any such public body; and

(2) for the joint employment of clerks, stenographers and other employees appertaining to any project, now existing or hereafter established in the authority, upon such terms and conditions as may be determined for the equitable apportionment of the expenses therefrom resulting;

JJ. obtain financial statements, appraisals, economic feasibility reports and valuations of any type
appertaining to any project or any property pertaining thereto;

KK. adopt any resolution authorizing a project or the issuance of securities, or both, or otherwise appertaining thereto, or otherwise concerning the authority;

LL. make and execute a mortgage, deed of trust, indenture or other trust instrument appertaining to a project or to any securities authorized in the Solid Waste Authority Act, or to both, except as provided in Subsection MM of this section and in Section 48 of the Solid Waste Authority Act;

MM. make all contracts, execute all instruments and do all things necessary or convenient in the exercise of the powers granted in the Solid Waste Authority Act, or in the performance of the authority's covenants or duties or in order to secure the payment of its securities; provided, no encumbrance, mortgage or other pledge of property, excluding any money, of the authority is created thereby and provided no property, excluding money, of the authority is liable to be forfeited or taken in payment of such securities;

NN. have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in the Solid Waste Authority Act, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of that act;

OO. exercise all or any part or combination of the powers granted in the Solid Waste Authority Act; and

PP. to fix and from time to time increase or decrease rates, tolls or charges for services or facilities furnished or made available by the authority, and to pledge that revenue for the payment of any indebtedness of the district. Until paid, all rates, tolls or charges constitue a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of New Mexico for the foreclosure of real estate mortgages.

Section 28

Section 28. LEVY AND COLLECTION OF TAXES.--To levy and collect taxes, the board shall determine in each year the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the authority, and shall propose by resolution a rate of levy, without limitation as to rate or amount, except for the limitation in Section 27 of the Solid Waste Authority Act and for any constitutional limitation, which, when levied upon the net taxable value, as that term is defined in the Property Tax Code, of all property subject to property taxation within the authority, and together with other revenues, will raise the amount required by the authority annually to supply funds for paying expenses of organization and the costs of acquiring, improving, equipping, operating and maintaining any project or facility of the authority, and promptly to pay in full, when due, all interest on and principal of bonds and other securities of the authority, and in the event of accruing defaults or deficiencies, an additional levy may be made as provided in Section 29 of the Solid Waste Authority Act.

Section 29

Section 29. LEVIES TO COVER DEFICIENCIES.--The board, in proposing ad valorem tax levies by resolution, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing securities and interest on securities, and deficiencies and defaults of prior years and shall make ample provision for the payment thereof. In case the money produced from such levies, together with other revenues of the authority, is not sufficient punctually to pay the annual installments of its contracts or securities, and interest thereon, and to pay defaults and deficiencies, the board shall propose by resolution such additional levies of taxes as may be necessary for such purposes, and notwithstanding any limitations, except the limitation in Subsection I of Section 27 of the Solid Waste Authority Act, and any constitutional limitation, such taxes, if approved by the qualified electors, shall be made and continue to be levied until the indebtedness of the authority is fully paid.

Section 30

Section 30. ELECTIONS FOR IMPOSITION OF AD VALOREM TAXES.--Whenever the board shall determine by resolution that the interest of the authority and the public interest or necessity demand the imposition of a general ad valorem tax, the board shall certify the rate of ad valorem tax needed and shall order the submission of the proposition of imposing the ad valorem tax to the qualified electors residing within the authority. Any such election may be held separate or may be consolidated or held concurrent with any other election authorized by the Solid Waste Authority Act. Such resolution shall also fix the date upon which the election shall be held, the manner of holding the same, the method of voting for or against the imposition of the proposed ad valorem tax, shall designate the polling place or places and shall appoint for each polling place from the qualified electors of the district the officers of such election consisting of three judges, one of whom shall act as clerk.

Section 31

Section 31. CONDUCT OF ELECTION.--Elections for imposition of ad valorem taxes shall be conducted in a manner prescribed by the laws of the state for the conduct of general elections and in accordance with the provisions and procedures outlined in the Solid Waste Authority Act for the election of directors.

Section 32

Section 32. SINKING FUND.--Whenever any indebtedness has been incurred by the authority, it is lawful for the board to levy taxes and to collect revenue for the purpose of creating a reserve fund in such amount as the board may determine, which may be used to meet the obligations of the authority, for maintenance and operating charges and depreciation, and to provide improvements for the authority.

Section 33

Section 33. MANNER OF LEVYING AND COLLECTING TAXES.--It is the duty of the body having authority to levy taxes within each county to levy the taxes provided in Subsection I of Section 27 of the Solid Waste Authority Act, and elsewhere in that act. It is the duty of all officials charged with collecting taxes to collect such taxes at the time and in the form and manner and with like interest and penalties as other general ad valorem taxes are collected, and when collected, to pay the same to the authority. The payment of such collection shall be made monthly to the treasurer of the authority and paid into the depository thereof to the credit of the authority. All general ad valorem taxes levied under that act, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same constitute until paid a perpetual lien on and against the property taxed, and such lien is on a parity with the tax lien of other general ad valorem taxes.

Section 34

Section 34. DELINQUENT TAXES.--If the general ad valorem taxes levied are not paid, then delinquent real property shall be sold at the regular tax sale for the payment of such taxes, interest and penalties, in the manner provided by the statutes of the state for selling real property for the nonpayment of general taxes. If there are no bids at the tax sale for the property so offered, the property shall be struck off to the county, and the county shall account to the authority in the same manner as provided by law for accounting for school, town and city taxes. Delinquent personal property shall be distrained and sold as provided by law.

Section 35

Section 35. POWERS OF PUBLIC BODIES.--The governing body of any municipality, federally authorized Indian pueblo or tribe or other public body, upon its behalf and in its name, for the purpose of aiding and cooperating in the determination of any authority boundary or any project authorized in the Solid Waste Authority Act, upon the terms and with or without consideration and with or without an election, as the governing body determines, may exercise the following powers:

A. sell, lease, loan, donate, grant, convey, assign, transfer and otherwise dispose to the authority, solid waste facilities or any other property or any interest therein;

B. make available for temporary use or otherwise dispose to the authority of any machinery, equipment, facilities and other property, and any agents, employees, persons with professional training and any other persons, to effect the purposes of that act. Any such property and persons owned or in the employ of any public body while engaged in performing for the authority any service, activity or undertaking authorized in that act, pursuant to contract or otherwise, shall have and retain all of the powers, privileges, immunities, rights and duties of and shall be deemed to be engaged in the service and employment of such public body, notwithstanding such service, activity or undertaking is being performed in or for the authority;

C. enter into any agreement or joint agreement between or among the federal government, the authority and any other public body, or any combination thereof, extending over any period not exceeding fifty years, which is mutually agreed thereby, notwithstanding any law to the contrary, respecting action or proceedings appertaining to any power granted in that act, and the use or joint use of any facilities, project or other property authorized in that act;

D. sell, lease, loan, donate, grant, convey, assign, transfer or pay over to the authority any facilities or any project authorized in that act, or any part thereof, or any interest in real or personal property, or any funds available for acquisition, improvement or equipment purposes, including the proceeds of any securities previously or hereafter issued for acquisition, improvement or equipment purposes

which may be used by the authority in the acquisition, improvement, equipment, maintenance or operation of any facilities or project authorized in that act;

E. transfer, grant, convey or assign and set over to the authority any contracts which may have been awarded by the public body for the acquisition, improvement or equipment of any project not begun or if begun, not completed;

F. budget and appropriate, and each municipality or other public body is hereby required and directed to budget and appropriate, from time to time, general ad valorem tax proceeds, and other revenues legally available therefor to pay all obligations arising from the exercise of any powers granted in the Solid Waste Authority Act as such obligations shall accrue and become due;

G. provide for an agency, by any agreement authorized in that act, to administer or execute that or any collateral agreement, which agency may be one of the parties to the agreement, or a commission or board constituted pursuant to the agreement;

H. provide that any such agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement. Such power is subject to the restrictions upon the manner of exercising the power of any one of the contracting parties, which party shall be designated by the agreement; and

I. continue any agreement authorized in the Solid Waste Authority Act for a definite term not exceeding fifty years, or until rescinded or terminated, which agreement may provide for the method by which it may be rescinded or terminated by any party.

Section 36

Section 36. EFFECT OF EXTRATERRITORIAL FUNCTIONS.--All of the powers, privileges, immunities and rights, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of the authority or any such public body when performing their respective functions within the territorial limits of the respective public agencies apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the Solid Waste Authority Act.

Section 37

Section 37. FORMS OF BORROWING.--Upon the conditions and under the circumstances set forth in the Solid Waste Authority Act, the authority, to carry out the purposes of that act, from time to time may borrow money to defray the cost of any

project, or any part thereof, as the board may determine and issue the following securities to evidence such borrowing:

A. notes;

B. warrants;

C. bonds;

D. temporary bonds; and

E. interim debentures.

Section 38

Section 38. ISSUANCE OF NOTES.--The authority is authorized to borrow money without an election in anticipation of taxes or other revenues, or both, and to issue notes to evidence the amount so borrowed.

Section 39

Section 39. ISSUANCE OF WARRANTS.--The authority is authorized to defray the cost of any services, supplies, equipment or other materials furnished to or for the benefit of the authority by the issuance of warrants to evidence the amount due therefor, without an election, in anticipation of taxes or other revenues, or both.

Section 40

Section 40. MATURITIES OF NOTES AND WARRANTS.--Notes and warrants may mature at such time not exceeding one year from the respective dates of their issuance as the board may determine. They shall not be extended or funded except by the issuance of bonds or interim debentures in compliance with Sections 41 and 43 of the Solid Waste Authority Act.

Section 41

Section 41. ISSUANCE OF BONDS AND INCURRENCE OF DEBT.--The authority is authorized to borrow money in anticipation of taxes or other revenues, or both, and to issue bonds to evidence the amount so borrowed. No bonded indebtedness or any other indebtedness not payable in full within one year, except for interim debentures as provided in Sections 43 and 86 through 88 of the Solid Waste Authority Act, shall be created by the authority without first submitting a proposition of issuing such bonds to the qualified electors of the authority and being approved by a majority of such electors voting thereon at an election held for that purpose in accordance with Sections 13 through 17 of that act. Bonds so authorized may be issued

in one series or more and may mature at such time or times not exceeding forty years from their issuance as the board may determine. The total of all outstanding indebtedness at any one time shall not exceed thirty million dollas ($30,000,000) without prior approval of the state legislature.

Section 42

Section 42. ISSUANCE OF TEMPORARY BONDS.--The authority is authorized to issue temporary bonds, pending preparation of definitive bond or bonds and exchangeable for the definitive bond or bonds when prepared, as the board may determine. Each temporary bond shall set forth substantially the same conditions, terms and provisions as the definitive bond for which it is exchanged. Each holder of any such temporary security shall have all the rights and remedies which he would have as a holder of the definitive bond or bonds.

Section 43

Section 43. ISSUANCE OF INTERIM DEBENTURES.--The authority is authorized to borrow money and to issue interim debentures evidencing construction or short-term loans for the acquisition or improvement and equipment of the solid waste system or any project in supplementation of long-term financing and the issuance of bonds as provided in Sections 86 through 88 of the Solid Waste Authority Act.

Section 44

Section 44. PAYMENT OF SECURITIES.--All securities issued by the authority shall be authorized by resolution. The authority may pledge its full faith and credit for the payment of any securities authorized in the Solid Waste Authority Act, the interest thereon, any prior redemption premium or premiums and any charges appertaining thereto. Securities may constitute the direct and general obligations of the authority. Their payment may be secured by a specific pledge of tax proceeds and other revenues of the authority as the board may determine.

Section 45

Section 45. ADDITIONALLY SECURED SECURITIES.--The board, in connection with such additionally secured securities, in the resolution authorizing their issuance or other instrument appertaining thereto, may pledge all or a portion of such revenues, subject to any prior pledges, as additional security for such payment of such securities, and at its option may deposit such revenues in a fund created to pay the securities or created to secure additionally their payment.

Section 46

Section 46. PLEDGE OF REVENUES.--Any such revenues pledged directly or as additional security for the payment of securities of any one issue or series, which revenues are not exclusively pledged therefor, may subsequently be pledged directly or as additional security for the payment of the securities of one or more issue or series subsequently authorized.

Section 47

Section 47. RANKING AMONG DIFFERENT ISSUES.--All securities of the same issue or series shall, subject to the prior and superior rights of outstanding securities, claims and other obligations, have a prior, paramount and superior lien on the revenues pledged for the payment of the securities over and ahead of any lien thereagainst subsequently incurred of any other securities; provided, however, the resolution authorizing, or other instrument appertaining to, the issuance of any securities may provide for the subsequent authorization of bonds or other securities the lien for the payment of which on such revenues is on a parity with the lien thereon of the subject securities upon such conditions and subject to such limitations as the resolution or other instrument may provide.

Section 48

Section 48. RANKING AMONG SECURITIES OF SAME ISSUE.--All securities of the same issue or series shall be equally and ratably secured without priority by reason of number, date of maturity, date of securities, of sale, of execution or of delivery, by a lien on such revenues in accordance with the provisions of the Solid Waste Authority Act and the resolution authorizing, or other instrument appertaining to, such securities, except to the extent such resolution or other instrument otherwise expressly provides.

Section 49

Section 49. PAYMENT RECITAL IN SECURITIES.--Each security issued under the Solid Waste Authority Act shall recite in substance that the security and the interest on that security are payable solely from the revenues or other money pledged to the payment of those revenues. Securities specifically pledging the full faith and credit of the authority for their payment shall so state.

Section 50

Section 50. INCONTESTABLE RECITAL IN SECURITIES.--Any resolution authorizing, or other instrument appertaining to, any securities under the Solid Waste Authority Act may provide that each security authorized by such a resolution shall recite that it is issued under authority of that act. Such recital shall conclusively impart full compliance with all of the provisions of that act, and all securities issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Section 51

Section 51. LIMITATIONS UPON PAYMENT OF SECURITIES.--The payment of securities shall not be secured by an encumbrance, mortgage or other pledge of property of the authority, except for revenues, income, tax proceeds and other money pledged for the payment of securities. No property of the authority, subject to such exception, shall be liable to be forfeited or taken in payment of the securities.

Section 52

Section 52. LIMITATIONS UPON INCURRING ANY DEBT.--Nothing in the Solid Waste Authority Act shall be construed as creating or authorizing the creation of an indebtedness on the part of any municipality or other public body included in the authority or elsewhere located.

Section 53

Section 53. SECURITY DETAILS.--Any securities authorized to be issued in the Solid Waste Authority Act shall bear the date or dates, shall be in the denomination or denominations, shall mature at the time or times but in no event exceeding forty years from their date or any shorter limitation provided in that act, shall bear interest which may be evidenced by one or two sets of coupons, payable annually or semiannually, except that the first coupon or coupons, if any, appertaining to any security may represent interest for any period not in excess of one year, as may be prescribed by resolution or other instrument; and the securities and any coupons shall be payable in the medium of payment at any banking institution or other place or places within or without the state, including but not limited to the office of the treasurer of the county in which the authority is located wholly or in part, as determined by the board, and the securities at the option of the board may be in one or more series, may be made subject to prior redemption in advance of maturity in the order or by lot or otherwise at the time or times without or with the payment of the premium or premiums not exceeding six percent of the principal amount of each security so redeemed, as determined by the board.

Section 54

Section 54. CAPITALIZATION OF COSTS.--Any resolution authorizing the issuance of securities or other instrument appertaining thereto may capitalize interest on any securities during any period of construction or other acquisition estimated by the board and one year thereafter and any other cost of any project by providing for the payment of the amount capitalized from the proceeds of the securities.

Section 55

Section 55. OTHER SECURITY DETAILS.--Securities may be issued in such manner, in such form, with such recitals, terms, covenants and conditions and with such other details as may be provided by the board in the resolution authorizing the securities, or other instrument appertaining thereto, except as otherwise provided in the Solid Waste Authority Act.

Section 56

Section 56. REISSUANCE OF SECURITIES.--Any resolution authorizing the issuance of securities or any other instrument appertaining thereto may provide for their reissuance in other denominations in negotiable or nonnegotiable form and otherwise in such manner and form as the board may determine.

Section 57

Section 57. NEGOTIABILITY.--Subject to the payment provisions specifically provided in the Solid Waste Authority Act, the notes, warrants, bonds, any interest coupons thereto attached, temporary bonds and interim debentures shall be fully negotiable within the meaning of and for all the purposes of the Uniform Commercial Code except as the board may otherwise provide. Each holder of such security, or of any coupon appertaining thereto, by accepting such security or coupon shall be conclusively deemed to have agreed that such security or coupon, except as otherwise provided, is and shall be fully negotiable within the meaning and for all purposes of that code.

Section 58

Section 58. SINGLE BONDS.--Notwithstanding any other provision of law, the board in any proceedings authorizing securities under the Solid Waste Authority Act:

A. may provide for the initial issuance of one or more securities, in this section called "bond", aggregating the amount of the entire issue or a designated portion thereof;

B. may make such provision for installment payments of the principal amount of any such bond as it may consider desirable;

C. may provide for the making of any such bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bonds; and

D. may further make provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into securities of smaller denominations, which

securities of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest or both.

Section 59

Section 59. LOST OR DESTROYED SECURITIES.--If lost or completely destroyed, any security may be reissued in the
form and tenor of the lost or destroyed security upon the owner furnishing to the satisfaction of the board:

A. proof of ownership;

B. proof of loss or destruction;

C. a surety bond in twice the face amount of the security and any coupons; and

D. payment of the cost of preparing and issuing the new security.

Section 60

Section 60. EXECUTION OF SECURITIES.--Any security shall be executed in the name of and on behalf of the authority and signed by the chairman, with the seal of the authority affixed thereto and attested by the secretary, except for securities issued in book entry or similar form without the delivery of physical securities.

Section 61

Section 61. INTEREST COUPONS.--Except for any bonds which are registrable for payment of interest, interest coupons payable to bearer and appertaining to the bonds shall be issued and shall bear the original or facsimile signature of the chairman.

Section 62

Section 62. FACSIMILE SIGNATURES.--Any of the officers, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature any security authorized in the Solid Waste Authority Act; provided that such a filing is not a condition of execution with a facsimile signature of any interest coupon, and provided that at least one signature required or permitted to be placed on each such security, excluding any interest coupon, shall be manually subscribed. An officer's facsimile signature has the same legal effect as his manual signature.

Section 63

Section 63. FACSIMILE SEAL.--The secretary may cause the seal of the authority to be printed, engraved, stamped or otherwise placed in facsimile on any security. The facsimile seal has the same legal effect as the impression of the seal.

Section 64

Section 64. SIGNATURES OF PREDECESSORS IN OFFICE.--The securities and any coupons bearing the signatures of the officers in office at the time of the signing shall be the valid and binding obligations of the authority, notwithstanding that before the delivery thereof and payment therefor, any or all of the persons whose signatures appar on those securities or coupons shall have ceased to fill their respective offices.

Section 65

Section 65. FACSIMILE SIGNATURES OF PREDECESSORS.--Any officer authorized or permitted in the Solid Waste Authority Act to sign any security or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt as and for his own facsimile signature the facsimile signature of his predecessor in office in the event that such facsimile signature appears upon the security or coupons appertaining thereto, or upon both the security and such coupons.

Section 66

Section 66. REPURCHASE OF SECURITIES.--The securities may be repurchased by the authority out of any funds available for such purpose from the project to which they pertain at a price of not more than the principal amount thereof and accrued interest, plus the amount of the premium, if any, which might, on the next redemption date of such securities, be paid to the holders thereof if such securities should be called for redemption on such date pursuant to their terms, and all securities so repurchased shall be canceled.

Section 67

Section 67. CUSTOMARY PROVISIONS.--The resolution authorizing the securities or other instrument appertaining thereto may contain any agreement or provision customarily contained in instruments securing securities, including without limiting the generality of the foregoing, covenants designated in Section 73 of the Solid Waste Authority Act.

Section 68

Section 68. SALE OF SECURITIES.--Any securities authorized in the Solid Waste Authority Act, except for warrants not issued for cash and except for temporary bonds issued pending preparation of definitive bond or bonds, shall be sold at public or private sale at, above or below par at a net effective interest rate not exceeding the

maximum net effective interest rate permitted by the Public Securities Act as amended and supplemented by the Solid Waste Authority Act.

Section 69

Section 69. SALE DISCOUNT OR COMMISSION PROHIBITED.--No discount, except as provided by the Solid Waste Authority Act, or commission shall be allowed or paid on or for any security sale to any purchaser or bidder, directly or indirectly, but nothing contained in that act shall be construed as prohibiting the board from employing legal, fiscal, engineering and other expert services in connection with any project or facilities authorized in that act and with the authorization, issuance and sale of securities.

Section 70

Section 70. APPLICATION OF PROCEEDS.--All money received from the issuance of any securities authorized in the Solid Waste Authority Act shall be used solely for the purpose for which issued and the cost of any project thereby delineated. Any accrued interest and any premium shall be applied to the payment of the interest on, or the principal of, the securities, or both interest and principal, or shall be deposited in a reserve therefor, as the board may determine.

Section 71

Section 71. USE OF UNEXPENDED PROCEEDS.--Any unexpended balance of such security proceeds remaining after the completion of the acquisition or improvement and equipment of the project or the completion of the purpose for which such securities were issued shall be paid immediately into the fund created for the payment of the principal of such securities and shall be used therefor, subject to the provisions as to the times and methods for their payment as stated in the securities and the proceedings authorizing or otherwise appertaining to their issuance, or so paid into a reserve therefor.

Section 72

Section 72. VALIDITY UNAFFECTED BY USE OF PROCEEDS.--The validity of such securities shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition or improvement and equipment of the project or the proper completion of any project for which the securities are issued. The purchaser or purchasers of the securities shall in no manner be responsible for the application of the proceeds of the securities by the authority or any of its officers, agents and employees.

Section 73

Section 73. COVENANTS IN SECURITY PROCEEDINGS.--Any resolution or trust indenture authorizing the issuance of securities or any other instrument appertaining thereto may contain covenants and other provisions, notwithstanding such covenants and provisions may limit the exercise of powers conferred by the Solid Waste Authority Act, in order to secure the payment of such securities in agreement with the holders and owners of such securities, as the board may determine, including without limiting the generality of the foregoing, all such acts and things as may be necessary or convenient or desirable in order to secure the authority's securities, or in the discretion of the board tend to make the securities more marketable, notwithstanding that such covenant, act or thing may not be enumerated in that act, it being the intention of that act to give the authority power to do all things in the issuance of securities and for their security except as specifically limited in that act.

Section 74

Section 74. REMEDIES OF SECURITY HOLDERS.--Subject to any contractual limitations binding upon the holders of any issue or series of securities, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion, percentage or number of such holders, and subject to any prior or superior rights of others, any holder of securities, or trustee therefor, shall have the right and power for the equal benefit and protection of all holders of securities similarly situated:

A. by mandamus or other suit, action or proceeding at law or in equity to enforce his rights against the authority and the board and any of its officers, agents and employees, and to require and compel the authority or the board or any such officers, agents or employees to perform and carry out its and their duties, obligations or other commitments under the Solid Waste Authority Act and its and their covenants and agreements with the holder of any security;

B. by action or suit in equity to require the authority and the board to account as if they were the trustee of an express trust;

C. by action or suit in equity to have appointed a receiver, which receiver may enter and take possession of any system or project or services revenues from which are pledged for the payment of the securities, prescribe sufficient fees derived from the operation thereof, and collect, receive and apply all revenues or other money pledged for the payment of the securities in the same manner as the authority itself might do in accordance with the obligations of the authority; and

D. by action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the holder of any security and to bring suit thereupon.

Section 75

Section 75. LIMITATIONS UPON LIABILITIES.--Neither the directors nor any person executing securities issued under the Solid Waste Authority Act shall be liable personally on the securities by reason of the issuance thereof. Securities issued pursuant to that act shall not be in any way a debt or liability of the state or of any municipality or other public body and shall not create or constitute any indebtedness, liability or obligation of the state or of any such municipality or other public body, either legal, moral or otherwise, and nothing contained in that act shall be construed to authorize the authority to incur any indebtedness on behalf of or in any way to obligate the state or any municipality or other public body, except the authority and except as otherwise expressly stated or necessarily implied in that act.

Section 76

Section 76. CANCELLATION OF PAID SECURITIES.--Whenever the treasurer shall redeem and pay any of the securities issued under the provisions of the Solid Waste Authority Act, he shall cancel the same by writing across the face thereof or stamping thereon the word "paid", together with the date of its payment, sign his name thereto and transmit the same to the secretary, taking his receipt therefor, which receipt shall be filed in the records of the authority. The secretary shall credit the treasurer on his books for the amount so paid.

Section 77

Section 77. INTEREST AFTER MATURITY.--No interest shall accrue on any security in the Solid Waste Authority Act authorized after it becomes due and payable; provided, funds for the payment of the principal of and the interest on the security and any prior redemption premium due are available to the paying agent for such payment without default.

Section 78

Section 78. REFUNDING BONDS.--Any bonds issued under the Solid Waste Authority Act may be refunded, without an election, but subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto, pursuant to a resolution or resolutions to be adopted by the board in the manner provided in that act for the issuance of other securities, to refund, pay or discharge all or any part of the authority's outstanding bonds, heretofore or hereafter issued, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs or effecting other economies or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or any project, or any combination thereof.

Section 79

Section 79. METHOD OF ISSUANCE.--Any bonds issued for refunding purposes may either be delivered in exchange for the outstanding bonds authorized to be

refunded or may be sold as provided in the Solid Waste Authority Act for the sale of other bonds.

Section 80

Section 80. LIMITATIONS UPON ISSUANCE.--No bonds may be refunded under the Solid Waste Authority Act unless the holders of the bonds voluntarily surrender them for exchange or payment or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds. Provision shall be made for paying the bonds within that period of time. No maturity of any bonds refunded may be extended over fifteen years nor may any interest on the bonds be increased to any coupon rate exceeding the maximum net effective interest rate permitted by the Public Securities Act. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds refunded so long as provision is duly and sufficiently made for their payment.

Section 81

Section 81. USE OF REFUNDING BOND PROCEEDS.--The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds to be refunded or be placed in escrow to be applied to the payment of the bonds upon their presentation; provided, however, any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest or the principal or both interest and principal or may be deposited in a reserve therefor as the board may determine. The escrow shall not necessarily be limited to refunding bond proceeds but may include other money made available for such purpose. Any escrowed proceeds pending such use may be invested or reinvested in federal securities. Escrowed proceeds and investments, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds refunded as they become due at their respective maturities or due at designated prior redemption date or dates upon which the board shall exercise a prior redemption option. Upon establishment of an escrow in accordance with this section, the refunded bonds payable therefrom no longer constitute outstanding indebtedness of the authority.

Section 82

Section 82. PAYMENT OF REFUNDING BONDS.--Refunding revenue bonds may be made payable from any revenues derived from the operation of the solid waste system or any project, notwithstanding the pledge of such revenues for the payment of the outstanding bonds issued by the authority which are to be refunded is thereby

modified. Any refunding revenue bonds shall not be made payable from taxes unless the bonds thereby refunded are payable from taxes.

Section 83

Section 83. COMBINATION OF REFUNDING AND OTHER BONDS.--Bonds for refunding and bonds for any other purpose or purposes authorized in the Solid Waste Authority Act may be issued separately or issued in combination in one series or more.

Section 84

Section 84. SUPPLEMENTAL PROVISIONS.--Except as specifically provided or necessarily implied in the Solid Waste Authority Act, the relevant provisions of that act pertaining to bonds generally shall be equally applicable in the authorization and issuance of refunding bonds, including their terms and security, the bond resolution, trust indenture, taxes and service charges and other aspects of the bonds.

Section 85

Section 85. BOARD'S DETERMINATION FINAL.--The determination of the board that the limitations imposed upon the issuance of refunding bonds under the Solid Waste Authority Act have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

Section 86

Section 86. ISSUANCE OF INTERIM DEBENTURES AND PLEDGE OF BONDS AS COLLATERAL SECURITY.--Notwithstanding any limitation or other provision in the Solid Waste Authority Act, whenever a majority of the qualified electors of the authority voting on a proposal to issue bonds has authorized the authority to issue bonds for any purpose authorized in that act, the authority is authorized to borrow money without any other election in anticipation of taxes, the proceeds of the bonds or any other revenues of the authority, or any combination thereof, and to issue interim debentures to evidence the amount so borrowed. Interim debentures may mature at such time not exceeding a period of time equal to the estimated time needed to effect the purpose for which the bonds are so authorized to be issued, plus two years, as the board may determine. Except as otherwise provided in this section and in Sections 87 and 88 of the Solid Waste Authority Act, interim debentures shall be issued as provided in that act for securities in Sections 66 and 68 of that act. Taxes, other revenues of the authority, including without limiting the generality of the foregoing proceeds of bonds to be thereafter issued or reissued or bonds issued for the purpose of securing the payment of interim debentures may be pledged for the purpose of securing the payment of the interim debentures. Any bonds pledged as collateral security
for the payment of any interim debentures shall mature at such time as the board may determine, but in no event exceeding forty years from the date of either any of such bonds or any of such interim debentures, whichever date is the earlier. Any such bonds

pledged as collateral security shall not be issued in an aggregate principal amount exceeding the aggregate principal amount of the interim debenture secured by a pledge of such bonds nor shall they bear interest at any time which with any interest accruing at the same time on the interim debenture so secured exceeds six percent per year.

Section 87

Section 87. INTERIM DEBENTURES NOT TO BE EXTENDED.--No interim debenture issued pursuant to the provisions of Section 86 of the Solid Waste Authority Act shall be extended or funded except by the issuance or reissuance of a bond or bonds in compliance with Section 88 of that act.

Section 88

Section 88. FUNDING.--For the purpose of funding any interim debenture or interim debentures, any bond or bonds pledged as collateral security to secure the payment of such interim debenture or interim debentures may be reissued without an election, and any bonds not previously issued but authorized to be issued at an election for a purpose the same as or encompassing the purpose for which the interim debentures were issued may be issued for such a funding. Any such bonds shall mature at such time as the board may determine, but in no event exceeding forty years from the date of either any of the interim debentures so funded or any of the bonds so pledged as collateral security, whichever date is the earlier. Bonds for funding, including but not necessarily limited to any such reissued bonds, and bonds for any other purpose or purposes authorized in the Solid Waste Authority Act may be issued separately or issued in combination in one series or more. Except as otherwise provided in Sections 83 and 88 of that act and in this section, any such funding bonds shall be issued as is provided for refunding bonds in Sections 78 through 84 of the Solid Waste Authority Act and provided for securities in Section 44 and Sections 81 through 87 of that act.

Section 89

Section 89. PUBLICATION OF RESOLUTION OR PROCEEDINGS.--In its discretion, the board may provide for the publication once in full of either any resolution or other proceedings adopted by the board ordering the issuance of any securities or, in the alternative, of notice thereof, which resolution, other proceedings or notice so published shall state the fact and date of such adoption and the place where such resolution or other proceedings have been filed for public inspection and also the date of the first publication of such resolution, other proceedings or notice and also state that any action or proceeding of any kind or nature in any court questioning the validity of the creation and establishment of the authority, or the validity or proper authorization of securities provided for by the resolution or other proceedings, or the validity of any covenants, agreements or contracts provided for by the resolution or other proceedings, shall be commenced within twenty days after the first publication of such resolution, other proceedings or notice.

Section 90

Section 90. FAILURE TO CONTEST LEGALITY CONSTITUTES BAR.--If no such action or proceedings are commenced or instituted within twenty days after the first publication of such resolution, other proceedings or notice, then all residents and taxpayers and owners of property in the authority and all public bodies and all other persons whatsoever shall be forever barred and foreclosed from instituting or commencing any action or proceeding in any court or from pleading any defense to any action or proceedings questioning the validity of the creation and establishment of the authority, the validity or proper authorization of such securities or the validity of any such covenants, agreements or contracts. The securities, covenants, agreements and contracts shall be conclusively deemed to be valid and binding obligations in accordance with their terms and tenor.

Section 91

Section 91. CONFIRMATION OF CONTRACT PROCEEDINGS.--In its discretion, the board may file a petition at any time in the district court in and for any county in which the authority is located wholly or in part, praying a judicial examination and determination of any power conferred or of any tax or rates or charges levied or of any act, proceeding or contract of the authority, whether or not the contract has been executed, including proposed contracts for the acquisition, improvement, equipment, maintenance, operation or disposal of any project for the authority. Such petition shall set forth the facts whereon the validity of such power, assessment, act, proceeding or contract is founded and shall be verified by the chairman of the board. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication and posting as provided in the Solid Waste Authority Act. Notice of the filing of the petition shall be given by the clerk of the court, under the seal thereof, stating in brief outline the contents of the petition and showing where a full copy of any contract therein mentioned may be examined. The notice shall
be served by publication in at least five consecutive issues of a weekly newspaper of general circulation published in the county in which the principal office of the authority is located, and by posting the same in the office of the authority at least thirty days prior to the date fixed in the notice for the hearing on the petition. Jurisdiction shall be complete after such publication and posting. Any owner of property in the authority or person interested in the contract or proposed contract or in the premises may appear and move to dismiss or answer the petition at any time prior to the date fixed for the hearing or within such further time as may be allowed by the court, and the petition shall be taken as confessed by all persons who fail so to appear.

Section 92

Section 92. REVIEW AND JUDGMENT OF COURT.--The petition and notice shall be sufficient to give the court jurisdiction, and upon hearing the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference thereto and render such judgment and decree thereon as

the case warrants. Costs may be divided or apportioned among any contesting parties in the discretion of the trial court. Review of the judgment of the court may be had as in other similar cases, except that such review shall be applied for within thirty days after the time of the rendition of such judgment or within such additional time as may be allowed by the court within thirty days. The rules of civil procedure shall govern in matters of pleading and practice where not otherwise specified in the Solid Waste Authority Act. The court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties.

Section 93

Section 93. PURPOSE OF TAX EXEMPTIONS.--The effectuation of the powers authorized in the Solid Waste Authority Act shall and will be in all respects for the benefit of the people of the state, including but not necessarily limited to those residing in the authority exercising any power under that act, for the improvement of their health and living conditions and for the increase of their commerce and prosperity.

Section 94

Section 94. PROPERTY EXEMPT FROM GENERAL TAXES.--The authority shall not be required to pay any general (ad valorem) taxes upon any property appertaining to any project authorized in the Solid Waste Authority Act and acquired within the state nor the authority's interest therein.

Section 95

Section 95. SECURITIES AND INCOME THEREFROM EXEMPT.--Securities issued under the Solid Waste Authority Act and the income therefrom shall forever be and remain free and exempt from taxation by the state, the authority and any other public body, except transfer, inheritance and estate taxes.

Section 96

Section 96. FREEDOM FROM JUDICIAL PROCESS.--Execution or other judicial process shall not issue against any property of the authority authorized in the Solid Waste Authority Act, nor shall any judgment against the authority be a charge or lien upon its property.

Section 97

Section 97. RESORT TO JUDICIAL PROCESS.--Section 96 of the Solid Waste Authority Act does not apply to or limit the right of the holder of any security, his trustee or any assignee of all or part of his interest, the federal government when it is a party to any contract with the authority, and any other obligee under that act to foreclose,

otherwise to enforce, and to pursue any remedies for the enforcement of any pledge or lien given by the authority on the proceeds of taxes, service charges or other revenues.

Section 98

Section 98. LEGAL INVESTMENTS IN SECURITIES.--It shall be legal for the state and any of its agencies, departments, instrumentalities, corporations or political subdivisions or any political or public corporation, any bank, trust company, banker, savings bank or institution, any building and loan association, savings and loan association, investment company and any other person carrying on a banking or investment business, any insurance company, insurance association or any other person carrying on an insurance business and any executor, administrator, curator, trustee or any other fiduciary to invest funds or money in their custody in any of the securities authorized to be issued pursuant to the provisions of the Solid Waste Authority Act. Such securities shall be authorized security for all public deposits. Nothing contained in this section with regard to legal investments shall be construed as relieving any public body or other person of any duty of exercising reasonable care in selecting securities.

Section 99

Section 99. CIVIL RIGHTS.--The authority damaged by any such act may also bring a civil action for damages sustained by any such act, and in such proceeding the prevailing party shall also be entitled to reasonable attorneys' fees and costs of court.

Section 100

Section 100. LIBERAL CONSTRUCTION.--The Solid Waste Authority Act, being necessary to secure and preserve the public health, safety and general welfare, the rule of strict consideration shall have no application to that act, but it shall be liberally construed to effect the purposes and objects for which that act is intended. SB 784

CHAPTER 320

RELATING TO INSURANCE; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE INSURANCE CODE.

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

Section 1

Section 1. Section 59A-1-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 1) is repealed and a new Section 59A-1-1 NMSA 1978 is enacted to read:

"59A-1-1. SHORT TITLE.--Chapter 59A NMSA 1978 shall be known and may be cited as the New Mexico Insurance Code and, in this chapter, may also be referred to as the "Insurance Code"."

Section 2

Section 2. Section 59A-2-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 22) is amended to read:

"59A-2-4. STAFF.--

A. With the corporation commission's approval, the superintendent may designate an employee of the insurance department as chief deputy superintendent, who shall be acting superintendent when the office of superintendent is vacant or the superintendent is unable to perform the duties of that office because of mental or physical disability.

B. With the corporation commission's approval, the superintendent may employ such other administrative and clerical assistants and such examiners and other personnel as may be required for insurance department operations.

C. Subject to applicable state personnel laws, the corporation commission may, with or without the superintendent's recommendation, remove any deputy, assistant, or other insurance department personnel.

D. With the corporation commission's approval and subject to applicable state personnel laws, the superintendent may make reasonable rules and regulations regarding staff development through job-related college courses, professional programs or other training programs that are commensurate with the duties and responsibilities of all professional and other personnel whose positions require specialized knowledge of insurance."

Section 3

Section 3. Section 59A-4-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 49) is amended to read:

"59A-4-5. EXAMINATION OF INSURERS.--

A. For the purpose of determining financial condition, fulfillment of contractual obligations, methods of doing business, treatment accorded policyholders, and compliance with law, the superintendent shall, as often as he deems advisable, examine or investigate the affairs, transactions, accounts, records and assets of each authorized insurer, and of any other person as to any matter which the superintendent in his sole discretion has determined to be relevant to the financial affairs of the insurer or to the examination. Except as expressly otherwise provided, the superintendent shall

so examine each domestic insurer not less frequently than every five years. In scheduling and determining the nature, scope and frequency of the examinations, the superintendent may consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, evidence of market practices, policyholder complaints and other criteria as set forth in the handbooks for financial or market conduct examiners adopted by the national association of insurance commissioners in effect when the superintendent exercises discretion under this section.

B. For like purposes, the superintendent shall examine each insurer, or proposed insurer, applying for an initial certificate of authority to transact insurance in this state.

C. Whenever the superintendent examines the affairs of any domestic insurer he may invite the representative of the insurance supervisory agency of at least one other state, if any, in which the insurer is an authorized insurer, to participate in the examination.

D. Until January 1, 1994, in lieu of making his own examination of a foreign or alien insurer the superintendent may accept a full report of an examination of the insurer made by competent examiners as of a date not more than one year prior and participated in by at least two states in which the insurer was authorized to transact insurance. The report shall be certified by the insurance supervisory official of the state under whose jurisdiction the examination was conducted. The superintendent may, at discretion, so accept such report of examination so made as of a date more than one year but not more than three years prior; and with respect to an alien insurer, the superintendent may at discretion so accept such a report of recent examination made by the insurance supervisory official of the port of entry state of the insurer into the United States without participation therein of another state.

E. After January 1, 1994, examination reports prepared by examiners employed by other state insurance departments may be accepted only if:

(1) made as of a date not more than five years prior to acceptance and the examiner in charge was employed by and under the direction of the insurance commissioners of the insurer's state of domicile or port of entry, which insurance department was at the time of the examination accredited under the financial regulation standards and accreditation program of the national association of insurance commissioners; or

(2) made as of a date not more than three years prior to acceptance and the examination was performed under the supervision of an accredited insurance department or with the participation of one or more examiners who were employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a

manner consistent with the standards and procedures required by their insurance department.

F. As far as practical the superintendent shall conduct examination of a foreign or alien insurer in cooperation with the insurance supervisory officials of other states in which the insurer is authorized to transact business."

Section 4

Section 4. Section 59A-4-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 50) is amended to read:

"59A-4-6. EXAMINERS AND SPECIALISTS.--

A. The superintendent may appoint one or more competent individuals, sufficiently knowledgeable in applicable accounting and operations, as examiners to represent the superintendent in an examination, and shall fix the reasonable compensation of the examiners.

B. The superintendent may also employ and fix reasonable compensation of independently contracting accountants knowledgeable of insurance accounting principles and practices, actuaries, attorneys, appraisers and other specialists not otherwise part of the insurance department staff, as the superintendent deems necessary for the examination, the cost of which shall be borne by the company which is the subject of the examination. All specialists shall be under the direction and control of the superintendent.

C. All examiners and specialists shall be subject to Sections 59A-2-5 and 59A-2-6 NMSA 1978."

Section 5

Section 5. Section 59A-4-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 51, as amended) is repealed and a new Section 59A-4-7 is enacted to read:

"59A-4-7. CONDUCT OF EXAMINATION--ACCESS TO INFORMATION--CORRECTION OF RECORDS--PENALTIES.--

A. Upon determining that an examination should be conducted, the superintendent or the superintendent's designee shall issue an order appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the national association of insurance commissioners. The superintendent may also employ such other guidelines or procedures as the superintendent may deem appropriate.

B. Every company or person from whom information is sought, its officers, directors and agents must provide to the examiners appointed under Subsection A of this section timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of, any license or authority held by the company to engage in an insurance or other business subject to the superintendent's jurisdiction.

C. The superintendent or any of his examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the superintendent may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

D. If the superintendent or examiner finds any accounts or records to be inadequate or inadequately or improperly kept or posted, the superintendent may employ experts to reconstruct, rewrite, post or balance them at the expense of the person being examined if such person has failed to maintain, complete or correct such records or accounting after the superintendent or examiner has given written notice and reasonable opportunity to do so.

E. Any individual giving false testimony or information as to any matter material to the examination with knowledge of such falsity, shall upon conviction thereof be guilty of a fourth degree felony and shall be punished by a fine not to exceed twenty thousand dollars ($20,000). Any individual who willfully refuses or fails to attend at the examination, or to produce books, records, accounts or files requested, or to give the superintendent or the examiner full and truthful information in writing in response to any written inquiry of the superintendent or examiner in regard to matters under examination, or to appear and testify under oath before the superintendent or examiner when so requested and given reasonable opportunity to do so, or who willfully obstructs or interferes with the superintendent or examiner in the conduct of the examination, shall upon conviction thereof be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000) for each such offense.

F. Nothing contained in Chapter 59A, Article 4 NMSA 1978 shall be construed to limit the superintendent's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

G. Nothing contained in Chapter 59A, Article 4 NMSA 1978 shall be construed to limit the superintendent's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the superintendent may, in his sole discretion, deem appropriate."

Section 6

Section 6. Section 59A-4-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 54, as amended) is amended to read:

"59A-4-10. EXAMINATION REPORT--DISTRIBUTION--CONFERENCE AND HEARING--ADOPTING.--

A. Upon completion of the examination and receipt of the examination report, the superintendent shall furnish two copies thereof to the person examined and shall allow the person a reasonable period, but not to exceed twenty days, within which to review the report and to file with the superintendent in writing requested corrections or modifications, with the reasons therefor. For good cause shown, the superintendent may grant reasonable extension of the review period.

B. As soon as reasonably possible after the superintendent's receipt of such request, the person examined shall confer with the superintendent and examiner relative to requested corrections and modification. If through such conference the report is acceptable to the person examined with such changes as the superintendent approves, the superintendent shall adopt the report as so changed. If the report is not acceptable, the superintendent shall hold a hearing with respect to the report and adopt the report with such changes as result with the superintendent's approval from the conference and hearing.

C. If no changes are requested, upon expiration of the period allowed by the superintendent for review of the report, the superintendent may adopt the report.

D. At any point prior to adoption of the examination report, the superintendent may reject the report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and the examiner in charge shall subsequently report in accordance with Section 59A-4-9 NMSA 1978."

Section 7

Section 7. Section 59A-4-11 NMSA 1978 (being Laws 1984, Chapter 127, Section 55) is amended to read:

"59A-4-11. EXAMINATION REPORT--FILING FOR PUBLIC INSPECTION--CONFIDENTIALITY.--

A. When the superintendent has adopted a report of examination he shall so notify the examinee in writing and file the report for public inspection in the insurance department. If deemed advisable the superintendent may, after adoption of the report, cause the results of the examination to be published in one or more newspapers of general circulation in the state. The superintendent shall expedite review and adoption of the report and cause it to be filed for public inspection as soon as reasonably possible.

B. Except as expressly otherwise provided, pending, during or after examination of any insurer or other person, the superintendent shall not make public, or permit to be made public, any financial statement, report or finding affecting the status, standing or rights of the insurer or person until after the report of examination has been adopted by the superintendent, and all working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the superintendent or any other person in the course of an examination shall remain confidential, are not subject to subpoena and may not be made public by the superintendent or any other person, except to the extent permitted by Sections 59A-4-7 and 59A-4-13 NMSA 1978. The superintendent may grant access to the national association of insurance commissioners on condition that it agree in writing prior to receiving the information to accord it the same confidential treatment as required by this section, unless the prior written consent of the insurer or person to which it pertains has been obtained."

Section 8

Section 8. Section 59A-4-13 NMSA 1978 (being Laws 1984, Chapter 127, Section 57) is amended to read:

"59A-4-13. EXAMINATION REPORT AS EVIDENCE--PROCEEDINGS DURING EXAMINATION.--

A. In any proceeding by or against the examinee or any officer or agent thereof the examination report as adopted by the superintendent shall be admissible as evidence of the facts stated therein, and shall constitute prima facie evidence of such facts.

B. Nothing contained in the Insurance Code shall prevent or be construed as prohibiting the superintendent from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with Chapter 59A, Article 4 NMSA 1978.

C. In the event the superintendent determines that regulatory action is appropriate as a result of any examination, whether completed, adopted or not, he may initiate any proceedings or actions as provided by law, and the superintendent or examiners may testify and give evidence, including any evidence received by them during the course of the examination."

Section 9

Section 9. Section 59A-4-19 NMSA 1978 (being Laws 1984, Chapter 127, Section 63) is amended to read:

"59A-4-19. TESTIMONY COMPELLED--IMMUNITY.--

A. If any individual refuses to attend or testify or to produce any books, papers, records, contracts, correspondence or other documents in connection with any examination, hearing or investigation on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to penalty or forfeiture, and is nonetheless, upon written application by a prosecuting attorney, directed by a court of competent jurisdiction in a written order finding that the testimony, or the record, document or other object may be necessary to the public interest and that the person has refused or is likely to refuse to testify or to produce the record, document or other subject on the basis of his privilege against self-incrimination, to give such testimony or produce such evidence, he must comply with such direction; but no testimony so given or evidence produced shall be used against him upon any criminal action, investigation or proceedings. However, no such individual so testifying or producing evidence shall be exempt from:

(1) prosecution or punishment for any perjury committed by him in such testimony, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury; or

(2) refusal, suspension or revocation of any license, permission or authority conferred pursuant to the Insurance Code.

B. Any such individual may execute, acknowledge and file in the offices of the superintendent and attorney general a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or court, tribunal, grand jury or otherwise; and if such testimony or evidence is so received or produced the individual shall not be entitled to any immunity or privileges on account of the testimony or evidence given or produced."

Section 10

Section 10. A new section of the Insurance Code, Section 59A-4-21 NMSA 1978, is enacted to read:

"59A-4-21. IMMUNITY FROM CIVIL LIABILITY.--

A. No cause of action shall arise nor shall any liability be imposed against the superintendent, the superintendent's authorized representatives or any examiner appointed by the superintendent for any statements made or conduct performed in good faith while carrying out the provisions of Chapter 59A, Article 4 NMSA 1978.

B. No cause of action shall arise nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the superintendent or the superintendent's authorized representative or examiner pursuant to an examination made under Chapter 59A, Article 4 NMSA 1978, if such act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

C. This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in Subsection A of this section.

D. A person identified in Subsection A of this section shall be entitled to an award of attorneys' fees and costs if he is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of Chapter 59A, Article 4 NMSA 1978 and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated."

Section 11

Section 11. Section 59A-5-27 NMSA 1978 (being Laws 1984, Chapter 127, Section 94) is amended to read:

"59A-5-27. DURATION OF SUSPENSION--INSURER'S OBLIGATIONS DURING SUSPENSION--REINSTATEMENT.--

A. Suspension of an insurer's certificate of authority shall be for a fixed period of time not to exceed two years or until the occurrence of a specific event necessary for remedying the reasons for suspension. During the suspension period the superintendent may modify or rescind the suspension by further order.

B. During the suspension period the insurer shall not solicit or write any new business in this state, but shall file its annual statement, pay fees, licenses and taxes as required under the Insurance Code, and may service its business already in force in this state, as if the certificate of authority had continued in full force. Upon

failure of the insurer to continue its certificate of authority in accordance with this subsection, the insurer's certificate of authority shall be revoked.

C. If the suspension of the certificate of authority is for a fixed period of time and the certificate of authority has not been otherwise terminated, upon expiration of the suspension period, the insurer's certificate of authority shall automatically reinstate unless the superintendent finds that the insurer is not in compliance with the requirements of the Insurance Code.

D. If the suspension of the certificate of authority was until the occurrence of a specific event and the certificate of authority has not been otherwise terminated, upon the presentation of evidence satisfactory to the superintendent that the specific event has occurred, the insurer's certificate of authority shall be reinstated unless the superintendent finds that the insurer is otherwise not in compliance with the requirements of the Insurance Code. The superintendent shall promptly notify the insurer of such reinstatement, and the insurer shall not consider its certificate of authority reinstated until so notified by the superintendent. If satisfactory evidence as to the occurrence of the specific event has not been presented to the superintendent within two years of the date of the suspension, the certificate of authority shall be revoked.

E. Nothing contained in this section shall prevent the superintendent from revoking a certificate of authority at any time upon any ground specified in the Insurance Code."

Section 12

Section 12. Section 59A-5-29 NMSA 1978 (being Laws 1984, Chapter 127, Section 96, as amended) is amended to read:

"59A-5-29. ANNUAL STATEMENT.--

A. Each authorized insurer shall annually on or before March 1, or within any reasonable extension of time which the superintendent for good cause may have granted on or before such date, file with the superintendent and with the national association of insurance commissioners a full and true statement of its financial condition and of its transactions and affairs as of the December 31 next preceding. The statement shall be prepared in the form of the annual statement blank prescribed by the national association of insurance commissioners for use in the United States for the type of insurer and kinds of insurance to be reported upon, in accordance with the annual statement instructions and the accounting practices and procedures manual published by the national association of insurance commissioners, or such other form and instructions as the superintendent may prescribe, and supplemented by additional information reasonably required by the superintendent; the superintendent may require that the annual statement data also be filed in electronically readable format. The statement shall be verified by the oath of the insurer's president or vice president and

secretary or actuary, as applicable; or, in absence of the foregoing, by two other principal officers; or if a reciprocal insurer or Lloyds insurer, the oath of the attorney-in-fact or its like officers if a corporation.

B. The statement of an alien insurer shall be verified by its United States manager or other officer duly authorized and shall relate only to the insurer's transactions and affairs in the United States unless the superintendent requires otherwise. If the superintendent requires a statement as to the alien insurer's affairs throughout the world, the insurer shall file such statement with the superintendent as soon as reasonably possible.

C. If the insurer's statement is in any language other than English or in monetary amounts other than United States dollars, the statement shall be accompanied by an English-language translation and monetary amounts shall be shown in United States dollars with statement of the basis upon and date as of which the monetary conversion was made.

D. The superintendent may suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due.

E. At time of filing the insurer shall pay the fee for filing its annual statement with the superintendent as prescribed by Section 59A-6-1 NMSA 1978, and pay to the national association of insurance commissioners the fee established for filing, review or processing of the information, unless such fee has been disapproved by the superintendent.

F. In the absence of actual malice, members of national association of insurance commissioners, their duly authorized committees, subcommittees and task forces, their delegates, employees and all others charged by the superintendent or the national association of insurance commissioners with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement blanks shall be acting as agents of the superintendent under the authority of the Insurance Code and shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review and analysis or dissemination of the data and information collected from the filings required hereunder.

G. As to publication of nonstatutory financial statements refer to Section 59A-16-9 NMSA 1978."

Section 13

Section 13. Section 59A-5-29.1 NMSA 1978 (being Laws 1986, Chapter 78, Section 2) is repealed and a new Section 59A-5-29.1 NMSA 1978 is enacted to read:

"59A-5-29.1. QUARTERLY REPORTS.--The superintendent may, in his sole discretion at any time and for any reason, including those set forth in Sections 59A-41-

24 through 59A-41-26 NMSA 1978, require any authorized insurer to file quarterly financial statements with the superintendent and with the national association of insurance commissioners in accordance with the provisions of Section 59A-5-29 NMSA 1978."

Section 14

Section 14. Section 59A-6-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 101, as amended) is amended to read:

"59A-6-1. FEE SCHEDULE.--The superintendent shall collect and receipt for, and persons so served shall pay to the superintendent, fees, licenses and miscellaneous charges as follows:

A. insurer's certificate of authority -

(1) filing application for certificate of authority, and issuance of certificate of authority, if issued, including filing of all charter documents, financial statements, service of process, power of attorney, examination reports and other documents included with and part of the application $1,000.00

(2) annual continuation of certificate of authority, per kind of insurance, each year continued $200.00

(3) reinstatement of certificate of authority (Section 59A-5-23 NMSA 1978) $150.00

(4) amendment to certificate of authority $200.00

B. charter documents - filing amendment to any charter document (as defined in Section 59A-5-3 NMSA 1978)..... $10.00

C. annual statement of insurer, filing $200.00

D. service of process, acceptance by superintendent and issuance of certificate of service, where issued $10.00

E. agents' licenses and appointments -

(1) filing application for original resident agent license and issuance of license, if issued $30.00

(2) appointment of agent -

(a) filing appointment, per kind of insurance, each insurer $20.00

(b) continuation of appointment, each insurer, each year continued $20.00

(3) variable annuity agent's license -

(a) filing application for license and issuance of license, if issued $25.00

(b) continuation of appointment, each year $25.00

(4) nonresident agent license - same as for resident agent

(5) temporary license as to life and health insurance or both $30.00

(a) as to property insurance $30.00

(b) as to casualty/surety insurance $30.00

(c) as to vehicle insurance $30.00

F. solicitor license -

(1) filing application for original license and issuance of license, if issued $30.00

(2) continuation of appointment, per kind of insurance, each year..... $20.00

G. nonresident broker license -

(1) filing application for license and issuance of original license, if issued $30.00

(2) annual continuation of license $30.00

H. insurance vending machine license -

(1) filing application for original license and issuance of license, if issued, each machine $25.00

(2) annual continuation of license, each machine $25.00

I. examination for license, application for examination conducted directly by superintendent, each grouping of kinds of insurance to be covered by the

examination as provided by the superintendent's rules and regulations, and payable as to each instance of examination $50.00

J. surplus line broker license -

(1) filing application for original license and issuance of license, if issued $100.00

(2) annual continuation of license $100.00

K. adjuster license -

(1) filing application for original license and issuance of license, if issued $30.00

(2) annual continuation of license $30.00

L. rating organization or rating advisory organization license -

(1) filing application for license and issuance of license, if issued $100.00

(2) annual continuation of license $100.00

M. nonprofit health care plans -

(1) filing application for preliminary permit and issuance of permit, if issued $100.00

(2) certificate of authority, application, issuance, continuation, reinstatement, charter documents - same as for insurers

(3) annual statement, filing.....$200.00

(4) agents and solicitors -

(a) filing application for original license and issuance of license, if issued $30.00

(b) examination for license conducted directly by superintendent, each instance of examination $50.00

(c) annual continuation of appointment $20.00

N. prepaid dental plans -

(1) certificate of authority, application, issuance, continuation, reinstatement, charter documents - same as for insurers

(2) annual report, filing $200.00

(3) agents and solicitors -

(a) filing application for original license and issuance of license, if issued $30.00

(b) examination for license conducted directly by superintendent, each instance of examination $50.00

(c) continuation of license, each year $30.00

O. prearranged funeral insurance - application for certificate of authority, issuance, continuation, reinstatement, charter documents, filing annual statement, licensing of sales representatives - same as for insurers

P. premium finance companies -

(1) filing application for original license and issuance of license, if issued $100.00

(2) annual renewal of license.....$100.00

Q. motor clubs -

(1) certificate of authority -

(a) filing application for original certificate of authority and issuance of certificate of authority, if issued $200.00

(b) annual continuation of certificate of authority..... $100.00

(2) sales representatives -

(a) filing application for registration or license and issuance of registration or license, if issued, each representative $20.00

(b) annual continuation of registration or license, each representative $20.00

R. bail bondsmen -

(1) filing application for original license as bail bondsman or solicitor, and issuance of license, if issued $30.00

(2) examination for license conducted directly by superintendent, each instanceof examination $50.00

(3) continuation of appointment, each year $20.00

S. securities salesperson license -

(1) filing application for license and issuance of license, if issued $25.00

(2) renewal of license, each year $25.00

T. for each signature and seal of the superintendent affixed to any instrument $10.00

U. required filing of forms or rates -

(1) rates $50.00

(2) major form - each new policy and each package submission which can include multiple policy forms, application forms, rider forms, endorsement forms or amendment forms $30.00

(3) incidental forms and rates - forms filed for informational purposes; riders, applications, endorsements and amendments filed individually; rate service organization reference filings; rates filed for informational purposes $15.00

V. health maintenance organizations -

(1) filing an application for a certificate of authority $1,000.00

(2) annual continuation of certificate of authority, each year continued $200.00

(3) filing each annual report $200.00

(4) filing an amendment to organizational documents requiring approval $200.00

(5) filing informational amendments $50.00

(6) agents and solicitors -

(a) filing application for original license and issuance of license, if issued $30.00

(b) examination for license, each instance of examination..... $50.00

(c) annual continuation of appointment $20.00

W. purchasing groups and foreign risk retention groups -

(1) original registration $500.00

(2) annual continuation of registration $200.00

(3) agent or broker fees same as for authorized insurers.

Notwithstanding the fees required in this subsection, an insurer shall be subject to additional fees or charges, termed retaliatory or reciprocal requirements, or both, whenever any form or rate-filing fees in excess of those imposed by the laws of this state are charged to insurers in New Mexico doing business in another state or whenever any condition precedent to the right to issue policies in another state is imposed by the laws of that state over and above the conditions imposed upon insurers by the laws of New Mexico; in those cases, the same form or rate-filing fees shall be imposed upon every insurer from every other state transacting or applying to transact business in New Mexico so long as the higher fees remain in force in the other state. If an insurer fails to comply with the additional retaliatory or reciprocal requirement charges imposed under this subsection, the superintendent shall refuse to grant or shall withdraw approval of the tendered form or rate filing.

Except as to certain appointment fees as specified in Section 59A-11-8 NMSA 1978, all fees are deemed earned when paid and are not refundable."

Section 15

Section 15. Section 59A-6-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 102, as amended) is amended to read:

"59A-6-2. PREMIUM TAX.--

A. The premium tax provided for in this section shall apply as to the following taxpayers:

(1) each insurer authorized to transact insurance in New Mexico;

(2) each insurer formerly authorized to transact insurance in New Mexico and receiving premiums on policies remaining in force in New Mexico, except that this provision shall not apply as to an insurer that withdrew from New Mexico prior to March 26, 1955;

(3) each plan operating under provisions of Chapter 59A, Articles 46 through 49 NMSA 1978;

(4) each property bondsman, as that person is defined in Section 59A-51-2 NMSA 1978, as to any consideration received as security or surety for a bail bond in connection with a judicial proceeding, which consideration shall be considered "gross premiums" for the purposes of this section; and

(5) each unauthorized insurer that has assumed a contract or policy of insurance directly or indirectly from an authorized or formerly authorized insurer and is receiving premiums on such policies remaining in force in New Mexico, except that this provision shall not apply if a ceding insurer continues to pay the tax provided in this section as to such policy or contract.

B. Each such taxpayer shall pay in accordance with this subsection three percent of the gross premiums and membership and policy fees received by it on insurance or contracts covering risks within this state during the preceding calendar year, less all return premiums, including dividends paid or credited to policyholders or contract holders and premiums received for reinsurance on New Mexico risks. For each calendar quarter, an estimated payment shall be made on April 15, July 15, October 15 and the following January 15. The estimated payments shall be equal to at least one-fourth of either the payment made during the previous calendar year or eighty percent of the actual payment due for the current calendar year, whichever is greater. The final adjustment for payments due for the prior year shall be made with the return which shall be filed on April 15 of each year, at which time all taxes for that year are due. Dividends paid or credited to policyholders or contract holders and refunds, savings, savings coupons and similar returns or credits applied or credited to payment of premiums for existing, new or additional insurance shall, in the amount so used, constitute premiums subject to tax under this section for the year in which so applied or credited. Provided that as to every insurer which throughout such preceding calendar year had at least forty percent of its admitted assets invested in New Mexico investments, as the same are defined in Subsection C of this section, the rate of such tax shall be nine-tenths of one percent in lieu of three percent; provided further that, effective January 1, 1992, the rate shall be one and four-tenths percent; effective July 1, 1992, the rate shall be one and nine-tenths percent; effective January 1, 1993, the rate shall be two and four-tenths percent; and effective July 1, 1993 and thereafter, the rate shall be three percent.

C. New Mexico investments for the purpose of Subsection B of this section are defined as follows:

(1) real estate located within New Mexico;

(2) bonds or obligations of New Mexico or of any county or other subdivision thereof;

(3) bonds, debentures or secured obligations of any corporation that has fifty percent of its assets located within New Mexico;

(4) first mortgages secured by real estate located within New Mexico;

(5) deposits in state banks, national banks and trust companies having their principal place of business within New Mexico;

(6) policy loans to residents of New Mexico; and

(7) preferred and common stock of corporations having at least fifty percent of their assets located within New Mexico.

D. Nothing contained in Subsection C of this section shall be construed to affect any provision of Chapter 59A, Article 9 NMSA 1978.

E. Exempted from the tax imposed by Subsection B of this section are premiums attributable to insurance or contracts purchased by the state or any political subdivision and payments received by a health maintenance organization from the federal secretary of health and human services pursuant to a contract issued under the provisions of 42 U.S.C. Section 1395 mm(g)."

Section 16

Section 16. Section 59A-6-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 104, as amended) is amended to read:

"59A-6-4. PENALTY FOR FAILURE TO REPORT OR PAY TAX OR FEES.--Every insurer, nonprofit health care plan, health maintenance organization, prepaid dental plan or prearranged funeral plan transacting business in New Mexico that fails to file when due any report for taxation, regardless of whether tax is due, or to pay when due any tax or fees as required in this article shall be liable to the state for the amount thereof and for penalty of one thousand dollars ($1,000) for each month or part thereof it has failed to file the report or pay the tax or fees after demand therefor. Services of process in any action against a person to recover the tax, fee or penalty may be made upon the superintendent as attorney for service of process as provided in Section 59A-5-32 NMSA 1978."

Section 17

Section 17. Section 59A-7-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 116) is amended to read:

"59A-7-10. LIMIT OF RISK.--

A. No insurer shall, other than as stated in this section, retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten percent of its surplus to policyholders.

B. No domestic Lloyds plan insurer shall retain any risk on any one subject of insurance in an amount in excess of ten percent of the sum of its surplus as to policyholders plus additional liability assumed by individual underwriters in the articles of agreement and policies or contracts of insurance.

C. No insurer shall retain as to title insurance risk on any one subject of insurance in an amount exceeding fifty percent of its surplus as to policyholders. If the insurer also transacts other kinds of insurance, its "surplus as to policyholders" for the purposes of this subsection shall be such reasonable proportion of the insurer's general surplus as to policyholders as may be allocated to title insurance in relation to premium income or other reasonable basis approved by the superintendent.

D. A "subject of insurance" for the purposes of this section means the following:

(1) as to insurance covering damage or loss of real or personal property, all real or personal property insured by an insurer which could reasonably be subject to loss or damage from the same occurrence of an insured hazard; and

(2) as to all other types of insurance, all policies issued by the same insurer applicable to a single insured exposure or occurrence.

E. Reinsurance ceded as authorized by Section 59A-7-11 NMSA 1978 shall be deducted in determining risk retained; but as to surety risks reinsurance shall be allowed as a deduction only if such reinsurance is with an insurer authorized to transact such insurance in this state, and is in such form as to enable the obligee or beneficiary to maintain an action thereon against he reinsured jointly with the reinsurer, and upon recovering judgment against the reinsured to have recovery against the reinsurer for payment to the extent in which it may be liable under such reinsurance and in discharge thereof. As to surety risks, deduction shall also be made of the amount assumed by any authorized cosurety and the value of any security deposited, pledged or held subject to the surety's consent and for the surety's protection.

F. As to alien insurers, this section relates only to risks and surplus to policyholders of the insurer's United States branch.

G. "Surplus as to policyholders" for the purposes of this section, in addition to the insurer's paid-in capital stock, if any, and surplus, includes also any voluntary reserves which are not required by law, and shall be determined from the last sworn financial statement of the insurer on file with the insurance department, or by the

last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

H. This section does not apply to life or health insurance, annuities, insurance of wet marine and transportation risks, workers' compensation insurance, or employers' liability coverages."

Section 18

Section 18. Section 59A-7-11 NMSA 1978 (being Laws 1984, Chapter 127, Section 117) is amended to read:

"59A-7-11. REINSURANCE.--

A. An insurer may reinsure all or any part of a particular risk or of a particular class of risks in another insurer, or accept such reinsurance from another insurer. No domestic insurer shall so reinsure with an insurer not authorized to transact insurance in this state unless the unauthorized insurer is authorized to transact insurance in another state and conforms to the same standards of solvency as would be required if at the time such reinsurance is effected the reinsurer was so authorized in this state; or unless, in the case of a group of individual, unincorporated alien insurers, it has assets held in trust for the benefit of its United States policyholders in amount not less than one hundred million dollars ($100,000,000), and is authorized to transact insurance in at least one state; or unless with the superintendent's approval in advance. With the superintendent's approval, a domestic insurer may reinsure all or substantially all of its risks in another insurer, or similarly reinsure the risks of another insurer, as provided in Section 59A-34-40 NMSA 1978.

B. Credit for reinsurance shall be allowed as an asset or as a deduction from liability to any ceding insurer for reinsurance lawfully ceded only when the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer directly to the ceding insurer or to its domiciliary liquidator or receiver, except where the assuming insurer with the consent of the direct insured or insureds has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees, and the reinsurer meets the requirements of Paragraph (1), (2), (3) or (4) of this subsection. If meeting the requirements of Paragraph (3) of this subsection, the requirements of Paragraph (5) of this subsection must also be met.

(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is authorized to transact insurance or reinsurance in this state.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which:

(a) files with the superintendent evidence of its submission to this state's jurisdiction;

(b) submits to this state's authority to examine its books and records;

(c) is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;

(d) files annually with the superintendent a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and either 1) maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars ($20,000,000) and whose accreditation has not been denied by the superintendent within ninety days of its submission; or 2) maintains a surplus as regards policyholders in amount less than twenty million dollars ($20,000,000) and whose accreditation has been approved by the superintendent.

(e) No credit shall be allowed a ceding insurer, if the assuming insurer's accreditation has been revoked by the superintendent after notice and hearing.

(3) Credit shall be allowed when the following requirements are met:

(a) the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in Paragraph (2) of Subsection D of this section, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the superintendent information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the superintendent to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars ($20,000,000). In the case of a group of individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of

the group; and the group shall make available to the superintendent an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accounts;

(b) in the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in Subparagraph (a) of this paragraph, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of ten billion dollars ($10,000,000,000); the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group; plus the group shall maintain a joint trusteed surplus of which one hundred million dollars ($100,000,000) shall be held jointly and exclusively for the benefit of the United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the superintendent an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant;

(c) such trust shall be established in a form approved by the superintendent. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the superintendent. The trust described herein must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust; and

(d) no later than February 28 of each year the trustees of the trust shall report to the superintendent in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(4) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of Paragraph (1), (2) or (3) of this subsection but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction.

(5) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by Paragraph (3) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(a) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction and will abide by the final decision of such court or of any appellate court in the event of an appeal; and

(b) to designate the superintendent or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company. This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

C. A reduction from liability for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of Subsection B of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in Paragraph (2) of Subsection D. This security may be in the form of:

(1) cash;

(2) securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets;

(3) clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States institution, as defined in Paragraph (1) of Subsection D, no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(4) any other form of security acceptable to the superintendent.

D. A "qualified United States financial institution" means:

(1) for purposes of Paragraph (3) of Subsection C, an institution that:

(a) is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state thereof;

(b) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) has been determined by either the superintendent or the securities valuation office of the national association of insurance commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the superintendent; and

(2) for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(a) is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

E. No insurer shall accept reinsurance of risk of any kind of insurance it is not authorized to transact directly in this state, if an authorized insurer, or in another state if the insurer does not hold a certificate of authority in this state.

F. Upon the superintendent's request an insurer shall furnish the superintendent with copies of its reinsurance treaties then in effect, and promptly inform the superintendent in writing of cancellation or other material change in its reinsurance treaties or arrangements.

G. No person shall have any rights against the reinsurer which are not expressly stated in the reinsurance contract or in a written agreement between such person and the reinsurer.

H. This section does not apply to wet marine and transportation insurance."

Section 19

Section 19. Section 59A-8-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 118) is amended to read:

"59A-8-1. "ASSETS" DEFINED.--In determination of the financial condition of any insurer or fraternal benefit society or United States branch of an alien insurer there shall be allowed as assets only such assets as are owned by the insurer or society and which consist of:

A. cash, including legal tender or equivalent thereof, in the principal or any branch office of the insurer or society or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company;

B. investments, securities, properties and loans acquired or held in accordance with the Insurance Code, and in connection therewith the following items:

(1) interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest;

(2) declared and unpaid dividends on stock and shares, unless such amount has otherwise been allowed as an asset;

(3) interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon;

(4) interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is, in the superintendent's judgment, a collectible asset;

(5) interest due or accrued on a mortgage or deed of trust loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of eighteen months be allowed as an asset;

(6) rent due or accrued on real property if such rent is not in arrears for more than three months, and rent more than three months in arrears if the payment of such rent is adequately secured by property held in the name of the tenant and conveyed to the insurer or society as collateral; and

(7) the unaccrued portion of taxes paid prior to the due date on real property;

C. premium notes, policy loans and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in amount not exceeding the legal reserve and other policy liabilities carried on each individual policy or contract;

D. the net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer or fraternal benefit society which carries the full mean tabular reserve liability; and in case of a fraternal benefit society which does

not carry the full mean tabular reserve liability, premiums or assessments actually collected by subordinate branches of the society and not yet received by its home office;

E. premiums in course of collection, other than for life insurance, not more than ninety days past due, less commissions payable thereon. This limitation as to ninety days shall not apply as to premiums payable directly or indirectly by the United States government or by any of its instrumentalities; nor shall it apply to reinsurance premiums receivable by an assuming insurer to the extent offset by amounts carried by the assuming insurer as liabilities for amounts due to the ceding insurer for unpaid losses or other mutual debts, but in no event shall reinsurance premiums more than ninety days past due be allowed in excess of ten percent of the assuming insurer's admitted assets as shown by its most recent annual statement on file with the superintendent;

F. installment premiums other than life insurance or annuity premiums, to the extent of the unearned premium reserves carried on the policy or contract to which the premium applies;

G. notes and like written obligations not past due, taken for premiums other than life insurance or annuity premiums, on policies and contracts permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon, except as otherwise prescribed by regulations of the superintendent;

H. reinsurance recoverable by a ceding insurer to the extent credit is allowed under Section 59A-7-11 of the Insurance Code;

I. amounts receivable by an assuming insurer for funds withheld by a solvent ceding insurer under a reinsurance treaty, but not exceeding the amounts carried by the assuming insurer as liabilities for unpaid losses and reserves under such contracts;

J. deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from suspended banking and other financial institutions, to the extent deemed by the superintendent available for payment of losses and claims and at values determined by the superintendent;

K. all such assets, whether or not consistent with the other provisions of this section, as may be allowed pursuant to the annual statement form approved by the superintendent for the kinds of insurance to be reported upon therein;

L. electronic and mechanical machines and related programs and equipment constituting a data processing, record keeping, accounting, word processing (excluding typewriters) or other electronic computer system in actual use, the cost of which shall be amortized in full over a period of not more than ten years. The aggregate amount invested in all such systems shall not exceed five percent of the insurer's or society's assets;

M. as to title insurance, the title plant and equipment necessary for conduct of the abstract and title insurance business, at not to exceed the original cost thereof. The superintendent may also allow as assets as to title insurance, premiums and fees for title examination and title insurance not more than twelve months past due, less commissions payable thereon; and

N. other assets, not inconsistent with the other provisions of this section, deemed by the superintendent to be available for payment of losses and claims, at values to be determined by the superintendent."

Section 20

Section 20. Section 59A-8-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 122) is amended to read:

"59A-8-5. STANDARD VALUATION LAW, LIFE INSURANCE AND ANNUITIES.--

A. This subsection shall apply to only those policies and contracts issued prior to the operative date of Section 59A-20-31 NMSA 1978.

The legal minimum standard for valuation of life insurance contracts issued before the first day of January, 1926, shall be the method and basis of valuation heretofore applied by the insurer in the valuation of such contracts, and for life insurance contracts issued on or after this date shall be the American experience table of mortality, with interest at the rate of three and one-half percent a year; or any other basis not producing a lower net value; provided, however, that the insurer may provide for not more than one-year preliminary term insurance by incorporating in the contracts a clause plainly showing that the first year's insurance under such policies is term insurance.

Except as otherwise provided in Paragraphs (2), (3), (4) and (5) of Subsection B of this section and in Subsections C, D, and E of this section for group annuity and pure endowment contracts, the legal minimum standard for the valuation of annuities shall be the American experience table of mortality, with interest at the rate of five percent a year for group annuity and pure endowment contracts and four percent a year for other annuities.

B. Subsections B, C, D and E of this section shall apply to only those policies and contracts issued on and after the operative date of Section 59A-20-31 NMSA 1978, except as otherwise provided in Paragraphs (2), (3), (4) and (5) of this subsection and in Subsections C, D and E of this section for group annuity and pure endowment contracts issued prior to such operative date.

(1) Except as otherwise provided in Paragraphs (2), (3), (4) and (5) of this subsection and Subsections C, D, and E of this section, the minimum standard

for the valuation of all such policies and contracts shall be the commissioners reserve valuation methods defined in Paragraphs (1) and (2) of Subsection E of this section, five percent interest for group annuity and pure endowment contracts and three and one-half percent interest for all other such policies and contracts, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after July 1, 1973, four percent interest for such policies issued prior to July 1, 1977, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies issued on or after July 1, 1977, and the following tables:

(a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies - the commissioners 1941 standard ordinary mortality table for such policies issued prior to the operative date of Paragraph (1) of Subsection D of Section 59A-20-31 NMSA 1978 and the commissioners 1958 standard ordinary mortality table for such policies issued on or after the operative date of Paragraph (1) of Subsection D of Section 59A-20-31 NMSA 1978 and prior to the operative date of Subsection F of Section 59A-20-31 NMSA 1978, provided that for any category of such policies issued on female risks, all modified net premiums and present values referred to in Subsections B, C, D and E of this section may be calculated according to an age not more than six years younger than the actual age of the insured; and for such policies issued on or after the operative date of Subsection F of Section 59A-20-31 NMSA 1978: 1) the commissioners 1980 standard ordinary mortality table; or 2) at the election of the insurer for any one or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors; or 3) any ordinary mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the superintendent for use in determining the minimum standard of valuation for such policies;

(b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies - the 1941 standard industrial mortality table for such policies issued prior to the operative date of Subsection E of Section 59A-20-31 NMSA 1978, and for such policies issued on or after such operative date, the commissioners 1961 standard industrial mortality table or any industrial mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the superintendent for use in determining the minimum standard of valuation for such policies;

(c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies - the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either o these tables approved by the superintendent;

(d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies - the group annuity mortality table for 1951, any modification of such table approved by the superintendent, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(e) for total and permanent disability benefits in or supplementary to ordinary policies or contracts: 1) for policies or contracts issued on or after January 1, 1966 the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the national association of insurance commissioners, that are approved by regulation promulgated by the superintendent for use in determining the minimum standard of valuation for such policies; 2) for policies or contracts issued on or after January 1, 1961 and prior to January 1, 1966 either such tables or, at the option of the insurer, the class (3) disability table (1926); and 3) for policies issued prior to January 1, 1961 the class (3) disability table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) for accidental death benefits in or supplementary to policies: 1) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the superintendent for use in determining the minimum standard of valuation for such policies; 2) for policies issued on or after January 1, 1961 and prior to January 1, 1966, either such table or, at the option of the insurer, the intercompany double indemnity mortality table; and 3) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table. 4) Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies; and

(g) for group life insurance, life insurance issued on the substandard basis and other special benefits - such tables as may be approved by the superintendent.

(2) Except as provided in Paragraphs (3), (4) and (5) of this subsection and in Subsections C, D and E of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph, as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioners reserve valuation methods defined in Paragraphs (1) and (2) of Subsection E of this section and the following tables and interest rates:

(a) for individual annuity and pure endowment contracts issued prior to July 1, 1977, excluding any disability and accidental death benefits in

such contracts, the 1971 individual annuity mortality table, or any modification of this table approved by the superintendent, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts;

(b) for individual single premium immediate annuity contracts issued on or after July 1, 1977, excluding any disability and accidental death benefits in such contracts - the 1971 individual annuity mortality table, or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the superintendent for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the superintendent, and seven and one-half percent interest;

(c) for individual annuity and pure endowment contracts issued on or after July 1, 1977, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts - the 1971 individual annuity mortality table, or any individual annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the superintendent for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the superintendent, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts;

(d) for all annuities and pure endowments purchased prior to July 1, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts - the 1971 group annuity mortality table, or any modification of this table approved by the superintendent, and six percent interest; and

(e) for all annuities and pure endowments purchased on or after July 1, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts - the 1971 group annuity mortality table, or any group annuity mortality table, adopted after 1980 by the national association of insurance commissioners, that is approved by regulation promulgated by the superintendent for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of this table approved by the superintendent, and seven and one-half percent interest.

(f) After July 1, 1973, any insurer may file with the superintendent a written notice of its election to comply with the provisions of this paragraph after a specified date before January 1, 1979, which shall be the operative date of this paragraph for such insurer, provided that an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for

group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this paragraph for such insurer shall be January 1, 1979.

(3) The interest rates used in determining the minimum standard for the valuation of:

(a) all life insurance policies issued in a particular calendar year, on or after the operative date of Subsection F of Section 59A-20-31 NMSA 1978;

(b) all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;

(c) all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982 under group annuity and pure endowment contracts; and

(d) the net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates as defined in Paragraph (4) of this subsection.

(4) The calendar year statutory valuation interest rates shall be determined as follows and the results rounded to the nearest one-quarter of one percent:

(a) for life insurance,

$$I = .03 + W (R1 - .03) + W/2 (R2 - .09);$$

(b) for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and for guaranteed interest contracts with cash settlement options,

$$I = .03 + W (R - .03)$$

where R1 is the lesser of R and .09, R2 is the greater of R and .09, R is the reference interest rate defined
in Subsection D of this section, and W is the weighting factor defined in Subsection C of this section;

(c) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in Subparagraph (b) of this paragraph, the formula for life insurance stated in Subparagraph (a) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in Subparagraph (b) of this

paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

(d) for other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in Subparagraph (b) of this paragraph shall apply; and

(e) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in Subparagraph (b) of this paragraph shall apply.

(5) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when Subsection F of Section 59A-20-31 NMSA 1978 becomes operative.

C. The weighting factors referred to in the formulas stated above are given in the following tables:

(1) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(2) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

3) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in Paragraph (2) of this subsection, shall be as specified in the tables set forth in Subparagraphs (a), (b) and (c) of this paragraph, according to the rules and definitions set forth in Subparagraphs (d), (e) and (f) of this paragraph:

(a) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration	Weighting Factor for Plan Type		
(Years)	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

(b) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in the table set forth in Subparagraph (a) of this paragraph incrased by:

Plan Type		
A	B	C
.15	.25	.05

(c) For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than

twelve months beyond the valuation date, the factors shown in the table set forth in Subparagraph (a) of this paragraph or derived as required in the table set forth in Subparagraph (b) of this paragraph increased by:

Plan Type

A B C

.05 .05 .05

(d) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(e) Plan type as used in the above tables is defined as follows:

Plan Type A: At any time policyholder may withdraw funds only: with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer; or without such adjustment but in installments over five years or more; or as an immediate life annuity; or no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only: with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer; or without such adjustment but in installments over five years or more; or no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either: without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer; or subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(f) An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in Subsections B, C and D of this section, an issue year basis of valuation refers to a valuation basis under which the

interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

D. The reference interest rate referred to in Paragraph (4) of Subsection B of this section shall be defined as follows:

(1) for all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated;

(2) for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated;

(3) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Paragraph (2) of this subsection, with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated;

(4) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Paragraph (2) of this subsection, with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated;

(5) for other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated;

(6) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in Paragraph (2) of this subsection, the average over a period of twelve months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated; and

(7) in the event that the national association of insurance commissioners determines that the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's investors service, incorporated is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the national association of insurance commissioners and approved by regulation promulgated by the superintendent may be substituted.

E. The reserve valuation method shall be defined as follows:

(1) Except as otherwise provided in this paragraph and Paragraph (2) of this subsection, reserves according to the national association of insurance commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of Subparagraph (a) over Subparagraph (b) of this paragraph, as follows:

(a) a net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age of one year higher than the age at issue of such policy; and

(b) a net one-year term premium for such benefits provided for in the first policy year.

Provided that for any life insurance policy issued on or after January 1, 1985 for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the

commissioners reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in Subparagraph (e) of this paragraph, be the greater of the reserve as of such policy anniversary calculated as described previously in this paragraph and the reserve as of such policy anniversary calculated as previously described in this paragraph, but with: the value defined in Subparagraph (a) of this paragraph being reduced by fifteen percent of the amount of such excess first year premium; all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; the policy being assumed to mature on such date as an endowment; and the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in Paragraphs (1), (3), (4) and (5) of Subsection B of this section and in Subsections C and D of this section shall be used.

Reserves according to the commissioners reserve valuation method for: 1) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; 2) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended; 3) disability and accidental death benefits in all policies and contracts; and 4) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of this paragraph, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums;

(c) in no event shall an insurer's aggregate reserves for all life insurance policies excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the methods set forth in this paragraph and Paragraph (2) of this subsection and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies;

(d) reserves for any category of policies, contracts or benefits as established by the superintendent, may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

Any such insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum

standard herein provided may, with the approval of the superintendent, adopt any lower standard of valuation, but not lower than the minimum herein provided; but, for the purpose of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by Section 59A-8-7 NMSA 1978 shall not be deemed to be the adoption of a higher standard of valuation;

(e) if in any contract year the gross premium charged by an insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this paragraph are those standards stated in Paragraphs (1), (3), (4) and (5) of Subsection B of this section.

Provided that for any life insurance policy issued on or after January 1, 1985 for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of Subparagraph (e) of this paragraph shall be applied as if the method actually used in calculating the reserve for such policy were the method previously described in this paragraph ignoring the unnumbered paragraph immediately following Subparagraph (b) of this paragraph. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with the method previously described in this paragraph, including the unnumbered paragraph immediately following Subparagraph (b), and the minimum reserve calculated in accordance with Subparagraph (e), of this paragraph; and

(f) in the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in Paragraphs (1) and (2) of this subsection, the reserves which are held under any such plan must: 1) be appropriate in relation to the benefits and the pattern of premiums for that plan; and 2) be computed by a method which is consistent with the principles of this standard valuation law, as determined by regulations promulgated by the superintendent.

(2) This paragraph shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a

retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values."

Section 21

Section 21. Section 59A-8-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 123) is amended to read:

"59A-8-6. ANNUAL VALUATION--RESERVES.--

A. The superintendent shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer authorized to do business in this state, except that as to an alien insurer the valuation shall be limited to its United States business. The superintendent may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in calculation of such reserves.

B. In calculating such reserves the superintendent may use group methods and approximate averages for fractions of a year or otherwise. In lieu of valuation of reserves herein required of a foreign or alien insurer, the superintendent may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the superintendent when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

C. The insurer may increase the standards of mortality in particular cases of invalid lives and other extra hazards.

D. For all health insurance policies the insurer shall maintain an active life reserve which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the superintendent and in no event less in the aggregate than the pro rata gross unearned premiums for such policies.

E. In no event shall the aggregate reserves for all polices, contracts and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by Section 59A-8-7 NMSA 1978."

Section 22

Section 22. Section 59A-8-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 124) is repealed and a new Section 59A-8-7 NMSA 1978 is enacted to read:

"59A-8-7. ACTUARIAL OPINION OF RESERVES.--

A. This section shall become operative on January 1, 1995 for calendar years 1994 and thereafter.

B. Every life insurer doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the superintendent by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The superintendent by regulation shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

C. Every life insurer, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by Subsection B of this section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the superintendent by regulation, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the insurer's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts. The superintendent may provide by regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.

D. Every opinion required by Subsection C of this section shall be governed by the following provisions:

(1) a memorandum, in form and substance acceptable to the superintendent as specified by regulation, shall be prepared to support each actuarial opinion; and

(2) if the insurer fails to provide a supporting memorandum at the request of the superintendent determines that the supporting memorandum provided by the insurer fails to meet the standards prescribed by the regulations or is otherwise unacceptable to the superintendent, the superintendent may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the superintendent.

E. Every opinion required by this section shall be governed by the following provisions:

(1) the opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1994;

(2) the opinion shall apply to all business in force, including individual and group health insurance plans in form and substance acceptable to the superintendent as specified by regulation;

(3) the opinion shall be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the superintendent may by regulation prescribe;

(4) in the case of an opinion required to be submitted by a foreign or alien insurer, the superintendent may accept the opinion filed by that insurer with the insurance supervisory official of another state if the superintendent determines that the opinion reasonably meets the requirements applicable to an insurer domiciled in this state;

(5) for the purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in such regulations;

(6) except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurer and the superintendent, for any act, error, omission, decision or conduct with respect to the actuary's opinion;

(7) disciplinary action by the superintendent against the insurer or the qualified actuary shall be defined in regulations by the superintendent; and

(8) any memorandum in support of the opinion, and any other material provided by the insurer to the superintendent in connection therewith, shall be

kept confidential by the superintendent and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder; provided, however, that the memorandum or other material may otherwise be released by the superintendent, with the written consent of the insurer, or to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the superintendent for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the insurer in its marketing or is cited before any governmental agency other than a state insurance department or is released by the insurer to the news media, all portions of the confidential memorandum shall be no longer confidential."

Section 23

Section 23. A new section of the Insurance Code, Section 59A-8-7.1 NMSA 1978, is enacted to read:

"59A-8-7.1. CONTINUED LIABILITY AFTER ASSUMPTION REINSURANCE TRANSACTIONS.--A ceding insurer shall remain jointly and severally liable with an unauthorized assuming insurer on ceded contracts or policies for which assumption certificates have been issued covering risks resident in this state until such time as:

A. the assuming insurer obtains a certificate of authority to transact the applicable kind of insurance in this state; or

B. the assuming insurer deposits with the superintendent a special deposit in an amount equal to the greater of:

(1) one hundred thousand dollars ($100,000); or

(2) twenty thousand dollars ($20,000) plus the statutory reserves required of an authorized insurer for the contracts assued."

Section 24

Section 24. Section 59A-8-13 NMSA 1978 (being Laws 1984, Chapter 127, Section 130, as amended) is amended to read:

"59A-8-13. VALUATION OF BONDS.--

A. Subject to the provisions of Subsections B, C and D of this section, all bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(1) if purchased at par, at the par value; and

(2) if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made.

B. The purchase price shall in no event be taken at a higher figure than actual market value at time of purchase, plus incidental costs of acquisition of the securities.

C. No such security shall be carried at above the call price for the entire issue during any period within which the security may be so called, and premiums paid at purchase shall be amortized by the scientific method to the first call date at which the entire issue may be redeemed.

D. Obligations subject to amortization under the published findings of the national association of insurance commissioners shall be carried at their amortized values. Obligations which do not qualify for amortization shall be reported at their market value or book value based upon an amortized computation, whichever is lower."

Section 25

Section 25. Section 59A-8-14 NMSA 1978 (being Laws 1984, Chapter 127, Section 131) is repealed and a new Section 59A-8-14 NMSA 1978 is enacted to read:

"59A-8-14. VALUATION OF OTHER SECURITIES.--

A. Common stocks shall be valued at their market value, as determined by customary method, or, at the option of the company, they may be carried at cost if cost is less than market value. If no publicly traded market quotation is available, the value of the stocks shall be based on the pro rata share of the issuing company's net worth as shown by its audited financial statements or, in the case of an insurance company, the pro rata share of its statutory net worth.

B. Preferred stocks shall be valued in accordance with procedures promulgated periodically by the securities valuation office of the national association of insurance commissioners.

C. Stock of an insurer's subsidiary shall be valued only on the basis of value of the assets of the subsidiary that would constitute lawful investments of the insurer if acquired or held directly by the insurer."

Section 26

Section 26. Section 59A-8-15 NMSA 1978 (being Laws 1984, Chapter 127, Section 132) is repealed and a new Section 59A-8-15 is enacted to read:

"59A-8-15. VALUATION OF PROPERTY.--

A. Real property held by a company may be valued at not more than: its cost plus the cost of capitalized additions and permanent improvements, less depreciation, or its fair market value as determined by appraisal within the most recent three years, whichever is less. Depreciation shall be computed under the straight line method or, at the option of the company, under any other method resulting in larger accumulated depreciation at any given time. Depreciation of any buildings shall be based upon an estimated useful life of not more than fifty years.

B. Property acquired in satisfaction of a debt shall be valued at its fair market value or the amount of the debt, including capitalized taxes and expenses, whichever amount is less."

Section 27

Section 27. A new section of the Insurance Code, Section 59A-12B-1 NMSA 1978, is enacted to read:

"59A-12B-1. SHORT TITLE.--Chapter 59A, Article 12B NMSA 1978 may be cited as the "Managing General Agents Law"."

Section 28

Section 28. A new section of the Insurance Code, Section 59A-12B-2 NMSA 1978, is enacted to read:

"59A-12B-2. DEFINITIONS.--As used in the Managing General Agents Law:

A. "actuary" means a person who is a member in good standing of the American academy of actuaries;

B. "insurer" means any person, firm, association or corporation duly authorized in this state pursuant to the Insurance Code to transact the business of insurance;

C. "managing general agent" means any person, firm, association or corporation who:

(1) manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office;

(2) acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the

policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced:

(a) adjusts or pays claims in excess of an amount determined by the superintendent; or

(b) negotiates reinsurance on behalf of the insurer; and

(3) notwithstanding the above, the following persons shall not be considered as managing general agents for the purposes of the Managing General Agents Law:

(a) an employee of the insurer;

(b) a United States manager of the United States branch of an alien insurer;

(c) an underwriting manager which, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to The Insurance Holding Company Law, and whose compensation is not based on the volume of premiums written; and

(d) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney; and

D. "underwrite" means the authority to accept or reject risk on behalf of the insurer."

Section 29

Section 29. A new section of the Insurance Code, Section 59A-12B-3 NMSA 1978, is enacted to read:

"59A-12B-3. LICENSURE.--

A. No person, firm, association or corporation shall act in the capacity of a managing general agent with respect to risks located in this state for an insurer authorized in this state unless such person is a licensed agent or broker in this state.

B. No person, firm, association or corporation shall act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed as an agent or broker in this state pursuant to the provisions of the Managing General Agents Law. Such license may be a nonresident license.

C. The superintendent may require a bond in an amount acceptable to him for the protection of the insurer.

D. The superintendent may require the managing general agent to maintain an errors and omissions policy."

Section 30

Section 30. A new section of the Insurance Code, Section 59A-12B-4 NMSA 1978 is enacted to read:

"59A-12B-4. REQUIRED CONTRACT PROVISIONS.--No person, firm, association or corporation acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and where both parties share responsibility for a particular function, specifies the division of such responsibilities and which contains the following minimum provisions:

A. the insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination;

B. the managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;

C. all funds collected for the account of an insurer shall be held by the managing general agent in the fiduciary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses;

D. every managing general agent shall maintain at its principal administrative office for the duration of the written agreement referred to in this section and seven years thereafter separate books and records of all transactions between it, insurers and insured persons. Such books and records shall be maintained in accordance with prudent standards of insurance recordkeeping. The superintendent shall have access to such books and records for the purpose of examination, audit and inspection. Any trade secrets contained therein, including but not limited to the identity and addresses of policyholders and certificate holders, shall be confidential, except that the superintendent may use such information in any proceedings instituted against the managing general agent or insurer. The insurer shall retain the right to continuing access to such books and records of the managing general agent sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and the managing general

agent on the proprietary rights of the parties in such books and records not inconsistent with fulfilling those obligations;

E. the contract may not be assigned in whole or part by the managing general agent;

F. appropriate underwriting guidelines, including:

(1) the maximum annual premium volume;

(2) the basis of the rates to be charged;

(3) the types of risks which may be written;

(4) maximum limits of liability;

(5) applicable exclusions;

(6) territorial limitations;

(7) policy cancellation provisions; and

(8) the maximum policy period.

The insurer shall have the right to cancel or non-renew any policy of insurance subject to the applicable laws and regulations concerning the cancellation and non-renewal of insurance policies;

G. if the contract permits the managing general agent to settle claims on behalf of the insurer:

(1) all claims must be reported to the company in a timely manner;

(2) a copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:

(a) has the potential to exceed an amount determined by the superintendent or exceeds the limit set by the company, whichever is less;

(b) involves a coverage dispute;

(c) may exceed the managing general agent's claims settlement authority;

(d) is open for more than six months; or

(e) is closed by payment of an amount set by the superintendent or an amount set by the company, whichever is less;

(3) all claim files will be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer such files shall become the sole property of the insurer or its estate; the managing general agent shall have reasonable access to and the right to copy the files on a timely basis; and

(4) any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination;

H. where electronic claims files are in existence, the contract must address the timely transmission of the data;

I. if the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to Section 59A-12B-5 NMSA 1978; and

J. the managing general agent shall not:

(1) bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines, including for both reinsurance assumed and ceded, a list of reinsures with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;

(2) commit the insurer to participate in insurance or reinsurance syndicates;

(3) appoint any agent or broker without assuring that the agent or broker is lawfully licensed to transact the type of insurance for which he is appointed;

(4) without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent of the insurer's policyholders' surplus as of December 31 of the last completed calendar year;

(5) collect any payment from a reinsurer or commit the insurer to any claim settlement with a retainer, without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;

(6) permit its subagent or broker to serve on the insurer's board of directors;

(7) jointly employ an individual who is employed with the insurer; or

(8) appoint a sub-managing general agent."

Section 31

Section 31. A new section of the Insurance Code, Section 59A-12B-5 NMSA 1978, is enacted to read:

"59A-12B-5. DUTIES OF INSURERS.--

A. The insurer shall have on file an independent financial examination, in a form acceptable to the superintendent, of each managing general agent with which it has done business.

B. If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

C. The insurer shall periodically, at least semiannually, conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

D. Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the managing general agent.

E. Within thirty days of entering into or termination of a contract with a managing general agent, the insurer shall provide written notification of such appointment or termination to the superintendent. Notices of appointment of a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the superintendent may request.

F. An insurer shall review its books and records each quarter to determine if any agent or broker has become a managing general agent. If the insurer determines that an agent or broker has become a managing general agent, the insurer shall promptly notify the agent or broker and the superintendent of such determination and

the insurer and agent or broker must fully comply with the provisions of the Managing General Agents Law within thirty days.

G. An insurer shall not appoint to its board of directors an officer, director, employee, subagent or broker or controlling shareholder of its managing general agents. This subsection shall not apply to relationships governed by The Insurance Holding Company Law or, if applicable, the Broker Controlled Insurer Law."

Section 32

Section 32. A new section of the Insurance Code, Section 59A-12B-6 NMSA 1978, is enacted to read:

"59A-12B-6. EXAMINATION AUTHORITY.--The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer."

Section 33

Section 33. A new section of the Insurance Code, Section 59A-12B-7 NMSA 1978, is enacted to read:

"59A-12B-7. PENALTIES AND LIABILITIES.--

A. If the superintendent determines that the managing general agent or any other person has not materially complied with the provisions of Chapter 59A, Article 12B NMSA 1978, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the superintendent may order:

(1) for each separate violation, a penalty in an amount not exceeding ten thousand dollars ($10,000);

(2) revocation or suspension of the agent's license; and

(3) if it was found that because of such material noncompliance that the insurer has suffered any loss or damage, the superintendent may maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors or seek other appropriate relief.

B. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to Chapter 59A, Article 41 NMSA 1978, and the receiver appointed under that order determines that the managing general agent or any other person has not materially complied with the provisions of Chapter 59A, Article 12B NMSA 1978, or any regulation or order promulgated thereunder, and the insurer suffered any loss or

damage, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

C. Nothing contained in this section shall affect the right of the superintendent to impose any other penalties provided for in the Insurance Code.

D. Nothing contained in the Managing General Agents Law is intended to or shall in any manner limit or restrict the rights of policyholders, claimants or creditors."

Section 34

Section 34. A new section of the Insurance Code, Section 59A-12B-8 NMSA 1978 is enacted to read:

"59A-12B-8. EFFECTIVE DATE.--No insurer may continue to utilize the services of a managing general agent on or after July 1, 1993, unless such utilization is in compliance with the Managing General Agents Law."

Section 35

Section 35. A new section of the Insurance Code, Section 59A-12C-1 NMSA 1978, is enacted to read:

"59A-12C-1. SHORT TITLE.--Chapter 59A, Article 12C NMSA 1978 may be cited as the "Broker Controlled Insurer Law"."

Section 36

Section 36. A new section of the Insurance Code, Section 59A-12C-2 NMSA 1978, is enacted to read:

"59A-12C-2. DEFINITIONS.--As used in the Broker Controlled Insurer Law:

A. "accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners;

B. "control" or "controlled" has the meaning ascribed in The Insurance Holding Company Law;

C. "controlled insurer" means an authorized insurer which is controlled, directly or indirectly, by a broker;

D. "controlling broker" means a broker who, directly or indirectly, controls an insurer;

E. "authorized insurer" or "insurer" means any person, firm, association or corporation duly authorized to transact a property or casualty insurance business in this state. The following are not authorized insurers for the purposes of the Broker Controlled Insurer Law:

(1) all risk retention groups as defined in: the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986); the Risk Retention Amendments of 1986, 15 U.S.C. Section 3901 et seq. (1982 & Supp. 1986); and Article 55 of the Insurance Code;

(2) all residual market pools and joint underwriting authorities or associations; and

(3) all captive insurers; for the purposes of the Broker Controlled Insurer Law, captive insurers are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates; and

F. "broker" means an insurance broker or brokers or any other person, firm, association or corporation, when, for any compensation, commission or other thing of value, such person, firm, association or corporation acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association or corporation."

Section 37

Section 37. A new section of the Insurance Code, Section 59A-12C-3 NMSA 1978, is enacted to read:

"59A-12C-3. APPLICABILITY.--The Broker Controlled Insurer Law shall apply to authorized insurers either domiciled in this state or domiciled in a state that is not an accredited state having in effect a ubstantially similar law. All provisions of The Insurance Holding Company Law, to the extent they are not superseded by the Broker Controlled Insurer Law, shall continue to apply to all parties within holding company systems subject to this article."

Section 38

Section 38. A new section of the Insurance Code, Section 59A-12C-4 NMSA 1978, is enacted to read:

"59A-12C-4. MINIMUM STANDARDS.--

A. The provisions of this section shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling broker is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurers' quarterly statement filed as of September 30 of the prior year.

B. The provisions of this section shall not apply if:

(1) the controlling broker:

(a) places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and

(b) accepts insurance placements only from non-affiliated subbrokers, and not directly from insureds; and

(2) the controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from a controlling broker, a broker controlled by the controlled insurer or a broker that is a subsidiary of the controlled insurer.

C. A controlled insurer shall not accept business from a controlling broker and a controlling broker shall not place business with a controlled insurer unless there is a written contract between the controlling broker and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(1) the controlled insurer may terminate the contract for cause, upon written notice to the controlling broker. The controlled insurer shall suspend the authority of the controlling broker to write business during the pendency of any dispute regarding the cause for the termination;

(2) the controlling broker shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling broker;

(3) the controlling broker shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than ninety days after the effective date of any public placed with the controlled insurer under this contract;

(4) all funds collected for the controlled insurer's account shall be held by the controlling broker in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling broker not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling broker's domiciliary jurisdiction;

(5) the controlling broker shall maintain separately identifiable records of business written for the controlled insurer;

(6) the contract shall not be assigned in whole or in part by the controlling broker;

(7) the controlled insurer shall provide the controlling broker with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged and the conditions for the acceptance or rejection of risks. The controlling broker shall adhere to the standards, rules, procedures, rates and conditions. The standards, rules, procedures, rates and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a broker other than the controlling broker;

(8) the rates and terms of the controlling broker's commissions, charges or other fees and the purposes for those charges or fees. The rates of the commissions, charges and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by brokers other than controlling brokers. For purposes of this paragraph and Paragraph (7) of this subsection, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risk, similar policy limits and similar quality of business;

(9) if the contract provides that the controlling broker, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to Paragraph (1) of Subsection E of this section;

(10) a limit shall be placed on the controlling broker's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or sub-line of business. The controlled insurer shall notify the controlling broker when the applicable limit is approached and shall not accept business from the controlling broker if the limit is reached. The controlling broker shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(11) the controlling broker may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling broker places with the controlled insurer, except that the controlling broker may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines, including, for both reinsurance assumed and ceded, a list of reinsures with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

D. Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants and an independent casualty actuary or other independent loss reserve specialist acceptable to the superintendent to review the adequacy of the insurer's loss reserves.

E. Controlled insurers shall be subject to the following reporting requirements:

(1) in addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the superintendent an opinion of an independent casualty actuary, or such other independent loss reserve specialist acceptable to the superintendent, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including incurred but not reported, on business placed by the broker; and

(2) the controlled insurer shall annually report to the superintendent the amount of commissions paid to the broker, the percentage such amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling brokers for placements of the same kinds of insurance."

Section 39

Section 39. A new section of the Insurance Code, Section 59A-12C-5 NMSA 1978, is enacted to read:

"59A-12C-5. DISCLOSURE.--The broker, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the broker and the controlled insurer; except that, if the business is placed through a subbroker who is not a controlling broker, the controlling broker shall retain in his records a signed commitment from the subbroker that the subbroker is aware of the relationship between the insurer and the broker and that the subbroker has or will notify the insured."

Section 40

Section 40. A new section of the Insurance Code, Section 59A-12C-6 NMSA 1978, is enacted to read:

"59A-12C-6. PENALTIES.--

A. If the superintendent believes that the controlling broker or any other person has not materially complied with the Broker Controlled Insurer Law, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the superintendent may order the controlling broker to cease placing business with the controlled insurer, and if it was found that because of such material noncompliance that the controlled insurer or any policyholder thereof has suffered any loss or damage, the superintendent may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

B. If an order for liquidation or rehabilitation of the controlled insurer has been entered and the receiver appointed under that order believes that the controlling broker or any other person has not materially complied with the Broker Controlled Insurer Law, or any regulation or order promulgated thereunder, and the insurer suffered any loss or damage, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

C. Nothing contained in this section shall affect the right of the superintendent to impose any other penalties provided for in the Insurance Code.

D. Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors or other third parties."

Section 41

Section 41. A new section of the Insurance Code, Section 59A-12C-7 NMSA 1978, is enacted to read:

"59A-12C-7. EFFECTIVE DATE.--Controlled insurers and controlling brokers who are not in compliance with Section 59A-12C-4 NMSA 1978 on its effective date shall have until July 31, 1993 to come into compliance and shall comply with Section 59A-12C-5 NMSA 1978 beginning with all policies written or renewed on or after August 1, 1993."

Section 42

Section 42. A new section of the Insurance Code, Section 59A-12D-1 NMSA 1978, is enacted to read:

"59A-12D-1. SHORT TITLE.--Chapter 59A, Article 12D may be cited as the "Reinsurance Intermediary Law"."

Section 43

Section 43. A new section of the Insurance Code, Section 59A-12D-2 NMSA 1978, is enacted to read:

"59A-12D-2. DEFINITIONS.--As used in the Reinsurance Intermediary Law:

A. "actuary" means a person who is a member in good standing of the American academy of actuaries;

B. "controlling persons" means any person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary;

C. "insurer" means any person, firm, association or corporation duly authorized in this state to transact the business of insurance pursuant to the applicable provisions of the Insurance Code as an insurer;

D. "licensed producer" means an agent, broker or reinsurance intermediary licensed pursuant to the applicable provisions of the Insurance Code;

E. "reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in Subsections F and G of this section;

F. "reinsurance intermediary-broker" means any person, other than an officer or employee of the ceding insurer, firm, association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer;

G. "reinsurance intermediary-manager" means any person, firm, association or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an agent for such reinsurer whether known as the reinsurance intermediary-manager, a manager or other similar term. Notwithstanding the above, the following persons shall not be considered a reinsurance intermediary-manager, with respect to such reinsurer, for the purposes of the Reinsurance Intermediary Law:

(1) an employee of the reinsurer;

(2) a United States manager of the United States branch of an alien reinsurer;

(3) an underwriting manager which, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, is under common control with

the reinsurer, subject to The Insurance Holding Company Law, and whose compensation is not based on the volume of premiums written; and

(4) the manager of a group, association, pool or organization or insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located;

H. "reinsurer" means any person, firm, association or corporation duly authorized in this state pursuant to the applicable provisions of the Insurance Code as an insurer with the authority to assume reinsurance;

I. "to be in violation" means that the reinsurance intermediary, insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of the Reinsurance Intermediary Law; and

J. "qualified United States financial institution" means an institution that:

(1) is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state thereof;

(2) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(3) has been determined by either the superintendent, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the superintendent."

Section 44

Section 44. A new section of the Insurance Code, Section 59A-12D-3 NMSA 1978, is enacted to read:

"59A-12D-3. LICENSURE.--

A. No person, firm, association or corporation shall act as a reinsurance intermediary-broker in this state if it maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

(1) in this state, unless such reinsurance intermediary-broker is a licensed producer in this state; or

(2) in another state, unless such reinsurance intermediary-broker is a licensed producer in this state or another state having a law substantially similar to

this law or such reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

B. No person, firm, association or corporation shall act as a reinsurance intermediary-manager:

(1) for a reinsurer domiciled in this state, unless such reinsurance intermediary-manager is a licensed producer in this state;

(2) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless such reinsurance intermediary-manager is a licensed producer in this state;

(3) in another state for a nondomestic insurer, unless such reinsurance intermediary-manager is a licensed producer in this state or another state having a law substantially similar to this law or such person is licensed in this state as a nonresident reinsurance intermediary.

C. The superintendent may require a reinsurance intermediary-manager subject to the provisions of Subsection B to:

(1) file a bond in an amount from an insurer acceptable to the superintendent for the protection of the reinsurer; and

(2) maintain an errors and omissions policy in an amount acceptable to the superintendent.

D.

(1) The superintendent may issue a reinsurance intermediary license to any person, firm, association or corporation who has complied with the requirements of the Reinsurance Intermediary Law. Any such license issued to a firm or association will authorize all the members of such firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. Any such license issued to a corporation shall authorize all of the officers and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of such corporation, and all such persons shall be named in the application and any supplements thereto.

(2) If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the superintendent as agent for service of process in the manner, and with the same legal effect, provided for by the Reinsurance Intermediary Law for designation of service of process upon unauthorized insurers; and also shall furnish the

superintendent with the name and address of a resident of this state upon whom notices or orders of the superintendent or process affecting such nonresident reinsurance intermediary may be served. Such licensee shall promptly notify the superintendent in writing of every change in its designated agent for service of process and such change shall not become effective until acknowledged by the superintendent.

E. The superintendent may refuse to issue a reinsurance intermediary license if, in his judgment, the applicant, anyone named on the application, or any member, principal, officer or director of the applicant, is not trustworthy, or that any controlling person of such applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of such license or has failed to comply with any prerequisite for the issuance of such license. Upon written request by the applicant, the superintendent will furnish a summary of the basis for refusal to issue a license, which document shall be subject to the provisions of Section 59A-11-20 NMSA 1978.

F. Licensed attorneys at law of this state when acting in their professional capacity as such shall be exempt from this section."

Section 45

Section 45. A new section of the Insurance Code, Section 59A-12D-4 NMSA 1978, is enacted to read:

"59A-12D-4. REQUIRED CONTRACT PROVISIONS--REINSURANCE INTERMEDIARY- BROKERS.--The transactions between a reinsurance intermediary-broker and the insurer it represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, provide that:

A. the insurer may terminate the reinsurance intermediary-broker's authority at any time;

B. the reinsurance intermediary-broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing, to the reinsurance intermediary-broker and remit all funds due to the insurer within thirty days of receipt;

C. all funds collected for the insurer's account shall be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank which is a qualified United States financial institution;

D. the reinsurance intermediary-broker shall comply with Section 59A-12D-5 NMSA 1978;

E. the reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks; and

F. the reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded."

Section 46

Section 46. A new section of the Insurance Code, Section 59A-12D-5 NMSA 1978 is enacted to read:

"59A-12D-5. BOOKS AND RECORDS--REINSURANCE INTERMEDIARY-BROKERS.--

A. For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction showing:

(1) the type of contract, limits, underwriting restrictions, classes or risks and territory;

(2) period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;

(3) reporting and settlement requirements of balances;

(4) rate used to compute the reinsurance premium;

(5) names and addresses of assuming reinsurers;

(6) rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;

(7) related correspondence and memoranda;

(8) proof of placement;

(9) details regarding retrocessions handled by the reinsurance intermediary-broker, including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(10) financial records, including but not limited to, premium and loss accounts; and

(11) when the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(a) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(b) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

B. The insurer shall have access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer."

Section 47

Section 47. A new section of the Insurance Code, Section 59A-12D-6 NMSA 1978, is enacted to read:

"59A-12D-6. DUTIES OF INSURERS UTILIZING THE SERVICES OF A REINSURANCE INTERMEDIARY-BROKER.--

A. An insurer shall not engage the services of any person, firm, association or corporation to act as a reinsuranceintermediary-broker on its behalf unless such person is licensed as required by Subsection A of Section 59A-12D-3 NMSA 1978.

B. An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business, unless such reinsurance intermediary- broker is under common control with the insurer and subject to The Insurance Holding Company Law.

C. The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business."

Section 48

Section 48. A new section of the Insurance Code, Section 59A-12D-7 NMSA 1978, is enacted to read:

"59A-12D-7. REQUIRED CONTRACT PROVISIONS--REINSURANCE INTERMEDIARY- MANAGERS.--Transactions between a reinsurance intermediary-manager and the reinsurer it represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty days before such reinsurer assumes or cedes business through such producer, a true copy of the approved contract shall be filed with the superintendent for approval. The contract shall, at a minimum, provide that:

A. the reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination;

B. the reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the reinsurance intermediary-manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis;

C. all funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank which is a qualified United States financial institution as defined in Section 59A-12D-2 NMSA 1978. The reinsurance intermediary-manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents;

D. for at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing:

(1) the type of contract, limits, underwriting restrictions, classes or risks and territory;

(2) period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(3) reporting and settlement requirements of balances;

(4) rate used to compute the reinsurance premium;

(5) names and addresses of reinsurers;

(6) rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;

(7) related correspondence and memoranda;

(8) proof of placement;

(9) details regarding retrocessions handled by the reinsurance intermediary-manager, including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(10) financial records, including but not limited to, premium and loss accounts; and

(11) when the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(a) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(b) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative;

E. the reinsurer shall have access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer;

F. the contract may not be assigned in whole or in part by the reinsurance intermediary-manager;

G. the reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks;

H. rates, terms and purposes of commissions, charges and other fees which the reinsurance intermediary-manager may levy against the reinsurer are set forth;

I. if the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

(1) all claims shall be reported to the reinsurer in a timely manner;

(2) a copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(a) has the potential to exceed the lesser of an amount determined by the superintendent or the limit set by the reinsurer;

(b) involves a coverage dispute;

(c) may exceed the reinsurance intermediary-manager's claims settlement authority;

(d) is open for more than six months; or

(e) is closed by payment of the lesser of an amount set by the superintendent or an amount set by the reinsurer;

(3) all claim files shall be the joint property of the reinsurer and reinsurance intermediary-manager; however, upon an order of liquidation of the reinsurer, such files shall become the sole property of the reinsurer or its estate; the reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis; and

(4) any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination;

J. if the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, that such interim profits shall not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later period set by the superintendent for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to Subsection C of Section 59A-12D-9 NMSA 1978;

K. the reinsurance intermediary-manager will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant;

L. the reinsurer shall periodically, at least semi-annually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager;

M. the reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such insurer pursuant to this contract; and

N. within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting."

Section 49

Section 49. A new section of the Insurance Code, Section 59A-12D-8 NMSA 1978, is enacted to read:

"59A-12D-8. PROHIBITED ACTS.--The reinsurance intermediary-manager shall not:

A. cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. Such guidelines shall include a list of reinsures with which such automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured and commission schedules;

B. commit the reinsurer to participate in reinsurance syndicates;

C. appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed;

D. without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;

E. collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report shall be promptly forwarded to the reinsurer;

F. jointly employ an individual who is employed by the reinsurer unless such reinsurance intermediary-manager is under common control with the reinsurer subject to The Insurance Holding Company Law;

G. appoint a sub-reinsurance intermediary-manager."

Section 50

Section 50. A new section of the Insurance Code, Section 59A-12D-9 NMSA 1978, is enacted to read:

"59A-12D-9. DUTIES OF REINSURERS UTILIZING THE SERVICES OF A REINSURANCE INTERMEDIARY-MANAGER.--

A. A reinsurer shall not engage the services of any person, firm, association or corporation to act as a reinsurance intermediary-manager on its behalf unless such person is licensed as required by Subsection B of Section 59A-12D-3 NMSA 1978.

B. The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager which such reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the superintendent.

C. If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion shall be in addition to any other required loss reserve certification.

D. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary-manager.

E. Within thirty days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of such termination to the superintendent.

F. A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder or subagent or subbroker of its reinsurance intermediary-manager. This subsection shall not apply to relationships governed by The Insurance Holding Company Law or, if applicable, the Broker Controlled Insurer Law."

Section 51

Section 51. A new section of the Insurance Code, Section 59A-12D-10 NMSA 1978, is enacted to read:

"59A-12D-10. EXAMINATION AUTHORITY.--

A. A reinsurance intermediary shall be subject to examination by the superintendent. The superintendent shall have access to all books, bank accounts and records of the reinsurance intermediary in a form usable to the superintendent.

B. A reinsurance intermediary-manager may be examined as if it were the reinsurer."

Section 52

Section 52. A new section of the Insurance Code, Section 59A-12D-11 NMSA 1978, is enacted to read:

"59A-12D-11. PENALTIES AND LIABILITIES.--

A. If the superintendent determines that the reinsurance intermediary or any other person has not materially complied with the provisions of the Reinsurance Intermediary Law, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the superintendent may order:

(1) for each separate violation, a penalty in an amount not exceeding ten thousand dollars ($10,000);

(2) revocation or suspension of the reinsurance intermediary's license; and

(3) if it was found that because of such material noncompliance that the insurer or reinsurer has suffered any loss or damage, the superintendent may maintain a civil action brought by or on behalf of the reinsurer or insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors or seek other appropriate relief.

B. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to Chapter 59A, Article 41 NMSA 1978, and the receiver appointed under that order determines that the reinsurance intermediary or any other person has not materially complied with the provisions of the Reinsurance Intermediary Law or any regulation or order promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or another appropriate sanction for the benefit of the insurer.

C. Nothing contained in this section shall affect the right of the superintendent to impose any other penalties provided for in the Insurance Code.

D. Nothing contained in the Reinsurance Intermediary Law is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties."

Section 53

Section 53. A new section of the Insurance Code, Section 59A-12D-12 NMSA 1978, is enacted to read:

"59A-12D-12. EFFECTIVE DATE.--No insurer or reinsurer may continue to utilize the services of a reinsurance intermediary on or after July 1, 1993, unless utilization is in compliance with the Reinsurance Intermediary Law."

Section 54

Section 54. Section 59A-14-3 NMSA 1978 (being Laws 1991, Chapter 125, Section 13) is amended to read:

"59A-14-3. PLACEMENT OF SURPLUS LINES INSURANCE.--No surplus lines insurance shall be solicited, negotiated, contracted for, effectuated or otherwise transacted within the meaning of Section 59A-1-13 NMSA 1978, unless:

A. the insurance is procured through a surplus lines broker;

B. each unauthorized insurer providing such insurance is an eligible surplus lines insurer;

C. the full amount or type of insurance cannot be obtained from insurers authorized to do business in this state. The full amount or type of insurance may be procured from eligible surplus lines insurers, provided that a diligent search has been made among insurers authorized to transact and actually writing the particular type and class of insurance in this state;

D. the surplus lines broker has taken such reasonable steps to ascertain that the insurer is in sound financial condition as may be required by regulations adopted by the superintendent; and

E. all other requirements of Chapter 59A, Article 14 NMSA 1978 are met."

Section 55

Section 55. A new section of the Insurance Code, Section 59A-15-21 NMSA 1978, is enacted to read:

"59A-15-21. SHORT TITLE.--Chapter 59A, Article 15 NMSA 1978 may be cited as the "Unauthorized Insurers Law"."

Section 56

Section 56. Section 59A-16-27 NMSA 1978 (being Laws 1984, Chapter 127, Section 294) is amended to read:

"59A-16-27. DESIST ORDERS FOR PROHIBITED PRACTICES.--

A. If the superintendent has cause to believe that any unfair method of competition or act or practice defined or prohibited in Chapter 59A, Article 16 NMSA 1978 is being engaged in by any person, he shall order such person to cease and desist therefrom. The superintendent shall deliver such order to such person directly or by certified mail. If the person fails to comply therewith within twenty days after receipt of the cease and desist order, and does not make written request for a hearing thereon within such twenty days, he shall be subject to the penalties referred to in Section 59A-16-29 NMSA 1978, for each violation committed theretofore or thereafter. In any event, if the person does not make a written request for hearing thereon within such twenty days the order shall be final and not subject to review or appeal.

B. If a hearing is so requested, the superintendent shall hold a hearing, and proceed as provided under Chapter 59A, Article 4 NMSA 1978 as to hearings in general.

C. If after such a hearing the violation is confirmed by final order of the superintendent, the violator shall be subject to the penalty referred to in Subsection A of this section, together with payment of the costs of the hearing as determined by the superintendent.

D. If the alleged violator fails to comply with the superintendent's order after expiration of the twenty-day period to request a hearing referred to in Subsection A of this section or after hearing referred to in Subsection C of this section, the superintendent may cause an action for injunction to be filed in the district court of the county in which the violation occurred.

E. No order of the superintendent pursuant to this section or order of court to enforce it, shall in any way relieve or absolve any person affected by such order from any other liability, penalty or forfeiture applicable under law.

F. Nothing in this section shall be construed as relieving any violator from penalties prescribed in Section 59A-16-29 NMSA 1978 whether or not such a cease and desist order is issued or other action hereunder taken by the superintendent."

Section 57

Section 57. Section 59A-18-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 342, as amended) is amended to read:

"59A-18-12. FILING OF FORMS AND CLASSIFICATIONS--REVIEW OF EFFECT UPON INSURED.--

A. No insurance policy or annuity contract shall be delivered or issued for delivery in this state, nor shall any assumption certificate, endorsement, rider or application which becomes a part of any such policy be used, until a copy of the form and the classification of risks pertaining thereto have been filed with the superintendent. Any such filing shall be made at least sixty days before its proposed effective date. No filing made pursuant to this section shall become effective nor shall it be used until approved by the superintendent pursuant to Section 59A-18-14 NMSA 1978. This subsection shall not apply as to policies, contracts, endorsements or riders of unique and special character not for general use or offering but designed and used solely as to a particular insured or risk.

B. No workers' compensation insurance policy covering a risk arising from the employment of a worker performing work for an employer in New Mexico when that employer is not domiciled in New Mexico shall be issued or become effective, nor shall any endorsement or rider covering such a risk be issued or become effective, until a copy of the form and the classification of risks pertaining thereto have been filed with the superintendent.

C. Any insured may in writing request the insurer to review the manner in which its filing has been applied as to insurance afforded him. If the insurer fails to make such review and grant appropriate relief within thirty days after such request is received, the insured may file a written complaint and request for a hearing with the superintendent, stating grounds relied upon. If the complaint charges a violation of the Insurance Code and the superintendent finds that the complaint was made in good faith and that the insured would be aggrieved if the violation is proved, he shall hold a hearing, with notice to the insured and insurer stating the grounds of complaint. If upon such hearing the superintendent finds the complaint justified, he shall order the insurer to correct the matter complained of within a reasonable time specified but not less than twenty days after a copy of his order was mailed to or served upon the insurer."

Section 58

Section 58. A new section of the Insurance Code, Section 59A-18-16.1 NMSA 1978 is enacted to read:

"59A-18-16.1. GROUP COVERAGE DISCONTINUANCE AND REPLACEMENT.--The superintendent may promulgate reasonable rules and regulations to establish requirements for group coverage discontinuance and replacement."

Section 59

Section 59. A new section of the Insurance Code, Section 59A-22A-1 NMSA 1978, is enacted to read:

"59A-22A-1. SHORT TITLE.--Chapter 59A, Article 22A NMSA 1978 shall be known and may be cited as the "Preferred Provider Arrangements Law"."

Section 60

Section 60. A new section of the Insurance Code, Section 59A-22A-2 NMSA 1978, is enacted to read:

"59A-22A-2. PURPOSE.--The purpose of the Preferred Provider Arrangements Law is to encourage health care cost containment while preserving quality of care by allowing health care insurers to enter into preferred provider arrangements in accordance with minimum standards for preferred provider arrangements and for the health benefit plans associated with those arrangements."

Section 61

Section 61. A new section of the Insurance Code, Section 59A-22A-3 NMSA 1978, is enacted to read:

"59A-22A-3. DEFINITIONS.--As used in the Preferred Provider Arrangements Law:

A. "covered person" means any person on whose behalf the health care insurer is obligated to pay for or to provide health benefit services;

B. "covered services" means health care services which the health care insurer is obligated to pay for or to provide under a health benefit plan;

C. "emergency care" means covered services delivered to a covered person after the sudden onset of a medical condition manifesting itself by acute symptoms that are severe enough that:

(1) the lack of immediate medical attention could result in:

(a) placing the person's health in jeopardy;

(b) serious impairment of bodily functions; or

(c) serious dysfunction of any bodily organ or part; or

(2) a reasonable person believes that immedite medical attention is required;

D. "health benefit plan" means the health insurance policy or subscriber agreement between the covered person or the policyholder and the health care insurer which defines the covered services and benefit levels available;

E. "health care insurer" means any person who provides health insurance in this state. For the purposes of the Small Group Rate and Renewability Act, "carrier" or "insurer" includes a licensed insurance company, a licensed fraternal benefit society, a prepaid hospital or medical service plan, a health maintenance organization, a nonprofit health care organization, a multiple employer welfare arrangement or any other person providing a plan of health insurance subject to state insurance regulation;

F. "health care provider" means providers of health care services licensed as required in this state;

G. "health care services" means services rendered or products sold by a health care provider within the scope of the provider's license. The term includes hospital, medical, surgical, dental, vision and pharmaceutical services or products;

H. "preferred provider" means a health care provider or group of providers who have contracted with a health care insurer to provide specified covered services to a covered person; and

I. "preferred provider arrangement" means a contract between or on behalf of the health care insurer and a preferred provider which complies with all the requirements of the Preferred Provider Arrangements Law."

Section 62

Section 62. A new section of the Insurance Code, Section 59A-22A-4 NMSA 1978, is enacted to read:

"59A-22A-4. PREFERRED PROVIDER ARRANGEMENTS.--Notwithstanding any provisions of law to contrary, any health care insurer may enter into preferred provider arrangements.

A. Such arrangements shall:

(1) establish the amount and manner of payment to the preferred provider. Such amount and manner of payment may include capitation payments for preferred providers;

(2) include mechanisms which are designed to minimize the cost of the health benefit plan; for example:

(a) the review or control of utilization of health care services; or

(b) procedures for determining whether health care services rendered are medically necessary; and

(3) assure reasonable access to covered services available under the preferred provider arrangement and an adequate number of preferred providers to render those services.

B. Such arrangements shall not unfairly deny health benefits for medically necessary covered services.

C. If an entity enters into a contract providing covered services with a health care provider, but is not engaged in activities which would require it to be licensed as a health care insurer, such entity shall file with the superintendent information describing its activities, a description of the contract or agreement it has entered into with the health care providers, and such other information as is required by the provisions of the Health Care Benefits Jurisdiction Act and any regulations promulgated under its authority. Employers who enter into contracts with health care providers for the exclusive benefit of their employees and dependents are subject to the Health Care Benefits Jurisdiction Act and are exempt from this requirement only to the extent required by federal law."

Section 63

Section 63. A new section of the Insurance Code, Section 59A-22A-5 NMSA 1978, is enacted to read:

"59A-22A-5. HEALTH BENEFIT PLANS.--

A. Health care insurers may issue health benefit plans which provide for incentives for covered persons to use the health care services of preferred providers. Such policies or subscriber agreement shall contain at least the following provisions:

(1) a provision that if a covered person receives emergency care for services specified in the preferred provider arrangement and cannot reasonably reach a preferred provider that emergency care rendered during the course of the emergency will be reimbursed as though the covered person had been treated by a preferred provider; and

(2) a provision which clearly identifies the differentials in benefit levels for health care services of preferred providers and benefit levels for health care services of non-preferred providers.

B. If a health benefit plan provides differences in benefit levels payable to preferred providers compared to other providers, such differences shall not unfairly deny payment for covered services and shall be no greater than necessary to provide a reasonable incentive for covered persons to use the preferred provider."

Section 64

Section 64. A new section of the Insurance Code, Section 59A-22A-6 NMSA 1978, is enacted to read:

"59A-22A-6. PREFERRED PROVIDER PARTICIPATION REQUIREMENTS.--Health care insurers may place reasonable limits on the number or classes of preferred providers which satisfy the standards set forth by the health care insurer, provided that there is no discrimination against providers on the basis of religion, race, color, national origin, age, sex or marital status, and further provided that selection of preferred providers is primarily based on, but not limited to, cost and availability of covered services and the quality of services performed by the providers."

Section 65

Section 65. A new section of the Insurance Code, Section 59A-22A-7 NMSA 1978, is enacted to read:

"59A-22A-7. GENERAL REQUIREMENTS.--Health care insurers complying with the Preferred Provider Arrangements Law shall be subject to and are required to comply with all other applicable laws, rules and regulations of this state."

Section 66

Section 66. Section 59A-34-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 563) is amended to read:

"59A-34-17. MANAGEMENT, COMPENSATION AND AGENCY CONTRACTS.--

A. No domestic insurer shall make, amend or renew any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the material exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer, or, if an officer, director or otherwise part of the insurer's management, is to receive any commission, bonus or compensation based upon the volume of the insurer's business or transactions, unless the contract is filed with and not disapproved by the superintendent. The contract amendment or renewal shall become effective in accordance with its terms unless disapproved by the superintendent within thirty days after date of filing, subject to such reasonable extension of time as the superintendent may require by written notice given within such thirty days. Any disapproval shall be delivered to the insurer in writing stating the grounds therefor.

B. Any such contract when made, amended, or renewed shall provide that any such manager, producer of its business or contract holder shall within ninety days after expiration of each calendar year furnish the insurer's board of directors a written statement of amounts received under or on account of the contract and amounts expended thereunder during such calendar year, with specification of the emoluments received therefrom by the respective directors, officers, and other principal management personnel of the manager, producer, contract holder or insurer, and with such classification of items and further detail as the insurer's board of directors may reasonably require.

C. The superintendent shall disapprove any such contract, amendment or renewal thereof if he finds that the contract:

(1) subjects the insurer to excessive charges;

(2) is to extend for an unreasonable length of time;

(3) does not contain fair and adequate standards of performance; or

(4) contains other inequitable provisions or provisions which impair the reasonable and proper interests of the insurer's stockholders, policyholders or members.

D. The superintendent may, after a hearing held thereon, disapprove or withdraw his approval of any such contract theretofore permitted to become effective or amended or renewed, if he finds that the contract should be disapproved on any of the grounds specified in Subsection C of this section.

E. Any contract or relationship with and any person who is a managing general agent as defined in the Managing General Agents Law, shall be subject to the provisions of that law."

Section 67

Section 67. Section 59A-34-18 NMSA 1978 (being Laws 1984, Chapter 127, Section 564) is amended to read:

"59A-34-18. DIVIDENDS TO STOCKHOLDERS.--

A. A domestic stock insurer shall not pay any cash dividend to stockholders except out of that part of its available and accumulated surplus funds otherwise unrestricted and derived from realized net operation profits and realized capital gains.

B. A cash dividend otherwise lawful may be so paid out of the insurer's earned surplus which is in excess of the amount of surplus required to be maintained by it under the Insurance Code.

C. A stock dividend may be paid out of any available surplus. Upon payment of a stock dividend the insurer shall transfer to its paid-in capital stock account funds equal to the aggregate of the par value of shares so distributed.

D. No dividend shall be declared or paid which would reduce the insurer's surplus funds below an amount reasonably required to sustain the insurer's normal operations currently and for the reasonably foreseeable future.

E. This section is subject to the provisions of Section 59A-37-22 NMSA 1978 relative to dividends by insurers which are subject to The Insurance Holding Company Law."

Section 68

Section 68. A new section of the Insurance Code, Section 59A-34-44 NMSA 1978, is enacted to read:

"59A-34-44. MATERIAL TRANSACTIONS--REPORT.--

A. Every domestic insurer, including health maintenance organizations, nonprofit health care plans and fraternal benefit societies, shall file a report with the superintendent disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance programs unless such transactions have been submitted to the superintendent for review, approval or information purposes pursuant to other provisions of the Insurance Code, laws, regulations or other requirements.

B. The report required in Subsection A of this section is due within fifteen days after the end of the calendar month in which any of the foregoing transactions occur.

C. One complete copy of the report, including any exhibits or other attachments filed as part thereof, shall be filed with the national association of insurance commissioners."

Section 69

Section 69. A new section of the Insurance Code, Section 59A-34-45 NMSA 1978, is enacted to read:

"59A-34-45. ACQUISITION AND DISPOSITION OF ASSETS--MATERIALITY--SCOPE-- REPORTING REQUIREMENTS.--

A. No acquisition or disposition of assets need be reported pursuant to Section 59A-34-44 NMSA 1978 if the acquisition or disposition is not material. For urposes of this section and Section 59A-34-44 NMSA 1978, a material acquisition, or aggregate of any series of acquisitions during any thirty-day period, or disposition, or aggregate of any series of dispositions during any thirty-day period, is one that involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent financial statement filed with the superintendent.

B. Asset acquisitions subject to the provisions of Section 59A-34-44 NMSA 1978 include every purchase, lease, exchange, merger, consolidation, succession or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose. Asset dispositions subject to Section 59A-34-44 NMSA 1978 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction or other disposition.

C. The following information is required to be disclosed in the report of a material acquisition or disposition of assets:

(1) the date of the transaction;

(2) the manner of acquisition or disposition;

(3) a description of the assets involved;

(4) the nature and amount of the consideration given or received;

(5) the purpose of, or reason for, the transaction;

(6) the manner by which the amount of consideration was determined;

(7) the amount of any gain or loss recognized or realized as a result of the transaction; and

(8) the names of the persons from whom the assets were acquired or to whom they were disposed.

D. Such insurers are required to report acquisitions and dispositions on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes an intercompany pooling agreement or arrangement or a one hundred percent reinsurance agreement under which the ceding company has ceded substantially all of its direct and assumed business to a pool, and the group reports in accordance with Section 59A-34-44 NMSA 1978 on behalf of the members of the group on a consolidated basis. For purposes of this section, an insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars ($1,000,000) of total direct plus assumed written premiums during a calendar year that are not subject to the pooling agreement or arrangement and the net income of the business not subject to the pooling agreement or arrangement represents less than five percent of the insurer's capital and surplus. If a group of insurers reports on a consolidated basis as allowed by this subsection, the report shall identify every insurer that is a member of the group."

Section 70

Section 70. A new section of the Insurance Code, Section 59A-34-46 NMSA 1978, is enacted to read:

"59A-34-46. NONRENEWALS, CANCELLATIONS OR REVISIONS OF CEDED REINSURANCE PROGRAMS--MATERIALITY--SCOPE--REPORTING REQUIREMENTS.--

A. No nonrenewal, cancellation or revision of a ceded reinsurance program need be reported pursuant to Section 59A-34-44 NMSA 1978 if the nonrenewal, cancellation or revision is not material. For purposes of this section and Section 59A-34-44 NMSA 1978, a material nonrenewal, cancellation or revision is one that, on an annualized basis as indicated in the insurer's most recently filed financial

statement, affects more than fifty percent of an insurer's ceded written premium for property or casualty business, including accident and health business when written by a casualty insurer, or affects more than fifty percent of the total reserve credit taken for business ceded for life, annuity, or accident and health business written by an insurer other than a casualty insurer; but the transaction is not material if the insurer's ceded written premium or the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of direct plus assumed written premium or ten percent of the statutory reserve requirement prior to any cession, respectively.

B. Notwithstanding the provisions of Subsection A of this section, and without regard to which part has initiated the nonrenewal, cancellation or revision of ceded reinsurance, a report is to be filed whenever:

(1) the entire cession has been canceled, nonrenewed or revised, and ceded indemnity and loss adjustment expense reserves after any nonrenewal, cancellation or revision represent less than fifty percent of the comparable reserves that would have been ceded had the nonrenewal, cancellation or revision not occurred;

(2) an authorized or accredited reinsurer has been replaced on an existing cession by an unauthorized or nonaccredited reinsurer; or

(3) previously established collateral requirements for unauthorized or nonaccredited reinsurers have been reduced or waived, either as to an existing reinsurer or reinsurers or to one or more reinsurers newly participating in an existing cession.

C. The following information is required to be disclosed in the report of a material nonrenewal, cancellation or revision of a ceded reinsurance program:

(1) the effective date of the nonrenewal, cancellation or revision;

(2) a description of the transaction with an identification of the initiator thereof;

(3) the purpose of, or reason for, the transaction; and

(4) if applicable, the identity of the replacement reinsurers.

D. Insurers are required to report all material nonrenewals, cancellations or revisions of ceded reinsurance programs on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes an intercompany pooling agreement or arrangement or a one hundred percent reinsurance agreement under which the ceding company has ceded substantially all of its direct and assumed business to a pool, and the group reports in accordance with Section 59A-34-44 NMSA 1978 on behalf of the members of the group on a consolidated basis. For purposes of this subsection an insurer is deemed to have ceded substantially all of its direct and

assumed business to a pool if the insurer has less than one million dollars ($1,000,000) of total direct plus assumed written premiums during a calendar year that are not subject to the pooling agreement or arrangement and the net income of the business not subject to the pooling agreement or arrangement represents less than five percent of the insurer's capital and surplus. If a group of insurers reports on a consolidated basis as allowed by this subsection, the report shall identify every insurer that is a member of the group."

Section 71

Section 71. Section 59A-37-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 617) is amended to read:

"59A-37-2. DEFINITIONS.--As used in Chapter 59A, Article 37 NMSA 1978:

A. "acquire" means to come into possession or control of, and "acquisition" means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person and includes but is not limited to the acquisition of voting securities or assets, bulk reinsurance and mergers;

B. "affiliate" means a person that directly or indirectly is controlled by, is under common control with or controls another person;

C. "control" means the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by an individual. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds ten or more percent of the voting securities of any other person. This presumption may be rebutted by a showing, in the manner provided by Section 59A-37-19 NMSA 1978, that control does not in fact exist. The superintendent may determine, after furnishing all persons in interest notice and an opportunity to be heard, that control exists in fact, notwithstanding the absence of a presumption to that effect, provided that the determination is based on specific findings of fact in its support;

D. "insurance holding company" is a person which controls an insurer; "insurance holding company system" means a combination of two or more affiliated persons, at least one of which is an insurer;

E. "insurer" means a person which undertakes, under contract, to indemnify a person against loss, damage or liability arising from an unknown or contingent future event. The term does not include agencies, authorities or instrumentalities of the United States, its possessions or territories, the commonwealth

of Puerto Rico, the District of Columbia, a state or any of its political subdivisions, a fraternal benefit society or a nonprofit medical and hospital service association;

F. "person" means an individual, corporation, association, partnership, joint stock company, trust, unincorporated organization or any similar entity or combination of entities;

G. "securityholder" means the owner of any security of a person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing;

H. "subsidiary" means an affiliate of a person controlled by the person either directly or indirectly through one or more intermediaries; and

I. "voting security" means a certificate evidencing the ownership or indebtedness of a person, to which is attached a right to vote on the management or policymaking of that person and includes any security convertible into or evidencing a right to acquire such a voting security."

Section 72

Section 72. Section 59A-37-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 618) is repealed and a new Section 59A-37-3 NMSA 1978 is enacted to read:

"59A-37-3. SUBSIDIARIES OF INSURERS.--

A. Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

(1) any kind of insurance business authorized by the jurisdiction in which it is incorporated;

(2) acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;

(3) investing, reinvesting or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(4) management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;

(5) acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;

(6) rendering investment advice to governments, government agencies, corporations or other organizations or groups;

(7) rendering other services relating to the operations of an insurance business, including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;

(8) ownership and management of assets which the parent corporation could itself own or manage;

(9) acting as administrative agent for a governmental instrumentality which is performing an insurance function;

(10) financing of insurance premiums, agents and other forms of consumer financing;

(11) any other business activity determined by the superintendent to be reasonably ancillary to an insurance business; and

(12) owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

B. In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of The Insurance Holding Company Law, a domestic insurer may also:

(1) invest, in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten percent of such insurer's assets or fifty percent of such insurer's surplus as regards policyholders, provided that after such investments, the insurer's surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

(a) total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(b) all amounts expended in acquiring additional common stock, preferred stock, debt obligations and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;

(2) invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, provided that each such subsidiary agrees to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in Paragraph (1) of this subsection or in Chapter 59A, Article 9 NMSA 1978 applicable to the insurer. For the purpose of this paragraph, "the total investment of the insurer" shall include:

(a) any direct investment by the insurer in an asset; and

(b) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary; or

(3) with the approval of the superintendent, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after such investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

C. Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to Subsection B of this section shall not be subject to the any of the otherwise applicable restrictions or prohibitions contained in the Insurance Code applicable to such investments of insurer.

D. Whether any investment pursuant to Subsection B of this section meets the applicable requirements thereof is to be determined before such investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

E. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the superintendent may prescribe, unless at any time after the investment shall have been made, the investment shall have met the requirements for investment under any other section of the Insurance Code, and the insurer has notified the superintendent thereof."

Section 73

Section 73. Section 59A-37-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 619) is amended to read:

"59A-37-4. ACQUISITION OF CONTROL OF DOMESTIC INSURER.--

A. No person other than the issuer shall make a tender, offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, acquire, seek to acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the superintendent and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by Section 59A-37-5 NMSA 1978, and such offer, request, invitation, agreement or acquisition has been approved by the superintendent in the manner hereinafter prescribed.

B. For the purposes of this section and Sections 59A-37-5 through 59A-37-10 NMSA 1978:

(1) a domestic insurer includes any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance; and

(2) "person" shall not include any securities broker holding, while in the performance of his usual and customary broker's function, less than twenty percent of the voting securities of an insurer, or of any person which controls an insurer."

Section 74

Section 74. Section 59A-37-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 620) is amended to read:

"59A-37-5. CONTENTS OF STATEMENT.--

A. The statement to be filed with the superintendent under Section 59A-37-4 NMSA 1978, shall be made under oath or affirmation and shall contain the following information:

(1) the name and address of each person, hereinafter called "acquiring party", by whom or on whose behalf the merger or other acquisition of control referred to in Section 59A-37-4 NMSA 1978 is to be effected, and:

(a) if the acquiring party is an individual, his principal occupation and all offices and positions held by him during the past five years, and any conviction of crime other than minor traffic violations during the past ten years; or

(b) if the acquiring party is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as it and any of its predecessors shall have been in existence; an informative description of the business intended to be done by it and its subsidiaries; and a list of all individuals who are or who have been selected to become its directors or executive officers, or who perform or will perform functions appropriate to such positions. The list shall include for each individual the information required by Subparagraph (a) of this paragraph;

(2) the source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction where funds were or are to be obtained for any such purpose including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration. However, where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing the statement so requests;

(3) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for such lesser period that the acquiring party and any of its predecessors shall have been in existence if less than five years, and similar unaudited information as of a date not earlier than ninety days prior to the date of the filing of the statement;

(4) any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any other person, or to make any other material change in its business or corporate structure or management;

(5) the number of shares of any security which each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was determined;

(6) the amount of each class of any security referred to in Section 59A-37-4 NMSA 1978, which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) a full description of any contracts, arrangements or understandings with respect to any security referred to in Section 59A-37-4 NMSA 1978 in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of

loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered into;

(8) a description of the purchase of any security referred to in Section 59A-37-4 NMSA 1978 during the twelve calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid;

(9) a description of any recommendations to purchase any security referred to in Section 59A-37-4 NMSA 1978 made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of any acquiring party;

(10) copies of all tender offers for, requests or invitations for tenders of exchange offers for and agreements to acquire or exchange any securities referred to in Section 59A-37-4 NMSA 1978 and, if distributed, of additional soliciting material relating thereto;

(11) the terms of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in Section 59A-37-4 NMSA 1978 for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto; and

(12) such additional information as the superintendent may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

B. If the person required to file the statement referred to in Section 59A-37-4 NMSA 1978 is a partnership, limited partnership, syndicate or other group, the superintendent may require that the information called for by Subsection A of this section shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group and each person who controls the partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in Section 59A-37-4 NMSA 1978 is a corporation, the superintendent may require that the information called for by Subsection A of this section shall be given with respect to the corporation, each officer and director of the corporation and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

C. If any material change occurs in the facts set forth in the statement filed with the superintendent and sent to such insurer pursuant to Section 59A-37-4 NMSA 1978, an amendment setting forth the change, together with copies of all documents and other materal relevant to the change, shall be filed with the superintendent and sent

to the insurer within two business days after the person learns of the change, and the insurer shall send the amendment to its shareholders without delay.

D. If any offer, request, invitation, agreement or acquisition referred to in Section 59A-37-4 NMSA 1978 is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in Section 59A-37-4 NMSA 1978 may utilize such documents in furnishing the information called for by that statement."

Section 75

Section 75. Section 59A-37-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 621) is amended to read:

"59A-37-6. APPROVAL BY SUPERINTENDENT--REVIEW.--

A. The superintendent shall approve any merger or other acquisition of control referred to in Section 59A-37-4 NMSA 1978 unless, after a public hearing thereon, he finds that:

(1) after the change of control, the domestic insurer would not be able to satisfy the requirements for the issuance of a certificate of authority to write the line or lines of insurance for which it is presently authorized;

(2) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(3) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interests of its policyholders or the interests of any remaining securityholders who are unaffiliated with the acquiring party;

(4) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any other person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(5) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(6) the acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

B. The superintendent may retain at the acquiring party's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the superintendent's staff reasonably necessary to assist the superintendent to review the proposed acquisition of control."

Section 76

Section 76. Section 59A-37-11 NMSA 1978 (being Laws 1984, Chapter 127, Section 626) is amended to read:

"59A-37-11. REGISTRATION OF INSURER MEMBER OF HOLDING COMPANY SYSTEM.--

A. Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the superintendent, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

(1) Sections 59A-37-11 through 59A-37-19.2 NMSA 1978;

(2) Subsection A of 59A-37-20 NMSA 1978;

(3) Sections 59A-37-21 and 59A-37-22 NMSA 1978; and

(4) either:

(a) Subsection B of Section 59A-37-20 NMSA 1978; or

(b) a provision requiring each registered insurer to keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each change or addition.

B. Any insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration, and annually thereafter by the fifteenth day of April each year, unless the superintendent for good cause shown extends the time for registration, and then within such extended time. The superintendent may require any authorized insurer which is a member of a holding company system and which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction."

Section 77

Section 77. Section 59A-37-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 627) is amended to read:

"59A-37-12. REGISTRATION--INFORMATION--FORM.--Every insurer subject to registration shall file a registration statement on a form provided by the superintendent, which shall contain current information about:

A. the capital structure, general financing condition, ownership and management of the insurer and any person controlling the insurer;

B. the identity of every member of the insurance holding company system;

C. the following agreements in force, relationships subsisting and transactions currently outstanding between such insurer and its affiliates:

(1) loans, other investments or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(2) purchases, sales or exchanges of assets;

(3) transactions not in the ordinary course of business;

(4) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(5) all management and service contracts and all cost-sharing arrangements;

(6) reinsurance agreements;

(7) dividends and other distributions to shareholders; and

(8) consolidated tax allocation agreements;

D. any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; and

E. other matters concerning transactions between registered insurers and

any affiliates as may be included from time to time in any registration forms adopted or approved by the superintendent."

Section 78

Section 78. Section 59A-37-14 NMSA 1978 (being Laws 1984, Chapter 127, Section 629) is repealed and a new Section 59A-37-14 NMSA 1978 is enacted to read:

"59A-37-14. SUMMARY OF REGISTRATION.--All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement."

Section 79

Section 79. Section 59A-37-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 631) is amended to read:

"59A-37-16. CONSOLIDATED FILING.--The superintendent may require or allow two or more affiliated insurers subject to registration to file a consolidated registration statement."

Section 80

Section 80. Section 59A-37-18 NMSA 1978 (being Laws 1984, Chapter 127, Section 633) is amended to read:

"59A-37-18. REGISTRATION EXEMPTIONS.--Sections 59A-37-11 through 59A-37-19.2 NMSA 1978 shall not apply to any insurer, information or transaction if and to the extent that the superintendent by rule, regulation or order shall exempt the same from the provisions of such sections."

Section 81

Section 81. A new section of the Insurance Code, Section 59A-37-19.1 NMSA 1978, is enacted to read:

"59A-37-19.1. REPORTING OF DIVIDENDS TO SHAREHOLDERS.--Subject to the

provisions of Section 59A-37-22 NMSA 1978, each registered insurer shall report to the superintendent all dividends and other distributions to shareholders within fifteen business days following the declaration thereof."

Section 82

Section 82. A new section of the Insurance Code, Section 59A-37-19.2 NMSA 1978, is enacted to read:

"59A-37-19.2. INFORMATION OF INSURERS.--Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of Chapter 59A, Article 37 NMSA 1978."

Section 83

Section 83. Section 59A-37-20 NMSA 1978 (being Laws 1984, Chapter 127, Section 635) is repealed and a new Section 59A-37-20 NMSA 1978 is enacted to read:

"59A-37-20. TRANSACTIONS WITH AFFILIATES.--

A. Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(1) the terms shall be fair and reasonable;

(2) charges or fees for services performed shall be reasonable;

(3) expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(4) the books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(5) the insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

B. The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into such transactions at least thirty days prior thereto, or such shorter period as the superintendent may permit, and the superintendent has not disapproved it within that period:

(1) sales, purchases, exchanges, loans or extensions of credit, guarantees or investments, provided the transactions are equal to or exceed:

(a) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders as of December 31 next preceding; or

(b) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 next preceding;

(2) loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit, provided the transactions are equal to or exceed:

(a) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders as of December 31 next preceding; or

(b) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 next preceding;

(3) reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between the insurer and non-affiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(4) all management agreements, service contracts and all cost-sharing arrangements; and

(5) any material transactions, specified by regulation, which the superintendent determines may adversely affect the interests of the insurer's policyholders.

Nothing contained in this subsection shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

C. A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the superintendent determines that such separate transactions were entered into over any twelve-month period for that purpose, he may exercise his authority under Section 59A-37-26 NMSA 1978.

D. The superintendent, in reviewing transactions pursuant to Subsection B of this section, shall consider whether the transactions comply with the standards set

forth in Subsection A of this section and whether they may adversely affect the interests of policyholders.

E. The superintendent shall be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities."

Section 84

Section 84. Section 59A-37-22 NMSA 1978 (being Laws 1984, Chapter 127, Section 637) is amended to read:

"59A-37-22. DIVIDENDS AND OTHER DISTRIBUTIONS.--

A. No domestic stock insurer shall declare or distribute any dividend to shareholders, other than a pro rata distribution of any class of the insurer's own securities, except out of earned surplus. For purposes of this section, "earned surplus" means the portion of the surplus that represents the net earnings, gains or profits, after deduction of all losses, that have not been distributed to the shareholders as dividends or transferred to stated capital or capital surplus or applied to other purposes permitted by law, but does not include twenty-five percent of the unrealized appreciation of assets.

B. No domestic insurer shall pay an extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(1) thirty days after the superintendent has received notice of the declaration thereof and has not within such period disapproved such payment; or

(2) the superintendent shall have approved such payment within the thirty-day period.

C. For the purposes of Sections 59A-37-20 through 59A-37-22 NMSA 1978, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the lesser of ten percent of the insurer's surplus as regards policyholders as of December 31 next preceding or the net gain from operations of the insurer, if the insurer is a life insurer, or the net investment income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

D. In determining whether a dividend or distribution is extraordinary:

(1) an insurer other than a life insurer may carry forward net income from the previous three calendar years that has not already been paid out as dividends,

which carry-forward shall be computed by taking the net income from the second, third and fourth preceding calendar years, not including realized capital gains, less dividends paid in the third, second and immediate preceding calendar years; and

(2) a life insurer may carry forward net gains from operations not including realized capital gains from the previous two calendar years that have not already been paid out as dividends, which carry-forward shall be computed by taking the net gain from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

E. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditioned upon the superintendent's approval thereof, and such a declaration shall confer no rights upon shareholders until:

(1) the superintendent has approved the payment of the dividend or distribution; or

(2) the superintendent has not disapproved the payment within thirty days after he has received notice of the declaration."

Section 85

Section 85. Section 59A-37-23 NMSA 1978 (being Laws 1984, Chapter 127, Section 638) is amended to read:

"59A-37-23. EXAMINATIONS.--

A. Pursuant to general powers of investigation and examination vested in the superintendent under Chapter 59A, Article 4 NMSA 1978, the superintendent may order any insurer registered under Section 59A-37-11 NMSA 1978 to produce such records, books or other information papers in the possession of the insurer or its affiliates as are necessary to ascertain the insurer's financial condition or its compliance with Chapter 59A, Article 37 NMSA 1978. If the insurer fails to comply with the order the superintendent may examine its affiliates to obtain the information.

B. The examination shall be conducted and otherwise be subject to applicable provisions of Chapter 59A, Article 4 NMSA 1978."

Section 86

Section 86. Section 59A-37-25 NMSA 1978 (being Laws 1984, Chapter 127, Section 640) is amended to read:

"59A-37-25. ENFORCEMENT--VOTING SECURITIES--CIVIL PROCEEDINGS.--

A. Whenever it appears to the superintendent that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of Chapter 59A, Article 37 NMSA 1978 or of any rule, regulation or order of the superintendent hereunder, the superintendent may apply to the district court for the county in which the principal office of the insurer is located or, if such insurer has no such office in this state, then to the district court for Santa Fe county, for an order enjoining the insurer or the director, officer, employee or agent thereof from violating or continuing to violate that article or any rule, regulation or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.

B. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of Chapter 59A, Article 37 NMSA 1978 or of any rule, regulation or order of the superintendent hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the superintendent has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of that article or of any rule, regulation or order of the superintendent hereunder, the insurer or the superintendent may apply to the district court for Santa Fe county or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of Sections 59A-37-4 through 59A-37-10 NMSA 1978, or any rule, regulation or order of the superintendent thereunder, to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

C. In any case where a person has acquired or is proposing to acquire any voting securities in violation of Chapter 59A, Article 37 NMSA 1978 or any rule, regulation or order of the superintendent hereunder, the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the superintendent, seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of that article. Notwithstanding any other provisions of law, for the purpose of that article, the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state."

Section 87

Section 87. Section 59A-37-26 NMSA 1978 (being Laws 1984, Chapter 127, Section 641) is amended to read:

"59A-37-26. ENFORCEMENT, CRIMINAL PROCEEDINGS--ENALTY.--

A. Any insurer failing, without just cause, to file any registration statement as required in Chapter 59A, Article 37 NMSA 1978 shall be required, after notice and hearing, to pay a penalty of fifty dollars ($50.00) for each day's delay, not to exceed a total penalty of ten thousand dollars ($10,000). The superintendent may reduce the penalty if the insurer demonstrates to the superintendent that the imposition of the penalty would constitute a financial hardship to the insurer.

B. Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any officer or agent of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to Section 59A-37-11 NMSA 1978, Subsection B of Section 59A-37-20 NMSA 1978, or Section 59A-37-22 NMSA 1978, or which violate Chapter 59A, Article 37 NMSA 1978, shall pay, in their individual capacity, a penalty of not more than ten thousand dollars ($10,000) per violation, after notice and hearing before the superintendent. In determining the amount of the penalty, the superintendent shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

C. Whenever it appears to the superintendent that any insurer subject to the provisions of Chapter 59A, Article 37 NMSA 1978 or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to the provisions of Sections59A-37-20 through 59A-37-22 NMSA 1978 and which would not have been approved had the approval been requested, the superintendent may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the superintendent may also order the insurer to void any contracts and restore the status quo if the action is in the best interes of the policyholders, creditors or the public.

D. Whenever it appears to the superintendent that any insurer or any director, officer, employee or agent thereof has committed a willful violation of Chapter 59A, Article 37 NMSA 1978, the superintendent may cause criminal proceedings to be instituted in the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then in the district court for Santa Fe county against the insurer or the responsible director, officer, employee or agent thereof. Any insurer which willfully violates that article may be fined not more than twenty thousand dollars ($20,000). Any individual who willfully violates that article may be fined not more than ten thousand dollars ($10,000).

E. Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any

false statements or false reports or false filings with the intent to deceive the superintendent in the performance of his duties under Chapter 59A, Article 37 NMSA 1978, upon conviction thereof, shall be imprisoned for not more than twenty years or fined not more than one million ($1,000,000), or both. Any fines imposed shall be paid by the officer, director or employee in his individual capacity."

Section 88

Section 88. Section 59A-37-27 NMSA 1978 (being Laws 1984, Chapter 127, Section 642) is amended to read:

"59A-37-27. RECEIVERSHIP--RECOVERY OF DISTRIBUTIONS.--

A. Whenever it appears to the superintendent that any person has committed a violation of Chapter 59A, Article 37 NMSA 1978 which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, then the superintendent may proceed as provided in Chapter 59A, Article 41 NMSA 1978, to take possession of the property of such domestic insurer and to conduct the business thereof.

B. If an order for liquidation or rehabilitation of a domestic insurer has been entered for any reason, the receiver appointed under such order shall have a right to recover on behalf of the insurer:

(1) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock;

(2) any payment in the form of a bonus, termination settlement or extraordinary lump-sum salary adjustment made by the insurer or its subsidiary to a director, officer or employee; or

(3) any payment on a surplus note entered into pursuant to Section 59A-34-23 NMSA 1978, where the distribution or payment pursuant to Paragraph (1), (2) or (3) of this subsection is made at any time during the two years preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of Subsections C, D, and E of this section.

C. No such distribution shall be recoverable if the parent or affiliate shows that when paid, the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

D. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time such distributions were paid shall be liable up to the amount of distributions or payments under Subsection B of this section which the person received. Any person who otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

E. The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty associations.

F. To the extent that any person liable under Subsection D of this section is insolvent or otherwise fails to pay claims due from it pursuant to this section, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid shall be liable for any resulting deficiency in the amount recovered from its subsidiary."

Section 89

Section 89. Section 59A-37-28 NMSA 1978 (being Laws 1984, Chapter 127, Section 643) is amended to read:

"59A-37-28. SUSPENSION, REVOCATION, NONCONTINUANCE OF CERTIFICATE OF AUTHORITY.--Whenever it appears to the superintendent that any person has violated a provision of Chapter 59A, Article 37 NMSA 1978 which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the superintendent may, after giving notice and an opportunity to be heard, suspend, revoke or refuse to continue the insurer's certificate of authority to do business in this state for such period as he finds necessary for protection of policyholders or the public. Any such order shall be accompanied by specific findings of fact and conclusions of law."

Section 90

Section 90. Section 59A-41-24 NMSA 1978 (being Laws 1984, Chapter 127, Section 716) is amended to read:

"59A-41-24. HAZARDOUS FINANCIAL CONDITION, DETERMINATION.--

A. For the purposes of Sections 59A-41-25 and 59A-41-26 NMSA 1978, an insurer may be deemed to be in a hazardous financial condition when the superintendent has determined, after notice and hearing, that the loss experience of the insurer, when reviewed in conjunction with the kinds and characteristics of risks insured,

or the insurer's financial condition, or its ownership, or the ratio of its annual premium volume in relation to its policyholders' surplus, would make further assumption of risks by the insurer hazardous to those persons doing business with the insurer or to the general public.

B. The following items may be considered by the superintendent to determine whether the continued operation of any insurer transacting an insurance business in this state is hazardous to the policyholders, creditors or the general public:

(1) findings reported in financial condition and market conduct examination reports;

(2) the national association of insurance commissioners insurance regulatory information system and its related reports;

(3) ratios of commission expense, general insurance expense, policy benefits and reserve increases to annual premium and net investment income;

(4) the value, liquidity or diversity of the insurer's asset portfolio when viewed in light of current economic conditions with regard to assuring the company's ability to meet its outstanding obligations as they mature;

(5) the adequacy, reliability and soundness of the insurer's reinsurance program as well as the financial condition of the assuming reinsurer and the ability of the assuming reinsurer to perform under its reinsurance agreements;

(6) the insurer's operating loss in the last twelve-month period or any shorter period of time, including net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, in comparison to such insurer's remaining surplus as regards policyholders in excess of the minimum required;

(7) whether any affiliate, subsidiary or reinsurer is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligation;

(8) contingent liabilities, pledges or guaranties which may affect the solvency of the insurer;

(9) whether any person having control of an insurer is delinquent in transmitting or paying net premiums to such insurer;

(10) the age and collectibility of receivables;

(11) whether the management of an insurer, including officers, directors or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

(12) whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false or misleading information concerning an inquiry;

(13) whether management of an insurer has filed with any regulatory authority or released to lending institutions or to the general public any false or misleading financial statements, or has made a false or misleading entry or has omitted an entry of material amount in the books of the insurer;

(14) whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(15) whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems; or

(16) such other material information and data as the superintendent may deem relevant.

C. For the purposes of making a determination of an insurer's financial condition under this section, the superintendent may:

(1) disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;

(2) make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates;

(3) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(4) increase the insurer's liability in an amount equal to any contingent liability, pledge or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period."

Section 91

Section 91. Section 59A-41-25 NMSA 1978 (being Laws 1984, Chapter 127, Section 717) is amended to read:

"59A-41-25. REQUIREMENTS OF INSURER IN HAZARDOUS FINANCIAL CONDITION.--

A. Whenever he finds an insurer authorized to transact insurance in this state to be in hazardous financial condition, as referred to in Section 59A-41-24 NMSA 1978, the superintendent may order the insurer to take such action as he deems reasonably necessary to rectify the hazardous condition, including but not limited to one or more of the following measures:

(1) require the insurer to reduce the volume of new business being accepted to an amount, for the period of time, and in a manner prescribed in the superintendent's order;

(2) require submission of reinsurance contracts for approval and make such further requirements as to the insurer's reinsurance arrangements as the superintendent deems necessary;

(3) require the insurer to bulk-reinsure all or any part of its New Mexico business with another insurer authorized to transact such business in this state;

(4) require a contribution to the insurer's surplus on such terms, in such amount, and in such manner as the superintendent deems necessary;

(5) require the insurer to maintain with the superintendent a special eposit in cash or securities eligible for investment of funds of a like domestic insurer under Chapter 59A, Article 9 NMSA 1978 and in amount not less than the lesser of:

(a) the amounts required to be maintained as: 1) reserves for losses and loss adjustment expenses on New Mexico business; and 2) reserves for unearned premiums on New Mexico business. In determining the amount of deposit required, the reserves for losses, loss adjustment expenses and unearned premiums shall be reduced only for reinsurance ceded to authorized or accredited reinsurers which maintain with an independent custodian cash or marketable securities in amount not less than the sum of the reinsurer's reserves for losses, loss adjustment expenses and unearned premiums as to reinsurance assumed; or

(b) five hundred thousand dollars ($500,000). Any deposit required by this paragraph shall be for the protection and benefit only of New Mexico policyholders or claimants, or both, and shall not be withdrawn until the superintendent terminates the requirement of the deposit. This paragraph shall not apply as to any domestic insurer, and Subparagraph (b) of this paragraph shall not apply as to any life insurer;

(6) require the insurer to reduce general insurance and commission expenses by specified methods;

(7) require the insurer to suspend or limit the declaration and payment of dividends to its stockholders or to its policyholders;

(8) require the insurer to file reports in a form acceptable to the superintendent concerning the market value of an insurer's assets;

(9) require the insurer to limit or withdraw from certain investments or discontinue certain investment practices to the extent the superintendent deems necessary;

(10) require the insurer to document the adequacy of premium rates in relation to the risks insured; or

(11) require the insurer to file, in addition to regular annual statements, interim financial reports on the form adopted by the national association of insurance commissioners or on such format as required by the superintendent.

B. The insurer may request a hearing to review the order in accordance with Chapter 59A, Article 4 NMSA 1978; however, the superintendent shall give written notice of the hearing not less than ten days in advance of the hearing, and the hearing shall be held privately unless the insurer requests a public hearing, in which case the hearing shall be public."

Section 92

Section 92. Section 59A-41-41 NMSA 1978 (being Laws 1984, Chapter 127, Section 733) is amended to read:

"59A-41-41. TIME TO FILE CLAIMS.--

A. If upon entry of an order of liquidation of a domestic insurer or United States branch of an alien insurer domiciled in this state under Chapter 59A, Article 41 NMSA 1978 or at any time thereafter during liquidation proceedings the insurer is not clearly solvent, the court shall, upon a hearing after such notice as it deems proper, make and enter an order adjudging the insurer to be insolvent.

B. After entry of order of insolvency and regardless of any prior notice given to creditors, the superintendent shall notify all persons who may have claims against the insurer to file such claims, at a place and within the time specified in the notice, or that such claims may be forever barred. The time specified in the notice shall be fixed by the court for filing of claims, which shall be not less than six months after entry of the order of insolvency. The notice shall be given in such manner and for such reasonable period of time as the court may order.

C. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(1) the existence of the claim was not known to the claimant and the claim was filed as promptly thereafter as reasonably possible after learning of it;

(2) a transfer to a creditor was avoided under Sections 59A-41-42 through 59A-41-43.1 NMSA 1978, or was voluntarily surrendered under Section 59A-41-43.3 NMSA 1978 and the filing satisfies the conditions of Section 59A-41-43.3 NMSA 1978;

(3) the valuation of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation and deficiency is determined by the court in accordance with the provisions of Subsection D of Section 59A-41-22 NMSA 1978; or

(4) the claim is from a guaranty association for reimbursement of covered claims paid or expenses incurred subsequent to the last day for filing where such payments were made and expenses incurred as provided by law."

Section 93

Section 93. Section 59A-41-43 NMSA 1978 (being Laws 1984, Chapter 127, Section 735) is amended to read:

"59A-41-43. FRAUDULENT TRANSFER AFTER PETITION.--

A. After a petition for rehabilitation or liquidation has been filed a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

B. After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:

(1) a transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred;

(2) a person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property, or any part thereof, to the insurer or upon his order, with the same effect as if the petition were not pending;

(3) a person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith; and

(4) a person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

C. Nothing in Chapter 59A, Article 41 NMSA 1978 shall impair the negotiability of currency or negotiable instruments.

D. Nothing in this section shall be constructed to give authority to any person to act on behalf of a receiver."

Section 94

Section 94. A new section of the Insurance Code, Section 59A-41-43.1 NMSA 1978, is enacted to read:

"59A-41-43.1. VOIDABLE PREFERENCES AND LIENS.--

A.

(1) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for rehabilitation or liquidation under Chapter 59A, Article 41 NMSA 1978, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers shall be deemed preferences if made or suffered within one year before the filing of the petition for rehabilitation, or within two years before the filing of the petition for liquidation, whichever time is shorter.

(2) Any preference may be avoided by the rehabilitator or liquidator if:

(a) the insurer was insolvent at the time of the transfer;

(b) the transfer was made within four months before the filing of the petition;

(c) the creditor receiving it or to be benefited thereby or his agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(d) the creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer, whether or not he held such position, or any shareholder holding directly or indirectly more than five percent of any class of any equity security issued by the insurer, or any other person, firm, corporation, association or aggregation of persons with whom the insurer did not deal at arm's length.

(3) Where the preference is voidable, the rehabilitator or liquidator may recover the property or, if it has been converted, its value from any person who has received or converted the property; except where a bona fide purchaser or lienor has given less than fair equivalent value, he shall have a lien upon the property to the extent of the consideration actually given by him. Where a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

B.

(1) A transfer of property other than real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.

(2) A transfer of real property shall be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien shall not be deemed to be perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filling of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(5) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

C.

(1) A lien obtainable by legal or equitable proceedings upon a simple contract is going one arising in the ordinary course of such proceedings upon the

entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of transferee ithin the meaning of Subsection B of this section, if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of Subsection B of this section through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.

D. A transfer of property for or on account of a new and contemporaneous consideration which is deemed under Subsection B of this section to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one days or any period expressly allowed by law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for on account of a new and contemporaneous consideration.

E. If any lien deemed voidable under Paragraph (2) of Subsection A of this section has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under Chapter 59A, Article 41 NMSA 1978 which results in a liquidation order, the indemnifying transfer or lien shall also be deemed voidable.

F. The property affected by any lien deemed voidable under Subsections A and E of this section shall be discharged from such lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

G. The court before which the rehabilitation or liquidation proceeding is pending shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of

indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the rehabilitator or liquidator, within such reasonable times as the court shall fix.

H. The liability of the surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the rehabilitator or liquidator, or where the property is retained under Subsection G of this section to the extent of the amount paid to the rehabilitator or liquidator.

I. If a creditor has been preferred, and afterward in good faith gives the insurer further credit without security of any kind, for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him.

J. If an insurer shall, directly or indirectly, within four months before the filing of a successful petition for rehabilitation or liquidation under Chapter 59A, Article 41 NMSA 1978, or at any time in contemplation of a delinquency proceeding, pay money or transfer property to an attorney-at-law for services rendered or to be rendered, the transactions may be examined by the court on its own motion or shall be examined by the court on petition of the rehabilitator or liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the rehabilitator or liquidator for the benefits of the estate; provided that where the attorney is in a position of influence in the insurer or an affiliate thereof payment of any money or the transfer of any property to the attorney-at-law for services rendered or to be rendered shall be governed by the provisions of Subparagraph (d) of Paragraph (2) of Subsection A."

Section 95

Section 95. A new section of the Insurance Code, Section 59A-41-43.2 NMSA 1978, is enacted to read:

"59A-41-43.2. LIABILITY FOR PARTICIPATION IN FRAUDULENT TRANSFER OR VOIDABLE PREFERENCE.--

A. Every officer, manager, employee, shareholder, member, subscriber, attorney or any other person acting on behalf of the insurer who knowingly participates in giving any preference or in any fraudulent transfer when he has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference or transfer shall be personally liable to the rehabilitator or liquidator for the amount of the

preference or transfer. It shall be a rebuttable presumption that such was the case if the transfer was made within four months before the date of filing of a successful petition for rehabilitation or liquidation.

B. Every person receiving any property from the insurer or the benefit thereof as a voidable preference or as a fraudulent transfer shall be personally liable therefor and shall be bound to account to the rehabilitator or liquidator.

C. Nothing in this section shall prejudice any other claim by the rehabilitator or liquidator against any person."

Section 96

Section 96. A new section of the Insurance Code, Section 59A-41-43.3 NMSA 1978, is enacted to read:

"59A-41-43.3. CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS.--

A. No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment or encumbrance voidable under Chapter 59A, Article 41 NMSA 1978 shall be allowed unless he surrenders the preference, lien, conveyance, transfer, assignment or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the rehabilitator or liquidator within thirty days from the date of the entering of the final judgment, except that the court having jurisdiction over the rehabilitation or liquidation may allow further time if there is an appeal or other continuation of the proceeding.

B. A claim allowable under Subsection A of this section by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment or encumbrance may be filed as an excused late filing under Section 59A-41-41 NMSA 1978 if filed within thirty days from the date of the avoidance, or within the further time allowed by the court under Subsection A of this section."

Section 97

Section 97. Section 59A-41-44 NMSA 1978 (being Laws 1984, Chapter 127, Section 736) is amended to read:

"59A-41-44. PRIORITIES IN DISTRIBUTION.--The priority of claims and order of distribution of the insurer's assets on liquidation shall be as stated in this section. The first fifty dollars ($50.00) of the amount allowed on each property, casualty or fidelity claim in the classes under Subsections B through F of this section, shall be deducted from the claim and included in the class under Subsection I of this section. Claims may not be cumulated by assignment to avoid application of the fifty dollar ($50.00) deductible provision. Subject to the fifty dollar ($50.00) deduction, every claim in each

class shall be paid in full or adequate funds retained for payment before the members of the next class receive any payment. No subclasses shall be established within any class. Subject to the foregoing, the order of distribution and of priority shall be as follows:

A. administration costs. The costs and expenses of administration, including but not limited to the actual and necessary costs of preserving or recovering the assets of the insurer, compensation for all services rendered in the liquidation, necessary filing fees, fees and mileage payable to witnesses, attorney's fees in reasonable amount and the reasonable expenses of a guaranty association for unallocated loss adjustment expense;

B. wages. Debts due to employees of the insurer for services performed, not to exceed one thousand dollars ($1,000) to each employee, and earned within three months before commencement of delinquency proceedings. The insurer's officers shall not be entitled to the benefit of this priority. Such priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of employees;

C. loss claims. All claims under policies or contracts for losses incurred, including third party claims and all claims of guaranty associations not specified in Subsection A of this section. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to his employee shall be treated as a gratuity;

D. unearned premiums. Claims under nonassessable policies for unearned premiums or other premium refunds;

E. residual classification. All other claims, including claims of the federal or any state or local government, not falling within other classes under this section. Claims, including those of any governmental body, for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under Subsection K of this section;

F. judgments. Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered by the liquidator, who shall give the judgment such weight as he deems appropriate. The claim as allowed shall receive the priority it would receive in absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment, except that, to the extent such judgment was obtained through fraud or collusion, it shall be disallowed;

G. interest on claims already paid. Interest at the legal rate compounded annually on all claims in the classes under Subsections A through I of this section, from date of petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the court's approval, may make reasonable classifications of claims for purposes of computing interest, may make approximate computations and may ignore certain classifications and time periods as de minimis;

H. miscellaneous subordinated claims. The remaining claims or portions of claims not already paid, with interest as in Subsection G of this section:

(1) the first fifty dollars ($50.00) of each claim in the classes under Subsections B through F of this section, subordinated under this section;

(2) claims subordinated by Section 59A-41-45 NMSA 1978;

(3) claims filed late except as provided otherwise in Subsection C of Section 59A-41-41 NMSA 1978;

(4) portions of claims subordinated under Subsection E of this section;

(5) claims or portions of claims payment of which is provided by other benefits or advantages recovered or recoverable by the claimant; and

(6) claims not otherwise provided for in this section;

I. preferred ownership claims. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Interest at the legal rate shall be added to each claim, as in Subsections G and H of this section; and

J. proprietary claims. The claims of shareholders or other owners."

Section 98

Section 98. Section 59A-42-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 752) is amended to read:

"59A-42-3. SCOPE OF ARTICLE.--

A. Chapter 59A, Article 42 NMSA 1978 applies to direct life insurance policies, health insurance policies, annuity contracts and contracts supplemental to life and health insurance policies and annuity contracts, issued or assumed by an authorized insurer, or assumed by an unauthorized insurer directly or indirectly from an authorized insurer.

B. Chapter 59A, Article 42 NMSA 1978 shall not apply as to:

(1) that portion or part of a variable life insurance or variable annuity contract not guaranteed by an insurer;

(2) that portion or part of any policy or contract under which the risk is borne by the policyholder;

(3) any policy or contract or part thereof assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued to policyholders;

(4) any such policy or contract issued or assumed by:

(a) fraternal benefit societies;

(b) health care plans whether or not nonprofit;

(c) prepaid dental plans;

(d) health maintenance organizations; or

(e) any insurer which was insolvent or unable to fulfill its contractual obligations as of April 9, 1975; or

(5) any policy or contract otherwise excluded under provisions of that article."

Section 99

Section 99. Section 59A-42-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 753) is amended to read:

"59A-42-4. DEFINITIONS.--As used in Chapter 59A, Article 42 NMSA 1978:

A. "account" means any one of the three accounts created by Section 59A-42-5 NMSA 1978;

B. "association" means the life insurance guaranty association;

C. "covered policy" means any policy or contract within the scope of Chapter 59A, Article 42 NMSA 1978;

D. "contractual obligation" means any obligation under covered policies;

E. "insolvent insurer" means an insurer:

(1) authorized to transact in this state insurance covered by Chapter 59A, Article 42 NMSA 1978 either at the time the policy was issued or when the insured event occurred; and

(2) against which an order of liquidation with a finding of insolvency has been entered after the effective date of the Insurance Code by a court of competent jurisdiction in the insurer's state of domicile, or of this state under the provisions of Section 59A-41-30 NMSA 1978, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order;

F. "member insurer" means any person who:

(1) holds a certificate of authority to transact in this state any kind of insurance to which Chapter 59A, Article 42 NMSA 1978 applies, including any insurer whose certificate of authority in this state may have been suspended, revoked, not renewed or voluntarily withdrawn; or

(2) assumes directly or indirectly from an insurer described in Paragraph (1) of this subsection a contract or policy of insurance to which Chapter 59A, Article 42 NMSA 1978 applies, or issues an assumption certificate pertaining to such a contract or policy of insurance;

G. "premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" does not include premiums and considerations on contracts between insurers and reinsurers;

H. "person" means any individual, corporation, partnership, association or voluntary organization; and

I. "resident" means any person who resides in this state at the time the insolvency is determined and to whom contractual obligations are owed."

Section 100

Section 100. Section 59A-42-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 755) is amended to read:

"59A-42-6. BOARD OF DIRECTORS.--

A. The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the superintendent. Vacancies on the board shall be filled for the remaining period of

the term by a majority vote of the remaining board members, subject to approval of the superintendent.

B. In approving selections the superintendent shall consider among other things whether all member insurers are fairly represented.

C. Members of the board may be reimbursed from the assets of the association for any reasonable and necessary expenses incurred by them as members of the board of directors, but the amount of such reimbursement shall not exceed the guidelines provided by the approved plan of operation."

Section 101

Section 101. Section 59A-43-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 776) is amended to read:

"59A-43-10. EFFECT OF PAID CLAIMS.--

A. Any person recovering under Chapter 59A, Article 43 NMSA 1978 shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of that article shall cooperate with the association to the same extent as he would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association do not operate to reduce the liability of the insured to the receiver, liquidator or statutory successor for unpaid assessments.

B. The receiver, liquidator or statutory successor of an insolvent insurer is bound by settlements of covered claims by the association or a similar organization in another state. The association may make application to the court for reimbursement of such claims and expenses and upon proper application the court shall order appropriate disbursements to be made in accordance with the provisions of Chapter 59A, Article 41 NMSA 1978 in effect at the time the application is acted upon by the court.

C. The association shall, within the time set by the receivership court, file with the receiver or liquidator of the insolvent insurer, statements of the covered claims paid by the association and estimates of anticipated claims on the association."

Section 102

Section 102. Section 59A-44-36 NMSA 1978 (being Laws 1989, Chapter 388, Section 36) is amended to read:

"59A-44-36. FEE SCHEDULE.--

A. Except as provided in Subsection B of this section, every society authorized to transact business in New Mexico shall pay to the superintendent the following fees:

(1) for annual certificate of authority continuation $100.00;

(2) for filing annual statement $100.00;

(3) for each license of agent or annual continuation thereof $30.00;

(4) for annual continuation of appointment $20.00;
and

(5) for each signature of the superintendent affixed to any instrument..... $10.00.

B. Every society which:

(1) issues certificates providing benefits strictly in accordance with the provisions of Chapter 59A, Article 44 NMSA 1978;

(2) limits its membership to members of one religious faith or to persons engaged in one or more hazardous occupations in the same or similar lines of business;

(3) does not employ paid solicitors or salesmen either on salary, commission or fee basis for procuring new insurance or members; and

(4) does not solicit insurance applications from the general public, but limits such solicitation to members in good standing in such society; shall be exempt from the fees specified in Subsection A of this section and in lieu thereof shall pay to the superintendent fees as follows:

(a) for annual license to transact business $50.00;

(b) for filing annual statement $50.00;
and

(c) for each seal and signature of the superintendent affixed to any instrument ..... $10.00.

C. Failure to pay any fees imposed under Chapter 59A, Article 44 NMSA 1978 shall render the society liable to this state for the amount thereof and to the applicable penalties provided by Section 59A-6-4 NMSA 1978 as though such a society were an insurer."

Section 103

Section 103. Section 59A-47-33 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.32, as amended) is amended to read:

"59A-47-33. OTHER PROVISIONS APPLICABLE.--The provisions of the Insurance Code other than Chapter 59A, Article 47 NMSA 1978 shall not apply to health care plans except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health care plans, their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives; and, for the purposes of such applicability, a health care plan may therein be referred to as an "insurer":

A. Chapter 59A, Article 1 NMSA 1978;

B. Chapter 59A, Article 2 NMSA 1978;

C. Chapter 59A, Article 4 NMSA 1978;

D. Subsection C of Section 59A-5-22 NMSA 1978;

E. Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;

F. Section 59A-7-11 NMSA 1978;

G. Chapter 59A, Article 8 NMSA 1978;

H. Chapter 59A, Article 10 NMSA 1978;

I. Section 59A-12-22 NMSA 1978;

J. Chapter 59A, Article 16 NMSA 1978;

K. Chapter 59A, Article 18 NMSA 1978;

L. Chapter 59A, Article 19 NMSA 1978;

M. Section 59A-22-34.1 NMSA 1978;

N. Section 59A-22-39 NMSA 1978;

O. Section 59A-22-40 NMSA 1978;

P. Sections 59A-34-9 through 59A-34-13 NMSA 1978 and Section 59A-34-23 NMSA 1978;

Q. Chapter 59A, Article 37 NMSA 1978, except Section 59A-37-7 NMSA 1978; and

R. Section 59A-46-15 NMSA 1978."

Section 104

Section 104. Section 59A-48-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 885) is amended to read:

"59A-48-6. DEPOSIT REQUIREMENT--EXCEPTION.--

A. A prepaid dental plan organization shall maintain on deposit with the state treasurer through the superintendent a surety bond guaranteeing services under the plan, or cash or securities eligible for investments of capital funds of health insurers under Chapter 59A, Article 9 NMSA 1978, in the following amounts depending on the number of members entitled to dental care services pursuant to contracts issued by the plan:

Number of Members	Deposit
2,500 or less	$ 25,000
2,501 - 5,000	30,000
5,001 - 7,500	40,000
7,501 - 10,000	50,000
10,001 - 15,000	75,000
15,001 - 20,000	100,000
20,001 - 25,000	125,000
25,001 - 30,000	150,000
30,001 - 40,000	175,000
40,001 and above	200,000.

B. The deposit prescribed by Subsection A of this section shall be held by the state treasurer in trust for the benefit and protection of persons covered by a prepaid dental plan.

C. Any securities within the description of Subsection A of this section, with the approval of the superintendent may be exchanged for similar securities or cash of equal amount. Interest on securities deposited shall be payable to the prepaid dental plan organization depositing such securities.

D. An unpaid final judgment arising from a membership coverage shall be a lien on the deposit described in Subsection A of this section, subject to execution after thirty days from the entry of final judgment. If the deposit is reduced, it shall be replenished within ninety days by the prepaid dental plan organization.

E. Upon liquidation or dissolution of a prepaid dental plan organization and the satisfaction of all its debts and liabilities, any balance remaining of the cash or securities deposit prescribed in Subsection A of this section, together with any other assets of the prepaid dental plan organization, shall be returned by the superintendent to the prepaid dental plan organization.

F. The deposit prescribed by Subsection A of this section shall not apply with respect to a prepaid dental plan organization which is funded by the federal, state or a municipal government or any political subdivision or body to the extent and for such period of time that the prepaid dental plan organization can demonstrate to the superintendent the presence of operational commitments from such sources equivalent to such deposit."

Section 105

Section 105. TEMPORARY PROVISION--PERSONNEL CLASSIFICATIONS.--The state personnel board and the superintendent of insurance shall develop appropriate personnel classifications for all professional and other employees of the department of insurance whose positions require specialized knowledge of insurance. The classifications shall include minimum educational and experience requirements that are commensurate with the duties and responsibilities of the classified positions. The classifications shall be completed by October 1, 1993.

Section 106

Section 106. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected. SB 557

CHAPTER 321

RELATING TO HEALTH CARE; PROVIDING FOR LOCAL REVENUES TO OBTAIN FEDERAL MEDICAID MATCHING FUNDS FOR SOLE COMMUNITY PROVIDER PAYMENTS TO CERTAIN HOSPITALS; CREATING THE SOLE COMMUNITY PROVIDER FUND; ALTERING THE PURPOSES OF THE COUNTY-SUPPORTED

MEDICAID FUND; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 27-5-1 NMSA 1978 (being Laws 1965, Chapter 234, Section 1) is amended to read:

"27-5-1. SHORT TITLE.--Chapter 27, Article 5 NMSA 1978 may be cited as the "Indigent Hospital and County Health Care Act"."

Section 2

Section 2. Section 27-5-2 NMSA 1978 (being Laws 1965, Chapter 234, Section 2, as amended) is amended to read:

"27-5-2. PURPOSE OF INDIGENT HOSPITAL AND COUNTY HEALTH CARE ACT.--The purpose of the Indigent Hospital and County Health Care Act is:

A. to recognize that the individual county of this state is the responsible agency for ambulance transportation or the hospital care or the provision of the health care to indigent patients domiciled in that county for at least three months or for such period of time, not in excess of three months, as determined by resolution of the board of county commissioners, and to provide a means whereby each county can discharge this responsibility through a system of financial reimbursement to ambulance providers, hospitals or health care providers for actual cost incurred for the care and treatment of the indigent patient in the hospitals of this state, or both; and

B. to recognize that the counties of the state are also responsible for supporting indigent patients by providing local revenues to match federal funds for the state medicaid program, including the provision of matching funds for payments to sole community provider hospitals and the transfer of funds to the county-supported medicaid fund pursuant to the Statewide Health Care Act."

Section 3

Section 3. Section 27-5-3 NMSA 1978 (being Laws 1965, Chapter 234, Section 3, as amended) is amended to read:

"27-5-3. PUBLIC ASSISTANCE PROVISIONS.--

A. A hospital shall not be paid from the county indigent hospital claims fund under the Indigent Hospital and County Health Care Act for any costs of an indigent patient for services that have been determined by the human services

department to be eligible for medicaid reimbursement from that department. However, nothing in the Indigent Hospital and County Health Care Act shall be construed to prevent the board from transferring money from the county indigent hospital claims fund to the sole community provider fund or the county-supported medicaid fund for support of the state medicaid program.

B. No action for collection of claims under the Indigent Hospital and County Health Care Act shall be allowed against an indigent patient who is medicaid eligible for medicaid covered services, nor shall action be allowed against the person who is legally responsible for the care of the indigent patient during the time that person is medicaid eligible."

Section 4

Section 4. Section 27-5-4 NMSA 1978 (being Laws 1965, Chapter 234, Section 4, as amended by Laws 1991, Chapter 171, Section 1 and also by Laws 1991, Chapter 212, Section 19) is amended to read:

"27-5-4. DEFINITIONS.--As used in the Indigent Hospital and County Health Care Act:

A. "ambulance provider" or "ambulance service" means a specialized carrier based within the state authorized under provisions and subject to limitations as provided in individual carrier certificates issued by the state corporation commission to transport persons alive, dead or dying en route by means of ambulance service. The rates and charges established by state corporation commission tariff shall govern as to allowable cost. Also included are air ambulance services approved by the board. The air ambulance service charges shall be filed and approved pursuant to Subsection D of Section 27-5-6 NMSA 1978 and Section 27-5-11 NMSA 1978;

B. "board" means the county indigent hospital and county health care board;

C. "indigent patient" means a person to whom an ambulance service, a hospital or a health care provider has provided medical care or ambulance transportation and who can normally support himself and his dependents on present income and liquid assets available to him but, taking into consideration this income and those assets and his requirement for other necessities of life for himself and his dependents, is unable to pay the cost of the ambulance transportation or medical care administered or both. If provided by resolution of the board, it shall not include any person whose annual income together with his spouse's annual income totals an amount that is fifty percent greater than the per capita personal income for New Mexico as shown for the most recent year available in the survey of current business published by the United States department of commerce. Every board that has a balance remaining in the fund at the end of a given fiscal year shall consider and may adopt at the first meeting of the succeeding fiscal year a resolution increasing the standard for

indigency. The term "indigent patient" includes a minor who has received ambulance transportation or medical care or both and whose parent or the person having custody of that minor would qualify as an indigent patient if transported by ambulance or admitted to a hospital for care or treated by a health care provider or all three;

D. "hospital" means any general or limited hospital licensed by the department of health, whether nonprofit or owned by a political subdivision, and may include by resolution of the board the following health facilities if licensed, or in the case of out-of-state hospitals, approved, by the department of health:

(1) for-profit hospitals;

(2) state-owned hospitals; or

(3) licensed out-of-state hospitals where treatment provided is necessary for the proper care of an indigent patient when that care is not available in an in-state hospital;

E. "cost" means all allowable ambulance transportation or medical care costs, including the costs of prenatal care, to the extent determined by resolution of the board, for an indigent patient. Allowable costs shall be determined in accordance with a uniform system of accounting and cost analysis as determined by regulation of the board, which includes cost of ancillary services, but shall not include the cost of servicing long-term indebtedness of a
hospital, health care provider or ambulance service;

F. "fund" means the county indigent hospital claims fund;

G. "medicaid eligible" means a person who is eligible for medical assistance from the department;

H. "county" means any county except a class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

I. "department" means the human services department;

J. "sole community provider hospital" means a hospital that is a sole community provider hospital under the provisions of the federal medicare guidelines established in 42 C.F.R. 412.92 pursuant to Title 18 of the federal Social Security Act;

K. "drug rehabilitation center" means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates drug abuse rehabilitation programs that meet the standards and requirements pursuant to the Drug Abuse Act;

L. "alcohol rehabilitation center" means an agency of local government, a state agency, a private nonprofit entity or combination thereof that operates alcohol abuse rehabilitation programs that meet the standards set by the department of health pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act;

M. "mental health center" means a not-for-profit center that provides outpatient mental health services that meet the standards set by the department of health pursuant to the Community Mental Health Services Act; and

N. "health care provider" means:

(1) a nursing home;

(2) in-state home health agencies;

(3) an in-state licensed hospice;

(4) a community-based health program operated by a political subdivision of the state or other nonprofit health organization that provides prenatal care delivered by New Mexico licensed, certified or registered health care practitioners;

(5) a community-based health program operated by a political subdivision of the state or other nonprofit health care organization that provides primary care delivered by New Mexico licensed, certified or registered health care practitioners;

(6) a drug rehabilitation center;

(7) an alcohol rehabilitation center; or

(8) a mental health center."

Section 5

Section 5. Section 27-5-5 NMSA 1978 (being Laws 1965, Chapter 234, Section 5) is amended to read:

"27-5-5. COUNTY INDIGENT HOSPITAL AND COUNTY HEALTH CARE BOARD.--

A. There is created within each county a "county indigent hospital and county health care board" which shall be composed of the members of the board of county commissioners of that county, and the chairman of the board of county commissioners shall be the chairman of the board.

B. Members of the board shall receive no compensation but shall be reimbursed for their actual per diem and mileage in an amount not to exceed the per diem and mileage paid to county commissioners.

C. Each member of the board shall furnish a surety bond, premium for which shall be paid from the fund, executed by a surety company licensed to do business in New Mexico, conditioned that he will faithfully perform his duties and account for the funds. The bond shall be in the penal sum of five thousand dollars ($5,000) running to the benefit of the board for payments into the fund."

Section 6

Section 6. Section 27-5-6 NMSA 1978 (being Laws 1965, Chapter 234, Section 6, as amended) is amended to read:

"27-5-6. POWERS AND DUTIES OF THE BOARD.--The board:

A. shall administer claims pursuant to the provisions of the Indigent Hospital and County Health Care Act;

B. shall prepare and submit a budget to the board of county commissioners for the amount needed to defray claims made upon the fund and to pay costs of administration of the Indigent Hospital and County Health Care Act, which costs of administration shall in no event exceed the following percentages of revenues based on the previous fiscal year revenues for a fund that has existed for at least one fiscal year or based on projected revenues for the year being budgeted for a fund that has existed for less than one fiscal year. The percentage of the revenues in the fund that may be used for administrative costs is equal to the sum of the following:

(1) ten percent of the amount in the fund not over five hundred thousand dollars ($500,000);

(2) eight percent of the amount in the fund over five hundred thousand dollars ($500,000) but not over one million dollars ($1,000,000); and

(3) four and one-half percent of the amount in the fund over one million dollars ($1,000,000);

C. shall make rules and regulations necessary to carry out the provisions of the Indigent Hospital and County Health Care Act; provided that the standards for eligibility and allowable costs for county indigent patients shall be no more restrictive than the standards for eligibility and allowable costs prior to December 31, 1992;

D. shall set criteria and cost limitations for medical care in licensed out-of-state hospitals, ambulance services or health care providers;

E. shall cooperate with appropriate state agencies to use available funds efficiently and to make health care more available;

F. shall cooperate with the department in making any investigation to determine the validity of claims made upon the fund for any indigent patient;

G. may accept contributions or other county revenues, which shall be deposited in the fund;

H. may hire personnel to carry out the provisions of the Indigent Hospital and County Health Care Act;

I. shall review all claims presented by a hospital, ambulance service or health care provider to determine compliance with the rules and regulations adopted by the board or with the provisions of the Indigent Hospital and County Health Care Act, determine whether the patient for whom the claim is made is an indigent patient and determine the allowable medical or ambulance service costs; provided that the burden of proof of any claim shall be upon the hospital, ambulance service or health care provider;

J. shall state in writing the reason for rejecting or disapproving any claim and shall notify the submitting hospital, ambulance service or health care provider of the decision;

K. shall pay all claims that are not matched with federal funds under the state medicaid program and that have been approved by the board from the fund;

L. shall determine by county ordinance the types of health care providers that will be eligible to submit claims under the Indigent Hospital and County Health Care Act;

M. shall review, verify and approve all medicaid sole community provider hospital payment requests in accordance with rules and regulations adopted by the board prior to their submittal by the hospital to the department for payment but no later than January 1 of each year;

N. shall transfer to the state treasurer by the last day of March, June, September and December of each year an amount equal to one-fourth of the county's payment for support of sole community provider payments as calculated by the department for that county for the current fiscal year. This money shall be deposited in the sole community provider fund; and

O. may provide for the transfer of money from the county indigent hospital claims fund to the county-supported medicaid fund to meet the requirements of the Statewide Health Care Act."

Section 7

Section 7. Section 27-5-7 NMSA 1978 (being Laws 1965, Chapter 234, Section 7, as amended) is amended to read:

"27-5-7. COUNTY INDIGENT HOSPITAL CLAIMS FUND.--

A. There is created in the county treasury of each county a "county indigent hospital claims fund".

B. Collections under the levy made pursuant to the Indigent Hospital and County Health Care Act and all payments shall be placed into the fund, and the amount placed in the fund shall be budgeted and expended only for the purposes specified in the Indigent Hospital and County Health Care Act, by warrant upon vouchers approved by a majority of the board and signed by the chairman of the board. Payments for indigent hospitalizations shall not be made from any other county fund.

C. The fund shall be audited in the manner that other state and county funds are audited, and all records of payments and verified statements of qualification upon which payments were made from the fund shall be open to the public.

D. Any balance remaining in the fund at the end of the fiscal year pursuant to Subsections F and G of this section shall carry over into the ensuing year, and that balance shall be taken into consideration in the determination of the ensuing year's budget and certification of need for purposes of making a tax levy.

E. Money may be transferred to the fund from other sources, but no transfers may be made from the fund for any purpose other than those specified in the Indigent Hospital and County Health Care Act.

F. On June 30 of each fiscal year, beginning in 1996, the board shall tranfer to the county-supported medicaid fund that amount of the balance in the county indigent hospital claims fund that exceeds two hundred thousand dollars ($200,000) or that exceeds the amount equal to thirty percent of the income to the fund during that fiscal year, whichever is greater. Beginning in 1996, the transfer shall be made by September 1 of each fiscal year. Any amount transferred to the county-supported medicaid fund pursuant to this subsection is in addition to the county's obligation pursuant to Section 27-10-4 NMSA 1978."

Section 8

Section 8. Section 27-5-8 NMSA 1978 (being Laws 1965, Chapter 234, Section 8) is amended to read:

"27-5-8. BOARD CERTIFICATION TO COUNTY COMMISSIONERS.-- For the purpose of providing funds for the administration of the Indigent Hospital and County

Health Care Act, the board shall each year certify the amount needed to the board of county commissioners. For the first year of operation the board shall estimate the amount necessary, and in succeeding years the board may use the previous year's experience to determine the amount necessary."

Section 9

Section 9. Section 27-5-9 NMSA 1978 (being Laws 1965, Chapter 234, Section 9, as amended) is amended to read:

"27-5-9. TAX LEVIES AUTHORIZED.--

A. Subject to the provisions of Subsection B of this section, the board of county commissioners, upon the certification of the board as to the amount needed in the fund, shall impose a levy against the net taxable value, as that term is defined in the Property Tax Code, of the property in the county sufficient to raise the amount certified by the board.

B. The question of imposing an indigent hospital levy for the purpose of the Indigent Hospital and County Health Care Act shall be submitted to the electors and voted upon as a separate question at the next subsequent general election or any special election called prior thereto for such purpose.

C. Upon finding by the board of county commissioners that an election will be necessary, the board of county commissioners shall meet and order an election to be held at a designated time in the county upon the question of imposing an indigent hospital levy for the purpose of the Indigent Hospital and County Health Care Act in the county. If the question is to be voted upon at a special election, theelection shall be held not less than thirty nor more than fifty days after the finding, but in no event shall the election be held within five days preceding or succeeding any general election held in the county. The order for the election shall be made a part of the official minutes of the board of county commissioners. A copy of the order shall be published in a newspaper of general circulation in the county at least fifteen days before the date set for the election, and an affidavit of publication shall be obtained. At least five days prior to the date for holding the election, the board of county commissioners shall publish in a newspaper of general circulation in the county and post in five conspicuous places in the county a notice of election, which shall be in substantially the following form:

"NOTICE OF ELECTION ON SPECIAL INDIGENT HOSPITAL LEVY

Notice is given on the_____day of _____, 19____, there will be held in_____county of New Mexico an election on the question of imposing an indigent hospital levy for the purposes of the Indigent Hospital and County Health Care Act, such levy to be made annually against the taxable value of the property in the county and limited to an amount sufficient to provide funds necessary to pay claims pursuant to such act.

_____".
Official Title of the Authority
The election shall be held on the date specified in the notice and shall be, if a special election, conducted and canvassed in substantially the same manner as general elections are conducted and canvassed in the county; provided that the ballot used in any election shall be a special and separate ballot and shall be in substantially the following form:

"BALLOT

On the question of imposing an indigent hospital levy for the purposes of the Indigent Hospital and County Health Care Act, such levy to be made annually against the taxable value of the property incounty of New Mexico, and limited to an amount sufficient to provide funds budgeted and certified as necessary to pay claims pursuant to such act:

FOR THE LEVY..... _____

AGAINST THE LEVY..... _____".

D. If the electors vote in favor of an indigent hospital levy, the levy shall become effective in the same manner prescribed by law for all levies upon property within that county, and a levy for those purposes in such an amount as will provide sufficient money for the fund shall be made for each year thereafter.

E. Any board of county commissioners that has, prior to the effective date of this section, made a valid imposition of a property tax for the purpose of the Indigent Hospital and County Health Care Act shall not be required to hold an election on the existing tax, and that tax may be imposed and continue to be imposed in accordance with the provisions of law existing at the time of its imposition. However, if any such tax is not imposed in a given property tax year or if the authorization for its imposition terminates or expires, the election requirements of Subsections B and C of this section shall apply to any subsequent proposed imposition of a property tax for the purpose of the Indigent Hospital and County Health Care Act."

Section 10

Section 10. Section 27-5-11 NMSA 1978 (being Laws 1965, Chapter 234, Section 12, as amended) is amended to read:

"27-5-11. HOSPITALS AND AMBULANCE SERVICES--HEALTH CARE PROVIDERS--REQUIRED TO FILE DATA--SOLE COMMUNITY PROVIDER HOSPITAL DUTIES.--

A. Any ambulance service, hospital or health care provider in New Mexico or licensed out-of-state hospital, prior to the filing of a claim with the board, shall have placed on file with the board:

(1) current data, statistics, schedules and information deemed necessary by the board to determine the cost for all patients in that hospital or cared for by that health care provider or tariff rates or charges of an ambulance service;

(2) proof that the hospital, ambulance service or health care provider is licensed, where required, under the laws of this state or the state in which the hospital operates; and

(3) any other information or data deemed necessary by the board.

B. Every sole community provider hospital requesting or receiving medicaid sole community provider hospital payments shall:

(1) accept indigent patients and request reimbursement for those patients through the appropriate county indigent fund. The responsible county shall approve requests meeting its eligibility standards and notify the hospital of such approval;

(2) confirm the amount of payment authorized by each county for indigent patients, to that county for the previous fiscal year, by September 30 of each calendar year;

(3) negotiate with each county the amount of indigent hospital payments anticipated for the following fiscal year by December 31 of each year; and

(4) provide to the department prior to January 15 of each year the amount of the authorized indigent hospital payments anticipated for the following fiscal year after an agreement has been reached on the amount with each responsible county and such other related information as the department may request."

Section 11

Section 11. Section 27-5-12 NMSA 1978 (being Laws 1965, Chapter 234, Section 13, as amended) is amended to read:

"27-5-12. PAYMENT OF CLAIMS.--A hospital, ambulance service or health care provider filing a claim with the board shall:

A. file claim with the board of the county in which the indigent patient is domiciled;

B. file claim for each patient separately, with an itemized detail of the total cost; and

C. file with the claim a verified statement of qualification for ambulance service, indigent hospital care or care from a health care provider signed by the patient or by the parent or person having his custody to the effect that he qualifies under the provisions of the Indigent Hospital and County Health Care Act as an indigent patient and is unable to pay the cost for the care administered and listing all assets owned by the patient or any person legally responsible for his care. The statement shall constitute an oath of the person signing it, and any false statements in the statement made knowingly constitute a felony."

Section 12

Section 12. Section 27-5-14 NMSA 1978 (being Laws 1965, Chapter 234, Section 15, as amended) is amended to read:

"27-5-14. BOARD TO RECOVER COSTS--PRESUMPTION OF PAYMENT.--

A. The payment of any claim to an ambulance service, a hospital or health care provider on behalf of an indigent patient creates a preferred claim in favor of the fund against the estate of the indigent patient and a lien against all real property or interest in real property vested in or later acquired by the indigent patient or any person legally responsible for his debts for the amount of the payment made from the fund to the ambulance service, hospital or health care provider, without interest. Such claims shall be preferred over all claims except charges of the last sickness and funeral of the deceased and allowances made by the court for the maintenance of the widow and children, taxes, municipal levies, cost of administration and attorneys' fees.

B. Proceeds recovered from such claims shall be placed into the fund.

C. The board shall file a certificate of payment to the ambulance service, hospital or health care provider on behalf of the indigent patient. The certificate shall constitute notice to the public that the lien created by the Indigent Hospital and County Health Care Act has attached. County clerks shall receive, index and file certificates and releases of liens created by the certificate, free of charge.

D. In all cases where a lien has been created under Subsection A of this section and a period of fourteen years has passed from the date the lien was created by the payment of any claim to an ambulance service, a hospital or health care provider on behalf of an indigent patient, the payment for which the lien is claimed shall be discharged due to the passage of time and the board shall file a certificate releasing the lien due to the lapse of time."

Section 13

Section 13. Section 27-5-16 NMSA 1978 (being Laws 1965, Chapter 234, Section 16, as amended) is amended to read:

"27-5-16. DEPARTMENT--PAYMENTS--COOPERATION.--

A. The department shall not decrease the amount of any assistance payments made to the hospitals or health care providers of this state pursuant to law because of any financial reimbursement made to ambulance services, hospitals or health care providers for indigent or medicaid eligible patients as provided in the Indigent Hospital and County Health Care Act.

B. The department shall cooperate with each board in furnishing information or assisting in the investigation of any person to determine whether he meets the qualifications of an indigent patient as defined in the Indigent Hospital and County Health Care Act.

C. The department shall ensure that the sole community provider payment and the reimbursement to hospitals made under the state medicaid program do not exceed what would have been paid for under medicare payment principles. In the event the sole community provider payment and medicaid reimbursement to hospitals would exceed medicare payment principles, the department shall reduce the sole community provider payment prior to making any reduction in reimbursement to hospitals made under the state medicaid program."

Section 14

Section 14. Section 27-5-18 NMSA 1978 (being Laws 1965, Chapter 234, Section 20) is amended to read:

"27-5-18. DATE OF IMPLEMENTATION.--No money shall be paid from the fund, and no judgment shall be rendered under the Indigent Hospital and County Health Care Act, for any services rendered to any indigent patient prior to the effective date of the Indigent Hospital and County Health Care Act."

Section 15

Section 15. A new section of the Indigent Hospital and County Health Care Act is enacted to read:

"DUTIES OF THE COUNTY--SOLE COMMUNITY PROVIDER HOSPITAL PAYMENTS.--Every county in New Mexico that authorizes payment for services to a sole community provider hospital shall:

A. determine eligibility for benefits and determine an amount payable on each claim for services to indigent patients from sole community provider hospitals;

B. notify the sole community provider hospital of its decision on each request for payment while not actually reimbursing the hospital for the services that are reimbursed with federal funds under the state medicaid program;

C. confirm the amount of the sole community provider hospital payments authorized for each hospital for the past fiscal year by September 30 of the current fiscal year;

D. negotiate agreements with each sole community provider hospital providing services for county residents on the anticipated amount of the payments for the following fiscal year; and

E. provide the human services department by January 15 of each year with the budgeted amount of sole community provider hospital payments, by hospital, for the following fiscal year."

Section 16

Section 16. A new section of the Indigent Hospital and County Health Care Act is enacted to read:

"COUNTY INDIGENT HOSPITAL CLAIMS FUND--AUTHORIZED USES OF THE FUND.--

A. The fund shall be used:

(1) to meet the county's contribution for support of sole community provider payments as calculated by the department for that county; and

(2) to pay all claims that have been approved by the board that are not matched with federal funds under the state medicaid program.

B. The fund may be used to meet the county's obligation under Section 27-10-4 NMSA 1978.

C. Until June 30, 1996, the cash reserves from the fund may be used to meet the county's obligation under Section 27-10-4 NMSA 1978."

Section 17

Section 17. A new section of the Statewide Health Care Act is enacted to read:

"INDIGENT HEALTH CARE REPORT--REQUIRED.--Every county in New Mexico shall file an annual report on indigent health care funded in whole or in part by the county with the local government division of the department of finance and administration. The report shall contain the county's eligibility criteria for indigent

patients, services provided to indigent patients, restrictions on services provided to indigent patients, conditions for reimbursement to providers of health care, revenue sources used to pay for indigent health care and other related information as determined by the local government division. The report shall be submitted by July 31 of each year on a form provided by the local government division and shall provide information from the previous fiscal year. The local government division shall make the report available for analysis by interested parties."

Section 18

Section 18. A new section of the Statewide Health Care Act is enacted to read:

"SOLE COMMUNITY PROVIDER FUND CREATED.--

A. The "sole community provider fund" is created in the state treasury. The fund, which shall be administered by the human services department, shall consist of funds provided by counties to match federal funds for medicaid sole community provider hospital payments. Money in the fund shall be invested by the state treasurer as other state funds are invested. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert.

B. Money in the sole community provider fund is appropriated to the human services department to make sole community provider hospital payments pursuant to the state medicaid program. No sole community provider hospital payments or money in the sole community provider fund shall be used to supplant any general fund support for the state medicaid program.

C. Money in the sole community provider fund shall be remitted back to the individual counties from which it came if federal medicaid matching funds are not received for medicaid sole community provider hospital payments."

Section 19

Section 19. Section 27-10-2 NMSA 1978 (being Laws 1991, Chapter 212, Section 2) is amended to read:

"27-10-2. FINDINGS AND PURPOSE.--

A. Access to health care reduces long-term medical and social costs. The effectiveness of statewide health care has been decreased by excessive fragmentation and failure to maximize the use of existing in-state revenues and to develop effective ways of drawing upon potential federal revenue sources. An effective statewide health care system must retain local health care efforts, stimulate local innovations for meeting particular health care needs and use existing resources to expand health care options, especially for those citizens unable to pay for their own care.

B. The purpose of the county-supported medicaid fund is to leverage existing resources to better address the state's health care needs. The county-supported medicaid fund will be used to accomplish this purpose by using local revenues to support the state medicaid program and to institute primary care health care services pursuant to Section 24-1A-3.1 NMSA 1978."

Section 20

Section 20. Section 27-10-3 NMSA 1978 (being Laws 1991, Chapter 212, Section 3, as amended) is amended to read:

"27-10-3. COUNTY-SUPPORTED MEDICAID FUND CREATED--USE--APPROPRIATION BY THE LEGISLATURE.--

A. There is created in the state treasury the "county-supported medicaid fund". The fund shall be invested by the state treasurer as other state funds are invested. Income earned from investment of the fund shall be credited to the county-supported medicaid fund. The fund shall not revert in any fiscal year.

B. Money in the county-supported medicaid fund is subject to appropriation by the legislature to support the state medicaid program and to institute primary care health care services pursuant to Subsection E of Section 24-1A-3.1 NMSA 1978. Of the amount appropriated each year, nine percent shall be appropriated to the department of health to institute primary care health care services pursuant to Subsection E of Section 24-1A-3.1.

C. Up to three percent of the county-supported medicaid fund each year may be expended for administrative costs related to medicaid or developing new primary care health care centers or facilities.

D. In the event federal funds for medicaid are not received by New Mexico for any eighteen-month period, the unencumbered balance remaining in the county-supported medicaid fund and the sole community provider fund at the end of the fiscal year following the end of any eighteen-month period shall be paid within a reasonable time to each county for deposit in the county indigent hospital claims fund in proportion to the payments made by each county through tax revenues or transfers in the previous fiscal year as certified by the local government division of the department of finance and administration. The department will provide for budgeting and accounting of payments to the fund."

Section 21

Section 21. Section 27-10-4 NMSA 1978 (being Laws 1991, Chapter 212, Section 4, as amended) is amended to read:

"27-10-4. ALTERNATIVE REVENUE SOURCE TO IMPOSITION OF COUNTY HEALTH CARE GROSS RECEIPTS TAX--TRANSFER TO COUNTY-SUPPORTED MEDICAID FUND.--

A. In the event a county does not enact an ordinance imposing a county health care gross receipts tax pursuant to Section 7-20D-3 NMSA 1978, the county shall, by ordinance to be effective July 1, 1993, dedicate to the county-supported medicaid fund an amount equal to a gross receipts tax rate of one-sixteenth of one percent applied to the taxable gross receipts reported during the prior fiscal year by persons engaging in business in the county. For purposes of this subsection, a county may use funds from any existing authorized revenue source of the county.

B. For each county that has in effect an ordinance enacted pursuant to Subsection A of this section on July 1 of each year, the taxation and revenue department shall certify to the county by September 15, 1993 and by September 15 of each subsequent fiscal year the amount of gross receipts reported for the county for purposes of the gross receipts tax during the prior fiscal year. Upon certification by the department, any county enacting an ordinance pursuant to Subsection A of this section shall transfer to the county-supported medicaid fund by the last day of March, June, September and December of each year an amount equal to a rate of one-sixty-fourth of one percent applied to the certified amount.

C. The requirements of an ordinance enacted pursuant to this section may be terminated for a county only on the effective date of an ordinance enacted by the county imposing the county health care gross receipts tax; provided that if the effective date of the ordinance imposing the tax is January 1, the termination does not apply to the payments required for September and December of that year."

Section 22

Section 22. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 3, 6, 10, 15, 16 and 18 of this act is the date that the human services department is notified in writing that the amendment to the state medicaid plan has been approved by the federal health care financing administration. The human services department shall provide public notice of the date within thirty days of being notified.

B. The effective date of the provisions of Sections 1, 2, 4, 5, 7 through 9, 11 through 14, 17 and 19 through 21 of this act is July 1, 1993.

Section 23

Section 23. EMERGENCY CLAUSE.--It is necessary for the public peace, health and safety that this act take effect immediately.SB 594

CHAPTER 322

RELATING TO HEALTH; AMENDING CERTAIN SECTIONS OF THE OCCUPATIONAL HEALTH AND SAFETY ACT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 50-9-1 NMSA 1978 (being Laws 1972, Chapter 63, Section 1, as amended) is amended to read:

"50-9-1. SHORT TITLE.--Sections 50-9-1 through 50-9-25 NMSA 1978 may be cited as the "Occupational Health and Safety Act"."

Section 2

Section 2. Section 50-9-2 NMSA 1978 (being Laws 1972, Chapter 63, Section 2) is amended to read:

"50-9-2. PURPOSE.--It is the purpose of the Occupational Health and Safety Act to assure every employee safe and healthful working conditions by providing for:

A. the establishment of occupational health and safety regulations applicable to places of employment in this state;

B. the effective enforcement of the health and safety regulations;

C. education and training programs for employers and employees in recognition of their responsibilities under the Occupational Health and Safety Act and advice and assistance to them about effective means of preventing occupational injuries and illnesses; and

D. appropriate job-related accident and illness reporting procedures that will help achieve the objectives of the Occupational Health and Safety Act."

Section 3

Section 3. Section 50-9-3 NMSA 1978 (being Laws 1972, Chapter 63, Section 3, as amended) is amended to read:

"50-9-3. DEFINITIONS.--As used in the Occupational Health and Safety Act:

A. "person" means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency or any other legal entity or their legal representatives, agents or assigns;

B. "employee" means an individual who is employed by an employer, but does not include a domestic employee or a volunteer nonsalaried firefighter;

C. "employer" means any person who has one or more employees, but does not include the United States;

D. "board" means the environmental improvement board;

E. "department" means the department of environment;

F. "place of employment" means any place, area or environment in or about which an employee is required or permitted to work;

G. "commission" means the occupational health and safety review commission established under the Occupational Health and Safety Act;

H. "chemical" means any element, chemical compound or mixture of elements or compounds;

I. "hazardous chemical" means any chemical or combination of chemicals that has been labeled hazardous by the chemical manufacturer, importer or distributor in accordance with regulations promulgated by the federal Occupational Safety and Health Act of 1970;

J. "label" means any written, printed or graphic material displayed on or affixed to containers of chemicals which idetifies the chemical as hazardous;

K. "material safety data sheet" means written or printed material concerning a hazardous chemical that contains information on the identity listed on the label, the chemical and common names of the hazardous ingredients, the physical and health hazards, the primary route of entry, the exposure limits, any generally applicable control measures, any emergency or first aid procedures, the date of preparation and the name, address and telephone number of the chemical manufacturer, importer, employer or other responsible party preparing or distributing the material safety data sheet;

L. "mobile work site" means any place of employment in standard industrial classification codes 13, oil and gas extraction, and 15 through 17, construction, where work is performed in a different location than the principal office in a fixed location used by the employer; and

M. "secretary" means the secretary of environment."

Section 4

Section 4. Section 50-9-4 NMSA 1978 (being Laws 1972, Chapter 63, Section 4) is amended to read:

"50-9-4. STATE OCCUPATIONAL HEALTH AND SAFETY AGENCY.--The department is the state occupational health and safety agency for all purposes under federal legislation relating to occupational health and safety and may take all action necessary to secure to this state the benefits of that legislation."

Section 5

Section 5. Section 50-9-6 NMSA 1978 (being Laws 1972, Chapter 63, Section 6, as amended) is amended to read:

"50-9-6. TRAINING--ASSISTANCE--CONSULTATION--RESEARCH.--

A. The department shall provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance and prevention of unsafe working conditions in employment and places of employment and consult with, advise and assist employers and employees about effective means of preventing occupational injuries and illnesses.

B. Upon an employer's request, the department shall provide an on-site consultation inspection of conditions and practices of the employer's work place without issuing citations or proposing penalties for violations noted, provided that imminent danger situations found during the on-site consultative visit must be pointed out to the employer. In the event the imminent danger is pointed out by the department consultant but immediate steps are not taken by the employer to eliminate such danger, the emergency procedures provided in Section 50-9-14 NMSA 1978 shall be pursued by the department to assure timely abatement of the imminent danger situation.

C. The secretary is responsible for programs involving research in occupational health and safety, for surveys and recommendations for occupational health and safety programs and for promotional, educational and advisory activities in occupational health and safety.

D. The board or the secretary may appoint special committees composed of technicians or professionals specializing in occupational health or safety to assist in carrying out the objectives of the Occupational Health and Safety Act. Members of such committees shall be reimbursed as provided in the Per Diem and Mileage Act."

Section 6

Section 6. Section 50-9-7 NMSA 1978 (being Laws 1972, Chapter 63, Section 7, as amended) is amended to read:

"50-9-7. DUTIES AND POWERS OF THE BOARD.--

A. The board shall promulgate regulations that are and will continue to be at least as effective as standards promulgated pursuant to the federal Occupational Safety and Health Act of 1970 to prevent or abate detriment to the health and safety of employees. In adopting, amending and repealing its regulations, the board shall provide an opportunity for representatives of employers and employees affected by the regulations to be heard and shall give weight it deems appropriate to all relevant facts and circumstances presented at the public hearing, including but not limited to:

(1) character and degree of injury to or interference with the health and safety of employees proposed to be abated or prevented by the regulation;

(2) technical practicability and economic reasonableness of the regulation and the existence of alternatives to the prevention or abatement of detriment to the health and safety of employees proposed by the regulation; and

(3) the public interest, including the social and economic effects of work-related accidents, injuries and illnesses.

B. In promulgating regulations dealing with toxic materials or harmful physical agents, the board shall provide regulations that most adequately assure to the extent feasible, on the basis of the best available technology, that no employee will suffer material impairment of health or functional capacity even if the employee has regular exposure to the hazard dealt with by the regulations for a period of his working life. Whenever practicable, the regulation promulgated shall be expressed in terms of objective criteria and of the performance desired.

C. The regulation shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment and proper conditions and precautions of safe use or exposure. Where appropriate, the standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with the hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to the hazards in order to most effectively determine whether the health of the employees is adversely affected by the exposure. Cost of medical examinations for research as ordered by the secretary shall be paid for by the department. Results of examinations shall be made available to the secretary, to the employer and, upon the request of the employee, to the employee's physician. The board may make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring and medical examinations, as may be warranted by

experience, information or medical or technological developments acquired subsequent to the promulgation of the relevant standard."

Section 7

Section 7. Section 50-9-8 NMSA 1978 (being Laws 1972, Chapter 63, Section 8) is amended to read:

"50-9-8. DUTIES AND POWERS OF THE DEPARTMENT.--The department shall:

A. prevent or abate detriment to the health and safety of employees arising out of and in the course of employment;

B. develop an effective and comprehensive program for the prevention or abatement of detriment to the health and safety of employees within the state;

C. advise and recommend an effective and comprehensive program of occupational health and safety applicable to all employees of public agencies of the state and its political subdivisions;

D. cause to be instituted legal proceedings to compel compliance with the Occupational Health and Safety Act or any regulation of the board;

E. accept, receive and administer grants or other funds or gifts from public or private agencies, including the federal government;

F. take reasonable steps to inform employees of their protections and obligations under the Occupational Health and Safety Act, including the provisions of applicable regulations; and

G. make reports to the secretary of the United States department of labor in the form and containing the information as the secretary may from time to time require."

Section 8

Section 8. Section 50-9-10 NMSA 1978 (being Laws 1972, Chapter 63, Section 9, as amended) is amended to read:

"50-9-10. RIGHT OF ENTRY AND INSPECTION--COMPLAINTS--CONSULTATION-- NOTIFICATION.--

A. In order to carry out the purposes of the Occupational Health and Safety Act, the department's authorized representatives, upon presenting appropriate credentials to the owner, operator or agent in charge, are authorized to and may:

(1) enter and inspect any place of employment at reasonable times and without delay; and

(2) question privately the employer and employees and to inspect and investigate during regular working hours and at other reasonable times and within reasonable limits and in a reasonable manner, the place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein. The department's representative is not authorized to question privately the employer or employees until the board has adopted regulations protecting the rights of such employer and employees.

B. Any employee or representative of employees may file a written complaint with the department concerning any alleged violation of a regulation or any hazardous condition. A copy of the complaint shall be provided to the employer at the time of the inspection. However, upon the request of the complainant, the complainant's shall not appear on the copy. The department shall investigate the complaint and notify the complainant and employer in writing of the results of the investigation and any action to be taken. If no action is contemplated, the department shall notify the complainant and include in the notice the reasons therefor. The department shall provide for the informal review of decisions not to take compliance action at the request of the complainant. The review shall not be by those who investigated the complaint.

C. In order to aid inspections, a representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the department inspector during the physical inspection of the work place. If there is no authorized employee representative, the department inspector shall consult with a reasonable number of employees.

D. Prior to or during any inspection of a work place, any employees or representative of employees employed in such work place may notify the department or the department inspector in writing of any violation of the Occupational Health and Safety Act which they have reason to believe exists in such work place. The department shall establish procedures for informal review of the decision made by the inspector, and, if no citation is issued with respect to the alleged violation, it shall furnish the employee requesting such review a written statement of the reasons for the department's final disposition of the case.

E. If an inspection reveals that employees are exposed to toxic materials or harmful physical agents at levels in excess of those prescribed by regulations of the board, the department shall provide the employees with access to the results of the inspection. The employer shall promptly notify the employees who are being exposed to the agents or materials in excess of the applicable regulations and inform them of the corrective action being taken or that review has been requested in accordance with Section 50-9-17 NMSA 1978.

F. It is unlawful for any person to give advance notice of any inspection to be conducted under the Occupational Health and Safety Act without the written approval of the secretary or the secretary's authorized representative.

G. The board shall adopt regulations to implement this section."

Section 9

Section 9. Section 50-9-11 NMSA 1978 (being Laws 1972, Chapter 63, Section 10, as amended) is amended to read:

"50-9-11. REPORTS AND RECORD KEEPING BY EMPLOYERS.--

A. An employer shall keep such records and make such reports to the department as the board, by regulation, may require to carry out the purposes of the Occupational Health and Safety Act. Such regulation regarding records and reports shall be at least as effective as and consistent with the occupational safety and health record and report requirements of the United States department of labor. These records and reports shall be obtained with a minimum burden upon emplyers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

B. Employers shall maintain accurate records of employee exposures to potentially toxic material or harmful physical agents which are required to be monitored or measured as the board may prescribe by regulations. Employees and their representatives shall be given an opportunity to observe such monitoring and measuring. Employees and former employees shall be granted access to their own records as will indicate their own exposure to toxic material or harmful agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or levels that exceed those prescribed by an applicable regulation adopted pursuant to the Occupational Health and Safety Act and shall inform any employee who is being thus exposed of the corrective action being taken. Employers shall retain the records of exposure of employees to specific toxic material and harmful agents for periods of time to be specified in regulations."

Section 10

Section 10. Section 50-9-12 NMSA 1978 (being Laws 1972, Chapter 63, Section 11, as amended) is amended to read:

"50-9-12. ADOPTION OF REGULATIONS--NOTICE AND HEARING.--

A. Any person may recommend or propose regulations to the board for promulgation. The board shall determine whether to hold a hearing within sixty days of submission of a proposed regulation.

B. No regulations shall be adopted, amended or repealed until after a public hearing by the board. Notice of the hearing shall be given at least thirty days prior to the hearing date and shall state the subject, time and place of the hearing and the manner in which interested persons may secure copies of any regulations proposed to be adopted, amended or repealed. The notice shall be published in a newspaper of general circulation in the state. Reasonable effort shall be made to give notice to all persons who have made a written request to the board for advance notice of hearings. At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing. Any person heard or represented at the hearing shall be given written notice of the action by the board. The board may designate a hearing officer to take evidence in the hearing and present the evidence to the board. A record shall be made of each hearing.

C. Notwithstanding the provisions of Subsection B of this section, the secretary may adopt an emergency regulation to take immediate effect upon its filing under the State Rules Act if the secretary determines:

(1) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and

(2) that the emergency regulation is necessary to protect employees from the danger.

D. The emergency regulation shall be effective until superseded by a final regulation promulgated in accordance with the procedures prescribed in Subsection B of this section. The final regulation shall be promulgated within one hundred twenty days of the date of promulgation of the relevant emergency regulation.

E. If the emergency regulation is promulgated in response to an emergency temporary standard issued pursuant to the federal Occupational Safety and Health Act of 1970, then such regulation shall only be enforceable to the same extent as the federal emergency temporary standard.

F. If the federal emergency temporary standard is superseded by a federal permanent standard, then the state emergency regulation shall remain in effect for an additional one hundred twenty days after promulgation of the superseding standard. During this additional one hundred twenty days, the board shall promulgate a regulation in accordance with the procedures prescribed in Subsection B of this section."

Section 11

Section 11. Section 50-9-13 NMSA 1978 (being Laws 1972, Chapter 63, Section 12) is amended to read:

"50-9-13. ADOPTING STANDARDS BY REFERENCE.--In the event the board wishes to adopt regulations that are identical with standards approved by an agency of the federal government, the board, after notice and hearing, may adopt the regulations by reference to the standards without setting forth the provisions of the standards."

Section 12

Section 12. Section 50-9-14 NMSA 1978 (being Laws 1972, Chapter 63, Section 13, as amended) is amended to read:

"50-9-14. EMERGENCY PROCEDURES.--

A. The district courts shall have jurisdiction, upon petition of the secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists that could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through the enforcement procedures otherwise provided by the Occupational Health and Safety Act. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct or remove the imminent danger and prohibit the employment of any individual in locations or under conditions where the danger exists, except individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations or, where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

B. Upon the filing of a petition, the district court may grant injunctive relief or a temporary restraining order in accordance with the New Mexico rules of civil procedure pending the outcome of an enforcement proceeding pursuant to the Occupational Health and Safety Act.

C. When the secretary or the secretary's representative determines that an emergency exists, he shall immediately inform the employees and employers of the hazards and take steps to obtain immediate abatement of the hazards by the employer.

D. If the secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employee, may bring an action against the secretary in the district court for the district in which the imminent danger is alleged to exist for a writ of mandamus to compel the secretary to seek an order of the court as provided in this section."

Section 13

Section 13. Section 50-9-15 NMSA 1978 (being Laws 1972, Chapter 63, Section 14) is amended to read:

"50-9-15. VALIDITY OF REGULATION--VARIANCE DETERMINATION--JUDICIAL REVIEW.--

A. Any person who is or may be affected by a regulation adopted by the board may appeal to the court of appeals for further relief. All appeals shall be upon the record made at the hearing and shall be taken to the court of appeals within thirty days after filing of the regulation under the State Rules Act. The board shall be made a party to the action.

B. A variance petitioner may appeal to the court of appeals from an order of the department denying the variance. All appeals shall be upon the record made at the hearing and shall be taken to the court of appeals within thirty days from the date the order is made. The department shall be made a party to the action.

C. Upon appeal, the court of appeals shall set aside a regulation or order only if found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law."

Section 14

Section 14. Section 50-9-16 NMSA 1978 (being Laws 1972, Chapter 63, Section 15, as amended) is amended to read:

"50-9-16. VARIANCES--TEMPORARY VARIANCES.--

A. The department may grant an individual variance from any regulation adopted pursuant to the Occupational Health and Safety Act setting health or safety standards whenever it is found by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used by the petitioner will provide employment and places of employment to his employees which are as safe and healthful as those that would prevail if he complied with the existing regulation.

B. No variance shall be granted until the department has considered the relative interests of the petitioner, his employees and the general public. The order so issued shall describe the conditions the employer must maintain and the practices, means, methods, operations and procedures which he must adopt and utilize to the extent they differ from the regulation in question. The secretary may at any time on his own motion, or upon application by an employer or employee after six months have elapsed from the date of issuance of the order granting a variance, after a hearing, modify or revoke such order.

C. A petitioner for a variance shall file a petition with the department in the manner prescribed by regulation. The department shall give the affected employees prompt notice of the application for a variance and an opportunity to request a hearing. When properly filed, the secretary shall promptly investigate the petition and provide for the disposition thereof.

D. The department may grant the variance without hearing when no hearing has been requested by either employees or employer and if it deems that no substantial public interest is involved. If the department is opposed to the granting of the variance, then a hearing shall be held upon the request of the petitioner. A record shall be made of the hearing. In the hearing, the burden of proof shall be upon the petitioner.

E. Any employer may apply to the department for a temporary order granting a variance from a regulation promulgated under the Occupational Health and Safety Act by submitting a petition to the department in the manner prescribed by regulation. A temporary variance may be granted only if the employer establishes:

(1) that he is unable to comply with a regulation by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the regulation or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) that he is taking all available steps to safeguard his employees against the hazards covered by the regulation; and

(3) that he has an effective program for coming into compliance with the regulation as quickly as practicable.

F. Any temporary order issued under this section shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the regulation. Such a temporary variance may be granted only after notice to employees and an opportunity for a hearing. Provided that the department may issue one interim order to be effective until a decision is made or a decision rendered if a hearing is requested. No temporary variance may be in effect for longer than the period needed by the employer to achieve compliance with the regulation or one year, whichever is shorter, except that such variance may be renewed not more than twice, so long as the requirements of this subsection are met and if an application for renewal is filed at least ninety days prior to the expiration date of the variance. No renewal of a temporary variance may remain in effect for longer than one hundred eighty days.

G. The department is authorized to grant a variance from any regulation whenever it determines that such a variance is necessary to an employer to participate in an experiment approved by the department designated to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

H. The department shall keep an appropriately indexed record of all variances granted under this section. The record shall be open for public inspection."

Section 15

Section 15. Section 50-9-17 NMSA 1978 (being Laws 1972, Chapter 63, Section 16, as amended) is amended to read:

"50-9-17. ENFORCEMENT.--

A. If as a result of investigation the department has good cause to believe that any employer is violating any provision of the Occupational Health and Safety Act or any regulation of the board, the department shall send prompt notice of the violation by certified mail to the employer believed to be in violation. The citation shall describe with particularity the provision of the Occupational Health and Safety Act or regulation alleged to have been violated.
The notice shall also state the time for abatement of the violation. Each citation issued pursuant to this section, or a copy thereof, shall be promptly and prominently posted by the cited employer, as prescribed in regulations issued by the board, at or near the place where the violation occurred. No citation may be issued under this section after the expiration of six months following the occurrence of any violation. The board may issue a regulation prescribing procedures for the use of a notice in lieu of a citation with respect to de minimis violations that have no direct or immediate relationship to safety or health.

B. If the department issues a citation under Subsection A of this section, it shall, within a reasonable time after issuance of the citation, notify the employer by certified mail of the penalty, if any, proposed to be assessed and that the employer has fifteen working days within which to notify the department in writing that he wishes to contest the citation or proposed penalty. If, within fifteen working days from the receipt of the notice issued by the department, the employer fails to notify the department that he intends to contest the citation or proposed penalty and no notice is filed by an employee or employee representative as provided by Subsection D of this section within such time, the citation and the assessment of penalty, if any, as proposed shall be deemed the final order of the commission and not subject to review by any court or agency.

C. If the department has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the abatement period permitted, which period shall not begin to run until the entry of a final order by the commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, the department shall notify the employer by certified mail of such failure to correct and of the penalty proposed to be assessed by reason of such failure and that the employer has fifteen working days within which to notify the department in writing that he wishes to contest the department's notification or the proposed assessment of penalty. If, within

fifteen working days from the receipt of notification issued by the department, the employer fails to notify the department that he intends to contest the notification or proposed assessment of penalty, the notification and assessment as proposed shall be deemed a final order of the commission and not subject to review by any court or department.

D. If any employer notifies the department in writing that he intends to contest the citation issued to him under Subsection A or notification issued under Subsection B or C of this section, or if, within fifteen working days of the receipt of notice under this section, any employee of an employer so cited or any such employee's representative files a notice with the department alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the department shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the petitioner may request a hearing before the commission within fifteen days after the administrative review. The commission shall afford an opportunity for a hearing within thirty days after receipt of such petition. The commission shall thereafter issue an order, based on findings of fact, affirming, modifying or vacating the department's citation or the proposed penalty fixed by the department or directing other appropriate relief.

E. At any time prior to the expiration of an abatement period, an employer may notify the department in writing that he is unable to take the corrective action required within the period of abatement. The department shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the petitioner may request a hearing before the commission after the administrative review. The commission shall afford prompt opportunity for a hearing after receipt of such petition. The only grounds for modifying an abatement period under this subsection are a showing by the employer of a good-faith effort to comply with the abatement requirement of a citation and that abatement has not been completed because of factors beyond the employer's control.

F. Affected employees or their representatives shall be provided an opportunity to participate as parties at both informal administrative review and commission hearings under this section.

G. Any person, including the department, adversely affected by an order of the commission issued under this section may obtain a review of the order in the court of appeals by filing a notice of appeal in such court within thirty days after issuance of the commission's order. Every person who participated as a party in the proceeding before the commission shall be made a party to the appeal, but the commission shall not be deemed a real party in interest and
shall not be so named. The findings of the commission with respect to questions of fact, as supported by substantial evidence, shall be conclusive. Upon appeal, the court may set aside action of the commission only if found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence; or

(3) beyond the scope of its legal authority."

Section 16

Section 16. Section 50-9-18 NMSA 1978 (being Laws 1972, Chapter 63, Section 17) is amended to read:

"50-9-18. SUBPOENA POWER.--In connection with investigations or enforcement hearings conducted under the Occupational Health and Safety Act, the department may apply to the district court for an order requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the state. Any district court, upon application by the department, shall have jurisdiction to issue to such person an order requiring the person to appear and to produce evidence if, as and when so ordered and to give testimony relating to the matter under investigation if the court finds that the evidence or testimony sought is discoverable under the Rules of Civil Procedure for The District Courts. Any failure to obey an order of the court may be punished by the court under its powers of contempt."

Section 17

Section 17. Section 50-9-19 NMSA 1978 (being Laws 1972, Chapter 63, Section 18) is amended to read:

"50-9-19. ACCIDENT REPORTS AND RECORDS.--

A. Every employer shall keep records and submit reports of occupational injuries and illnesses as prescribed by the department. Reports shall not require employee identification by name.

B. The department shall publish annually a detailed summary of the statistical data received from employers. The department shall make a copy of such summary available on request to each employer, and the summary shall be made available upon request to any person having an interest in the report. In the preparation, publication or release of the statistical summary, the department shall not in any manner disclose information identifying any employer unless prior permission has been obtained from the employer in writing. The reports of each employer shall remain confidential and shall not be released, revealed or otherwise disclosed to any person other than the bureau of labor statistics and the occupational safety and health administration of the United States department of labor without prior permission of the employer unless pursuant to an administrative hearing of the board or an order of a court of competent jurisdiction."

Section 18

Section 18. Section 50-9-20 NMSA 1978 (being Laws 1972, Chapter 63, Section 19) is amended to read:

"50-9-20. COORDINATION.--For the purpose of carrying out the provisions of the Occupational Health and Safety Act, the department shall coordinate, to the greatest extent practicable, the occupational health and safety activities of all state and local agencies. It shall advise, consult and cooperate with other agencies of the state, federal government, other states and interstate agencies and with affected public and private organizations."

Section 19

Section 19. Section 50-9-21 NMSA 1978 (being Laws 1972, Chapter 63, Section 20, as amended) is amended to read:

"50-9-21. CIVIL ACTIONS--ADMISSIBILITY AS EVIDENCE--CONFIDENTIALITY OF TRADE SECRETS.--

A. Nothing in the Occupational Health and Safety Act shall be construed or held to supersede or in any manner affect the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties or liabilities of employers and employees under the laws of this state with respect to injuries, occupational or other diseases or death of employees arising out of or in the course of employment.

B. Statements, reports and information obtained or received by the department in connection with an investigation under or the administration or enforcement of the provisions of the Occupational Health and Safety Act shall be made available except to the extent privileged by law. Information obtained under the provisions of Subsection B of Section 50-9-6 NMSA 1978 shall remain confidential. The information may be used for statistical purposes if the information revealed is not identified as applicable to any individual employer.

C. All information reported to or otherwise obtained by the secretary or the secretary's authorized representative in connection with any inspection or proceeding under this section which contains or might reveal a trade secret, as defined in Paragraph (2) of this subsection, shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out the Occupational Health and Safety Act. In any such proceeding, the secretary, the secretary's authorized representative or a court of competent jurisdiction, as the case may be, shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

(1) It is unlawful for any employee of the agency to reveal to any individual other than another employee of the department the trade secrets of any employer except in response to an order of a district court, the court of appeals, the

supreme court or a federal court in an action to which the state is a party and in which the information sought is material to the inquiry.

(2) For the purposes of this subsection, "trade secrets" means the whole or any portion or phrase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and of value. A trade secret shall be presumed to be secret when the owner takes measures to prevent it from becoming available to persons other than those selected by the owner to have access for limited purposes."

Section 20

Section 20. Section 50-9-24 NMSA 1978 (being Laws 1975, Chapter 290, Section 14, as amended) is amended to read:

"50-9-24. PENALTIES.--

A. Any employer who willfully or repeatedly violates any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act may be assessed a civil penalty not to exceed seventy thousand dollars ($70,000) for each violation; provided that a civil penalty shall not be less than five thousand dollars ($5,000) for each willful violation.

B. Any employer who has received a citation for a serious violation of any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act shall be assessed a civil penalty not to exceed seven thousand dollars ($7,000) for each such violation.

C. Any employer who has received a citation for a violation of any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act that is determined not to be of a serious nature may be assessed a civil penalty of up to seven thousand dollars ($7,000) for each such violation.

D. Any employer who fails to correct a violation for which a citation has been issued within the period permitted for its corretion, which period shall not begin to run until the date of the final order of the commission in the case of any review proceeding under Section 50-9-17 NMSA 1978 initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty not to exceed seven thousand dollars ($7,000) for each day during which the failure or violation continues.

E. Any civil penalty assessed against the state, a political subdivision of the state or any agency of either pursuant to Subsection B, C or G of this section shall not be collected during the time permitted for correction of the violation, and if the

violation is corrected within such time, the civil penalty shall be deemed paid without further action of the state, political subdivision or agency.

F. For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition that exists or from one or more practices, means, methods, operations or processes that have been adopted or are in use in the place of employment unless the employer did not and could not with the exercise of reasonable diligence know of the presence of the violation.

G. Any employer who violates any of the posting requirements as prescribed by the Occupational Health and Safety Act shall be assessed a civil penalty not to exceed seven thousand dollars ($7,000) for each violation.

H. The commission has authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer and the history of previous violations.

I. Civil penalties imposed under this section shall be paid into the general fund.

J. Any employer who willfully violates any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act causing death to any employee by that violation shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000) or by imprisonment for not more than six months or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than twenty thousand dollars ($20,000) or by imprisonment for less than one year or by both.

K. Any person who gives advance notice of any inspection to be conducted under the Occupational Health and Safety Act without authority of the secretary shall, upon conviction, be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than six months or by both.

L. Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to the Occupational Health and Safety Act shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000) for each such violation or by imprisonment for not more than six months or by both.

M. A person who reveals a trade secret in violation of Section 50-9-21 NMSA 1978 violates this subsection and shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000) or by imprisonment for less than one year or both."

Section 21

Section 21. Section 50-9-25 NMSA 1978 (being Laws 1975, Chapter 290, Section 15) is amended to read:

"50-9-25. DISCRIMINATION.--

A. No person or employer shall discharge or in any manner discriminate against any employee because the employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to the Occupational Health and Safety Act or has testified or is about to testify in any such proceeding or because of the exercise by the employee on behalf of himself or others of any right afforded by the Occupational Health and Safety Act.

B. Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty days after such alleged violation occurs, file a complaint with the secretary, in writing and acknowledged by the employee, alleging such discrimination. Upon receipt of the complaint, the secretary shall cause such investigation to be made as he deems appropriate. Within sixty days of the receipt of a complaint filed under this section, the secretary shall notify the complainant of his determination. If, upon such investigation, the secretary determines that the provisions of this section have been violated, he shall file a petition in the district court for the political subdivision in which the alleged violation occurred to restrain the violation of Subsection A of this section and for other appropriate relief including rehiring or reinstatement of the employee to his former position with back pay."

Section 22

Section 22. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.SB 655

CHAPTER 323

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

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

Section 1

Section 1. Section 58-13B-27 NMSA 1978 (being Laws 1986, Chapter 7, Section 27, as amended) is amended to read:

"58-13B-27. EXEMPT TRANSACTIONS.--The following transactions are exempted from Section 58-13B-20 NMSA 1978 and, unless otherwise noted, Section 58-13B-29 NMSA 1978:

A. an isolated non-issuer transaction, whether or not effected through a broker-dealer;

B. a non-issuer transaction in a security by a registered broker-dealer if:

(1) the issuer of the security has a class of securities required to be registered under Section 12 of the Securities Exchange Act of 1934;

(2) the issuer has filed reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 during the ninety-day period immediately preceding the date of the offer or sale or is an issuer of a security covered by Section 12(g)(2)(B) or (G) of that 1934 act;

(3) the broker-dealer has a reasonable basis for believing that the issuer is current in filing the reports required to be filed at regular intervals pursuant to the provisions of Section 13 or Section 15(d), as the case may be, of the Securities Exchange Act of 1934 or in the case of insurance companies exempted from Section 12(g) of the Securities Exchange Act of 1934 by Subparagraph 12(g)(2)(G) thereof, the annual statement referred to in Section 12(G)(2)(G)(i) of the Securities Exchange Act of 1934; and

(4) the broker-dealer has in its records, and makes reasonably available upon request to any person expressing an interest in a proposed transaction in the securities, the issuer's most recent annual report filed pursuant to Section 13 or 15(d), as the case may be, of the Securities Exchange Act of 1934 or the annual statement in the case of an insurance company exempted from Section 12(g) of the Securities Exchange Act of 1934 by Subparagraph 12(G)(2)(G) thereof, together with any other reports required to be filed at regular intervals under the Securities Exchange Act of 1934 by the issuer after such annual report or annual statement; provided that the making available of such reports pursuant to this paragraph, unless otherwise represented, shall not constitute a representation by the broker-dealer that the information is true and correct but shall constitute a representation by the broker-dealer that the information is reasonably current; or

(5) the issuer has filed and maintained with the director, for not less than ninety days before the transaction, information in such form as the director by rule specifies, substantially comparable to the information which the issuer would be required to file under Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934 were the issuer to have a class of its securities registered under Section 12 of the Securities Exchange Act of 1934, and under either Subparagraph (1) or (2), the issuer has paid a fee of five hundred dollars ($500);

C. a non-issuer transaction in a security:

(1) of a class outstanding in the hands of the public for not less than one hundred eighty days before the transaction if a nationally recognized securities manual designated by the director by rule or order contains the names of the issuer's officers and directors, a statement of financial condition of the issuer as of a date within the last eighteen months and a statement of income or operations for either the last fiscal year before the date or the most recent year of operation; or

(2) if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest or dividends on the security; provided that the director may impose additional requirements as a condition of the exemption established in this paragraph as necessary for the protection of investors and shall promulgate rules specifying application of this exemption;

D. any non-issuer transaction effected by or through a registered broker-dealer registered in this state pursuant to an unsolicited order or offer to buy; provided that the director by rule shall require that the broker-dealer have the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of that form be preserved by the broker-dealer for a specified period;

E. a transaction between the issuer or other person on whose behalf the offering of a security is made and an underwriter or a transaction among underwriters;

F. a transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement or by an agreement for the sale of real estate or personal property, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

G. a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator;

H. a transaction executed by a bona fide secured party without a purpose of evading the New Mexico Securities Act of 1986;

I. an offer to sell or sale of a security to a financial or institutional investor or to a broker-dealer;

J. the issuance and offer and sale of securities by any corporation organized under the laws of this state or any offer or sale of limited partnership interests by a limited partnership organized or to be organized under the laws of this state if:

(1) in the case of a corporation, its principal office and a majority of its full-time employees are located in this state or, in the case of a limited partnership, its principal place of business and eighty percent of its assets are located in this state;

(2) at least eighty percent of the proceeds from the offering shall be used by the issuer in operations of the issuer in this state;

(3) no commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state except to broker-dealers and sales representatives licensed pursuant to the New Mexico Securities Act of 1986;

(4) an offering document is delivered to each purchaser or prospective purchaser prior to the sale of the securities disclosing such information as the director by rule or order may require;

(5) the total offering, including interest on installment payments, does not exceed one million five hundred thousand dollars ($1,500,000); and

(6) the issuer claiming this exemption files notice with the director on a form prescribed by the director prior to the first offer and pays a fee of three hundred fifty dollars ($350). The director may require any issuer using this exemption to file periodic reports not more often than quarterly to keep reasonably current the information contained in the notice and to disclose the progress of the offering. The director may impose conditions by rule or order with respect to issuers, broker-dealers or affiliates who by reason of prior misconduct will not be eligible to utilize ths exemption. The issuance and offer and sale of securities pursuant to this subsection shall be subject to Section 58-13B-29 NMSA 1978;

K. the issuance and offer and sale of securities by any corporation organized under the laws of this state or any offer or sale of limited partnership interests by a limited partnership organized or to be organized under the laws of this state if:

(1) in the case of a corporation, the total number of security holders does not and will not in consequence of the sale exceed twenty-five or, in the case of a limited partnership, the number of limited partners does not and will not in consequence of the sale exceed twenty-five;

(2) the issuer reasonably believes that all buyers are purchasing for investment;

(3) no public advertising or general solicitation is used in connection with the offer or sale; and

(4) no commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state except to broker-dealers and sales representatives licensed pursuant to the New Mexico Securities Act of 1986.

The director by rule or order may impose additional requirements as a condition of the exemption established in this subsection as necessary for the protection of investors and to specify its application. Any notice filing that may be imposed pursuant to Subsection C of Section 58-13B-28 NMSA 1978 shall not be deemed a condition of this exemption;

L. any offer or sale of a preorganization certificate or subscription if:

(1) such sale or offer is made by an agent, the agent shall be licensed pursuant to the New Mexico Securities Act of 1986. No commission shall be paid to an agent not licensed pursuant to that act;

(2) no public advertising or general solicitation is used in connection with the offer or sale;

(3) the number of subscribers does not exceed ten; and

(4) either no payment is made by any subscriber or any payment made by a subscriber is put into escrow until the entire issue is subscribed;

M. an offer or sale of a preorganization certificate or subscription agreement issued in connection with the organization of a depository institution if that organization is under the supervision of an official or agency of any state or of the United States which has and exercises the authority to regulate and supervise the depository institution. For the purpose of this subsection, supervision of an organization by an official or agency means that the official or agency by law has authority to:

(1) require disclosures to prospective investors similar to that required under Section 58-13B-23 NMSA 1978;

(2) impound proceeds from the sale of preorganization certificates or subscription agreements until organization of the depository institution is completed; and

(3) require a refund to investors if the depository institution does not obtain a grant of authority from the appropriate official or agency except that the official or agency with the authority to require a refund need not include such amounts as the official or agency has by law determined to be proper organizational expenditures;

N. a transaction pursuant to an offer to sell to existing security holders of the issuer, including persons who at the time of the transaction are holders of transferable warrants exercisable within not more than ninety days of their issuance, convertible securities or nontransferable warrants, if:

(1) no commission or other similar compensation, other than a standby commission, is paid or given, directly or indirectly, for soliciting a security holder in this state; or

(2) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

O. a transaction involving an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(1) a registration or offering statement or similar document as required under the Securities Act of 1933 has been filed but is not effective;

(2) a registration statement has been filed under the New Mexico Securities Act of 1986 but is not effective; and

(3) no stop order has been entered by the director, the securities and exchange commission or other state's securities agency, and no proceeding or examination that may culminate in that kind of order is pending;

P. a transaction involving an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(1) a registration statement has been filed under the New Mexico Securities Act of 1986 but is not effective; and

(2) no stop order has been entered by the director, other state securities agencies or the securities and exchange commission and no proceeding or examination that may culminate in that kind of order being issued by the director is pending;

Q. a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganization to which the issuer, or its parent and subsidiary, and the other person, or its parent or subsidiary, are parties, if:

(1) the securities to be distributed are registered under the Securities Act of 1933 and written notice of the transaction is given to the director prior to the consummation of the transaction; or

(2) if the securities to be distributed are not required to be registered under the Securities Act of 1933, and written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited is given to the director at least ten days before the consummation of the transaction and the director does not disallow by order the exemption within the next ten days;

R.

(1) a transaction involving the offer to sell or sale of one or more promissory notes each of which is directly secured by a first lien on a single parcel of real estate, or a transaction involving the offer to sell or sale of participation interests in the notes if the notes and participation interests are originated by a depository institution and are offered and sold subject to the following conditions:

(a) the minimum aggregate sales price paid by each purchaser may not be less than two hundred fifty thousand dollars ($250,000);

(b) each purchaser must pay cash either at the time of the sale or within sixty days after the sale; and

(c) each purchaser may buy for that person's own account only;

(2) a transaction involving the offer to sell or sale of one or more promissory notes directly secured by a first lien on a single parcel of real estate or participation interests in the notes, if the notes and participation interests are originated by a mortgagee approved by the secretary of housing and urban development under Sections 203 and 211 of the National Housing Act and are offered or sold, subject to the conditions specified in Paragraph (1) of this subsection, to a depository institution or insurance company, the federal home loan mortgage corporation, the federal national mortgage association or the government national mortgage association;

(3) a transaction between any of the persons described in Paragraph (2) of this subsection involving a nonassignable contract to buy or sell the securities described in Paragraph (1) of this subsection, which contract is to be completed within two years, if:

(a) the seller of the securities pursuant to the contract is one of the parties described in Paragraph (1) or (2) of this subsection who may originate securities;

(b) the purchaser of securities pursuant to any contract is any other institution described in Paragraph (2) of this subsection; and

(c) the three conditions described in Paragraph (1) of this subsection are fulfilled;

S. any transaction involving leases or interests in leases in oil, gas or other mineral rights between parties each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business. For purposes of this subsection, a party "engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business" means:

(1) any corporation, partnership or other business entity that is directly engaged in and derives at least eighty percent of its annual gross income from the exploration or production of oil, gas or other valuable minerals;

(2) any general partner or any employee who spends at least eighty percent of his work time in the daily management of a business entity that is directly engaged in and derives at least eighty percent of its gross annual income from the exploration or production of oil, gas or other valuable minerals; or

(3) any corporation, partnership or other business entity that is directly engaged in the business of exploration and production of oil, gas or other valuable minerals and derives at least five million dollars ($5,000,000) of annual gross income from such business; and

T. any transaction involving the sale or offer of interests in and under oil, gas or mining rights located in New Mexico or fees, titles or contracts relating thereto, or such sale or offer of such interests, wherever located, made by an entity principally operating in New Mexico where:

(1) the total number of sales by any one owner of interests, whether whole, fractional, segregated or undivided, in any oil, gas or mineral lease, fee or title or contract relating thereto, shall not exceed twenty-five, provided that such sales shall be made only to persons meeting suitability standards established by rule or order of the director and that investors are provided with such disclosure documents and other information as the director may require by rule or order;

(2) no use is made of advertisement or public solicitation; and

(3) if such sale or offer is made by an agent for such owner or owners, such agent shall be licensed pursuant to the New Mexico Securities Act of 1986. No commission shall be paid to an agent not licensed pursuant to that act.

For the purposes of this subsection, "principally operating in New Mexico" means a corporation organized under the law of this state, a corporation a majority in interest of whose shareholders are residents of this state, a partnership in which a majority in interest of the partners are residents of this state, a trust in which a majority in interest of the beneficiaries are residents of this state or a sole proprietorship in which the owner is a resident of this state."

Section 2

Section 2. Section 58-13B-37 NMSA 1978 (being Laws 1986, Chapter 7, Section 37) is amended to read:

"58-13B-37. ENFORCEMENT.--

A. If the director reasonably believes, whether or not based upon an investigation conducted under Section 58-13B-36 NMSA 1978, that any person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the New Mexico Securities Act of 1986 or any rule or order under that act, the director may, subject to the right of that person to obtain a subsequent hearing pursuant to Section 58-13B-53 NMSA 1978, in addition to any specific powers granted under that act, issue a cease and desist order, without a prior hearing, against the person engaged in the prohibited activities, directing him to desist and refrain from further illegal activity.

B. When it appears to the director, whether or not based upon an investigation conducted under Section 58-13B-36 NMSA 1978, that a person has violated the New Mexico Securities Act of 1986 or a rule or order of the director under that act, the director, in ddition to any specific power granted under that act, may, after notice and hearing in an administrative proceeding unless the right to notice and hearing is waived by the person against whom the sanction is imposed:

(1) issue a cease and desist order against the person;

(2) censure the person if that person is a licensed broker-dealer, sales representative, investment adviser or investment adviser representative;

(3) bar or suspend that person from association with a licensed broker-dealer or investment adviser in this state;

(4) issue an order against an applicant, licensed person or other person who violates that act, imposing a civil penalty up to a maximum of five thousand dollars ($5,000) for each violation; or

(5) initiate one or more of the actions specified in Section 58-13B-38 NMSA 1978 as applicable.

C. For purposes of determining the amount of civil penalty imposed pursuant to Paragraph (4) of Subsection B of this section, the director shall consider, among other factors, the frequency and persistence of the conduct constituting a violation of the New Mexico Securities Act of 1986 or a rule or order of the director under that act, the number of persons adversely affected by the conduct and the resources of the person committing the violation."

Section 3

Section 3. Section 58-13B-38 NMSA 1978 (being Laws 1986, Chapter 7, Section 38) is amended to read:

"58-13B-38. POWER OF COURT TO GRANT RELIEF.--

A. Upon a showing by the director that a person has violated or is about to violate the New Mexico Securities Act of 1986 or any rule or order of the director under that act, the district court of Santa Fe county or other appropriate district court in the state may grant or impose one or more of the following appropriate legal or equitable remedies:

(1) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction or a writ of prohibition or mandamus;

(2) a civil penalty up to a maximum of five thousand dollars ($5,000) for each violation;

(3) disgorgement;

(4) declaratory judgment;

(5) restitution to investors;

(6) the appointment of a receiver or conservator for the defendant or the defendant's assets;

(7) recovery by the director of all costs and expenses for conducting an investigation or the bringing of any enforcement action under that act; or

(8) other relief as the court deems just.

B. Upon a showing that the defendant is about to violate the New Mexico Securities Act of 1986 or a rule or order of the director under that act, a court may issue:

(1) a temporary restraining order;

(2) a temporary or permanent injunction;

(3) a writ of prohibition or mandamus; or

(4) an order for costs and expenses.

C. In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the director under Section 58-13B-36 NMSA 1978 in connection with the transactions constituting violations of the New Mexico Securities Act of 1986.

D. The court shall not require the director to post a bond in an action under this section.

E. Upon a showing by the administrator or securities agency of another state that a person has violated the securities act of that state or a rule or order of the administrator or securities agency of that state, the district court of Santa Fe county or other appropriate district court may grant, in addition to any other legal or equitable remedies, one or more of the following remedies:

(1) appointment of a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant's assets located in this state; or

(2) other relief as the court deems just."

Section 4

Section 4. Section 58-13B-40 NMSA 1978 (being Laws 1986, Chapter 7, Section 40, as amended) is amended to read:

"58-13B-40. CIVIL LIABILITY.--

A. A person who, in connection with the offer or sale of a security, violates Subsection A of Section 58-13B-3, Subsection A of Section 58-13B-5, Section 58-13B-20, Subsections K and L of Section 58-13B-24, Section 58-13B-30, Section 58-13B-32, Section 58-13B-33, Subsection B of Section 58-13B-35 NMSA 1978 or of a condition imposed under Subsection H, I or J of Section 58-13B-24 NMSA 1978 or any rule of the director relating to any of those sections is liable to the person purchasing the security, except that no such liability will exist in the case of failure to file any notice of claim of exemption pursuant to Subsection K of Section 58-13B-27 NMSA 1978. Upon tender of the security, the purchaser shall recover the consideration paid for the security and interest at the legal rate of this state from the date of payment, costs and reasonable attorneys' fees, less the amount of income received on the security. If the purchaser no longer owns the security, he shall recover damages. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate of this state from the date of disposition of the security. Tender requires only notice of willingness to exchange the security for the amount specified.

B. A person who offers or sells a security in violation of Subsection B of Section 58-13B-30 NMSA 1978 is not liable under Subsection A of this section if the purchaser knew that a statement of a material fact was untrue or that there was an omission of a statement of a material fact.

C. Any person who purchases a security in violation of Section 58-13B-30, 58-13B-32 or 58-13B-33 NMSA 1978 is liable to the person selling the security. The person selling the security may sue to recover the security, plus any income received by the purchaser on the security upon tender of the consideration received, costs and reasonable attorneys' fees, or for damages if the purchaser no longer owns the security. Damages are the excess of the value of the security when the purchaser acquired it or

disposed of it, whichever is greater, over the consideration paid for the security, plus interest at the legal rate from the date of disposition. Tender requires only notice of willingness to pay the amount specified in exchange for the security.

D. A person who purchases a security in violation of Subsection B of Section 58-13B-30 NMSA 1978 is not liable under Subsection C of this section if the seller knew that a statement of a material fact was untrue or that there was an omission of a statement of a material fact.

E. A person who willfully participates in any act or transaction in violation of Section 58-13B-31 NMSA 1978 is liable to a person who purchases or sells a security, at a price that was affected by the act or transaction for the damages sustained as a result of the act or transaction. Damages are the difference between the price at which the securities were purchased or sold and the market value the securities would have had at the time of the person's purchases or sale in the absence of the act or transaction, plus interest at the legal rate of this state from the date of the act or transaction and reasonable attorneys' fees.

F. A person who directly or indirectly controls another person who is liable under Subsection A, B, C, D or E of this section, a partner, officer or director of the person liable, a person occupying a similar status or performing similar functions, any agent of the person liable, an employee of the person liable if the employee materially aids in the act, omission or transaction constituting the violation and a broker-dealer or sales representative who materially aids in the act, omission or transaction constituting the violation, are also liable jointly and severally with and to the same extent as the other person, but it is a defense that they did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by which the liability exists. Contribution among the several persons liable is the same as in cases arising out of breach of contract.

G. The legal rate of interest as used in the New Mexico Securities Act of 1986 shall be the rate set by Subsection A of Section 56-8-4 NMSA 1978 or its successor statutes.

H. In any action brought pursuant to the New Mexico Securities Act of 1986, other than one brought by the state of New Mexico, if it appears to the court that the suit was groundless or brought for purposes of harassment, the plaintiffs may be liable for court costs and reasonable attorneys' fees incurred by the defendant." SB 703

CHAPTER 324

RELATING TO FLOOD CONTROL; INCREASING THE AGGREGATE TOTAL ASSESSMENT IMPOSITION PERMITTED FOR THE SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 72-19-22 NMSA 1978 (being Laws 1990, Chapter 14, Section 22, as amended) is amended to read:

"72-19-22. ADDITIONAL POWERS OF THE AUTHORITY.--The authority may exercise the following duties, privileges, immunities, rights, liabilities and disabilities appertaining to a public body politic and corporate and constituting a quasi-municipal corporation and political subdivision of the state established as an instrumentality exercising public and essential governmental and proprietary functions to provide for the public health, safety and general welfare:

A. perpetual existence and succession;

B. adopt, have and use a corporate seal and alter the same at pleasure;

C. sue and be sued and be a party to suits, actions and proceedings;

D. commence, maintain, intervene in, defend, compromise, terminate by settlement or otherwise and otherwise participate in and assume the cost and expense of any and all actions and proceedings now or hereafter begun and appertaining to the authority, its board, its officers, agents or employees, or any of the authority's duties, privileges, immunities, rights, liabilities and disabilities, or the authority's flood control system, other property of the authority or any project;

E. enter into contracts and agreements, including but not limited to contracts with the federal government, the state and any other public body;

F. borrow money and issue securities evidencing any loan to or amount due by the authority, provide for and secure the payment of any securities and the rights of the holders of those securities and purchase, hold and dispose of securities as provided in the Southern Sandoval County Arroyo
Flood Control Act;

G. refund any loan or obligation of the authority and issue refunding securities to evidence such loan or obligation without any election;

H. purchase, trade, exchange, encumber and otherwise acquire, maintain and dispose of property and interests in that property;

I. levy and cause to be collected general ad valorem taxes on all property subject to property taxation within the authority; provided that the total tax levy, excluding any levy for the payment of any debt of the authority authorized pursuant to the Southern Sandoval County Arroyo Flood Control Act, for any fiscal year shall not

exceed an aggregate total of one dollar ($1.00), or any lower amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon this tax levy, for each one thousand dollars ($1,000) of net taxable value, as that term is defined in the Property Tax Code, by certifying, on or before the fifteenth day of July in each year in which the board determines to levy a tax, to the board of county commissioners of Sandoval county, or by such other date as the laws of the state may prescribe to such other body having authority to levy taxes within each county wherein the authority has any territory, the rate so fixed, with directions tat, at the time and in the manner required by law for levying taxes for other purposes, such body having authority to levy taxes shall levy the tax upon the net taxable value of all property subject to property taxation within the authority, in addition to such other taxes as may be levied by such body, as provided in Sections 72-19-23 through 72-19-27 NMSA 1978. No taxes may be levied and collected for any purpose, or any contract made, until a bond issue has been submitted to and approved by the qualified electors as provided in the Southern Sandoval County Arroyo Flood Control Act;

J. hire and retain officers, agents, employees, engineers, attorneys and any other persons, permanent or temporary, necessary or desirable to effect the purposes of the Southern Sandoval County Arroyo Flood Control Act, defray any expenses incurred thereby in connection with the authority and acquire office space, equipment, services, supplies, fire and extended coverage insurance, use and occupancy insurance, workers' compensation insurance, property damage insurance, public liability insurance for the authority and its officers, agents and employees and other
types of insurance, as the board may determine; provided, however, that no provision in that act authorizing the acquisition of insurance shall be construed as waiving any immunity of the authority or any director, officer or agent thereof and otherwise existing under the laws of the state;

K. condemn property for public use;

L. acquire, improve, equip, hold, operate, maintain and dispose of a flood control system, storm sewer facilities, project and appurtenant works, or any interest therein, wholly within the authority, or partially within and partially without the authority, and wholly within, wholly without or partially within and partially without any public body all or any part of the area of which is situated within the authority;

M. pay or otherwise defray the cost of any project;

N. pay or otherwise defray and contract so to pay or defray, for any term not exceeding fifty years, without an election, except as otherwise provided in the Southern Sandoval County Arroyo Flood Control Act, the principal of, any interest on and any other charges appertaining to, any securities or other obligations of the federal government, any public body or person incurred in connection with any such property so acquired by the authority;

O. establish and maintain facilities within or without the authority, across or along any public street, highway, bridge, viaduct or other public right-of-way or in, upon, under or over any vacant public lands, which public lands are now or may become the property of the state, or across any stream of water or water course, without first obtaining a franchise from the municipality, county or other public body having jurisdiction over the same; provided that the authority shall cooperate with any public body having such jurisdiction, shall promptly restore any such street, highway, bridge, viaduct or other public right-of-way to its former state of usefulness as nearly as may be and shall not use the same in such manner as to impair completely or unnecessarily the usefulness thereof;

P. deposit any money of the authority, subject to the limitations in Article 8, Section 4 of the constitution of New Mexico, in any banking institution within or without the state and secured in such manner and subject to such terms and conditions as the board may determine, with or without the payment of any interest on any such deposit;

Q. invest any surplus money in the authority treasury, including such money in any sinking or reserve fund established for the purpose of retiring any securities of the authority, not required for the immediate necessities of the authority, in its own securities or in federal securities, by direct purchase of any issue of such securities, or part thereof, at the original sale of the same, or by the subsequent purchase of such securities;

R. sell any such securities thus purchased and held, from time to time;

S. reinvest the proceeds of any such sale in other securities of the authority or in federal securities, as provided in Subsection Q of this section;

T. sell in season from time to time such securities thus purchased and held, so that the proceeds may be applied to the purposes for which the money with which such securities were originally purchased was placed in the treasury of the authority;

U. accept contributions or loans from the federal government for the purpose of financing the planning, acquisition, improvement, equipment, maintenance and operation of any enterprise in which the authority is authorized to engage and enter into contracts and cooperate with and accept cooperation and participation from the federal government for these purposes;

V. enter, without any election, into joint operating or service contracts and agreements, acquisition, improvement, equipment or disposal contracts or other arrangements, for any term not exceeding fifty years, with the federal government, any public body or any person concerning storm sewer facilities, or any project, whether acquired by the authority or by the federal government, any public body or any person, and accept grants and contributions from the federal government, any public body or any person in connection therewith;

W. enter into and perform, without any election, when determined by the board to be in the public interest and necessary for the protection of the public health, contracts and agreements, for any term not exceeding fifty years, with the federal government, any public body or any person for the provision and operation by the authority of storm sewer
facilities;

X. enter into and perform, without any election, contracts and agreements with the federal government, any public body or any person for or concerning the planning, construction, lease or other acquisition, improvement, equipment, operation, maintenance, disposal, and the financing of any project, including but not necessarily limited to any contract or agreement for any term not exceeding fifty years;

Y. enter upon any land, make surveys, borings, soundings and examinations for the purposes of the authority, locate the necessary works of any project and roadways and other rights-of-way appertaining to any project authorized in the Southern Sandoval County Arroyo Flood Control Act; and acquire all property necessary or convenient for the acquisition, improvement or equipment of such works;

Z. cooperate with and act in conjunction with the state, or any of its engineers, officers, boards, commissions or departments, or with the federal government or any of its engineers, officers, boards, commissions or departments, or with any other public body or any person in the acquisition, improvement or equipment of any project for the controlling of flood or storm waters of the authority, or for the protection of life or property therein, or for any other works, acts or purposes provided for in the Southern Sandoval County Arroyo Flood Control Act, and adopt and carry out any definite plan or system of work for any such purpose;

AA. cooperate with the federal government or any public body by an agreement therewith by which the authority may:

(1) acquire and provide, without cost to the cooperating entity, the land, easements and rights-of-way necessary for the acquisition, improvement or equipment of the flood control system or any project;

(2) hold and save harmless the cooperating entity free from any claim for damages arising from the acquisition, improvement, equipment, maintenance and operation of the flood control system or any project;

(3) maintain and operate any project in accordance with regulations prescribed by the cooperating entity; and

(4) establish and enforce flood channel limits and regulations, if any, satisfactory to the cooperating entity;

BB. carry on technical and other investigations of all kinds, make measurements, collect data and make analyses, studies and inspections pertaining to control of floods, sewer facilities, and any project, both within and without the authority, and for this purpose the authority has the right of access through its authorized representative to all lands and premises within the state;

CC. have the right to provide from revenues or other available funds an adequate fund for the improvement and equipment of the authority's flood control system or of any parts of the works and properties of the authority;

DD. prescribe and enforce reasonable rules and regulations for the prevention of further encroachment upon existing defined waterways, by their enlargement or other modification, for additional waterway facilities to prevent flooding;

EE. require any person desiring to make a connection to any storm water drain or flood control facility of the authority or to cause storm waters to be emptied into any ditch, drain, canal, floodway or other appurtenant structure of the authority firstly to make application to the board to make the connection, to require the connection to be made in such manner as the board may direct;

FF. refuse, if reasonably justified by the circumstances, permission to make any connection designated in Subsection DD or Subsection EE of this section;

GG. make and keep records in connection with any project or otherwise concerning the authority;

HH. arbitrate any differences arising in connection with any project or otherwise concerning the authority;

II. have the management, control and supervision of all the business and affairs appertaining to any project herein authorized, or otherwise concerning the authority, and of the acquisition, improvement, equipment, operation and maintenance of any such project;

JJ. prescribe the duties of officers, agents, employees and other persons and fix their compensation; provided that the compensation of employees and officers shall be established at prevailing rates of pay for equivalent work;

KK. enter into contracts of indemnity and guaranty, in such form as may be approved by the board, relating to or connected with the performance of any contract or agreement which the authority is empowered to enter into under the provisions of the Southern Sandoval County Arroyo Flood Control Act or of any other law of the state;

LL. provide, by any contract for any term not exceeding fifty years, or otherwise, without an election:

(1) for the joint use of personnel, equipment and facilities of the authority and any public body, including without limitation public buildings constructed by or under the supervision of the board of the authority or the governing body of the public body concerned, upon such terms and agreements and within such areas within the authority as may be determined, for the promotion and protection of health, comfort, safety, life, welfare and property of the inhabitants of the authority and any such public body; and

(2) for the joint employment of clerks, stenographers and other employees appertaining to any project, now existing or hereafter established in the authority, upon such terms and conditions as may be determined for the equitable apportionment of the expenses therefrom resulting;

MM. obtain financial statements, appraisals, economic feasibility reports and valuations of any type appertaining to any project or any property pertaining thereto;

NN. adopt any resolution authorizing a project or the issuance of securities, or both, or otherwise appertaining thereto, or otherwise concerning the authority;

OO. make and execute a mortgage, deed of trust, indenture or other trust instrument appertaining to a project or to any securities authorized in the Southern Sandoval County Arroyo Flood Control Act, or to both, except as provided in Subsection PP of this section and in Section 72-19-54 NMSA 1978;

PP. make all contracts, execute all instruments and do all things necessary or convenient in the exercise of the powers granted in the Southern Sandoval County Arroyo Flood Control Act, or in the performance of the authority's covenants or duties, or in order to secure the payment of its securities; provided, no encumbrance, mortgage or other pledge of property, excluding any money, of the authority is created thereby and provided no property, excluding money, of the authority is liable to be forfeited or taken in payment of such securities;

QQ. have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in the Southern Sandoval County Arroyo Flood Control Act, which specific powers shall not be considered as a limitatio upon any power necessary or appropriate to carry out the purposes and intent of that act; and

RR. exercise all or any part or combination of the powers granted in the Southern Sandoval County Arroyo Flood Control Act."

Section 2

Section 2. Section 72-19-32 NMSA 1978 (being Laws 1990, Chapter 14, Section 32) is amended to read:

"72-19-32. POLLING PLACES.--All polling places shall be within the area included within the authority. The authority may consolidate the precincts for any election of the authority not conducted at the time of the general election. If precincts are consolidated, the notice of the election shall state which precincts have been consolidated and the designation of the polling place."

Section 3

Section 3. Section 72-19-34 NMSA 1978 (being Laws 1990, Chapter 14, Section 34, as amended) is amended to read:

"72-19-34. ELECTION RETURNS.--For authority elections held at the time of the general election, the regular general election precinct board shall certify the results of the authority election to the county canvassing board. The county canvassing board shall certify directly to the secretary of the authority that portion of the returns pertaining to the authority election. Electronic voting machines shall be used in the conduct of any authority election. For authority elections held at a different time than the general election, the authority shall appoint an authority precinct board at the authority's expense for each polling place. The authority precinct board shall conduct the election as provided in the Election Code. The separate authority precinct board shall certify the results of the election in that precinct to the secretary within twelve hours after the close of the polls. The secretary shall canvass the results of the authority election as certified by each of the separate authority precinct boards and shall declare the results of the election at any regular or special meeting held not less than five days following the date of the election. Except as otherwise provided, any proposal submitted at any election held pursuant to the Southern Sandoval County Arroyo Flood Control Act shall not carry unless the proposal has been approved by a majority of the qualified electors of the district voting on the proposal." SB 705

CHAPTER 325

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSURE; REPEALING THE ATHLETIC TRAINER ACT; ENACTING THE ATHLETIC TRAINER PRACTICE ACT; MAKING AN APPROPRIATION.

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

Section 1

Section 1. A new Section 61-14D-1 NMSA 1978 is enacted to read:

"61-14D-1. SHORT TITLE.--Sections 1 through 19 of this act may be cited as the "Athletic Trainer Practice Act"."

Section 2

Section 2. A new Section 61-14D-2 NMSA 1978 is enacted to read:

"61-14D-2. PURPOSE.--In the interest of public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of athletic training, it is necessary to provide laws and regulations to govern the granting of the privilege to practice as an athletic trainer. The primary responsibility and obligation of the athletic trainer practice board is to protect the public."

Section 3

Section 3. A new Section 61-14D-3 NMSA 1978 is enacted to read:

"61-14D-3. DEFINITIONS.--As used in the Athletic Trainer Practice Act:

A. "athlete" means a person trained to participate in exercise requiring physical agility and stamina;

B. "athletic trainer" means a person who, with the advice and consent of a licensed physician, practices the treatment, prevention, care and rehabilitation of injuries incurred by athletes;

C. "board" means the athletic trainer practice board;

D. "department" means the regulation and licensing department;

E. "district" means an area having the same boundaries as a congressional district in the state; and

F. "licensed physician" means a chiropractor, osteopath or physician licensed pursuant to Articles 4, 6 or 10 of Chapter 61 NMSA 1978."

Section 4

Section 4. A new Section 61-14D-4 NMSA 1978 is enacted to read:

"61-14D-4. LICENSE REQUIRED.--

A. Unless licensed pursuant to the Athletic Trainer Practice Act, no person shall:

(1) practice as an athletic trainer as defined in the Athletic Trainer Practice Act;

(2) use the title or represent himself as a licensed athletic trainer or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as an athletic trainer; or

(3) advertise, hold out to the public or represent in any manner that he is authorized to practice athletic training in the jurisdiction."

Section 5

Section 5. A new Section 61-14D-5 NMSA 1978 is enacted to read:

"61-14D-5. EXEMPTIONS.--

A. Nothing in the Athletic Trainer Practice Act shall be construed:

(1) as preventing qualified members of other recognized professions that are licensed, certified or regulated under New Mexico law or regulation from rendering services within the scope of their license, certification or regulation, provided they do not represent themselves as licensed athletic trainers;

(2) as preventing the practice of athletic training by a student enrolled in a program of study at a nationally accredited institution approved by the board; provided that the student renders services pursuant to a course of instruction or assignment under the supervision of a licensed athletic trainer; or

(3) as requiring any school district to employ an athletic trainer."

Section 6

Section 6. A new Section 61-14D-6 NMSA 1978 is enacted to read:

"61-14D-6. SCOPE OF PRACTICE.--The practice of athletic training includes the prevention, care and rehabilitation of athlete's injuries. Athletic trainers may evaluate and treat athletes pursuant to the written prescription, standing order or protocol of a licensed physician; provided that an athletic trainer may treat postsurgical conditions only pursuant to the written prescription of that athlete's surgeon. To carry out these functions, an athletic trainer may use exercise and physical modalities such as heat, light, sound, cold, electricity or mechanical devices related to rehabilitation and treatment. Nothing in the Athletic Trainer Practice Act shall be construed to allow an athletic trainer to provide the initial treatment or evaluation of an athlete injured in a non-athletic setting."

Section 7

Section 7. A new Section 61-14D-7 NMSA 1978 is enacted to read:

"61-14D-7. BOARD CREATED.--

A. There is created the "athletic trainer practice board".

B. The board shall be administratively attached to the department.

C. The board shall consist of five members appointed by the governor for staggered terms of three years each, except that the initial board shall be appointed so that the term of one member expires June 30, 1994, the terms of two members expire June 30, 1995 and the terms of two members expire June 30, 1996. Three of the members shall be athletic trainers licensed under the Athletic Trainer Practice Act with at least three years experience in the profession in the state of New Mexico. One member shall be from each district and at least one member shall be employed by a high school. Two members shall represent the public and have no financial interest, direct or indirect, in the occupation regulated. One public member shall be from any area north of interstate 40 in the state and one public member shall be from any area south of interstate 40 in the state. Board members shall serve until their successors have been appointed.

D. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

E. A simple majority of the board members currently serving shall constitute a quorum of the board.

F. The board shall meet at least once a year and at such other times as it deems necessary.

G. No board member shall serve more than two consecutive terms. Any member failing to attend three meetings, after proper notice, shall automatically be recommended to be removed as a board member, unless excused for reasons set forth in board regulations.

H. The board shall elect a chairman and other officers as deemed necessary to administer its duties."

Section 8

Section 8. A new Section 61-14D-8 NMSA 1978 is enacted to read:

"61-14D-8. DEPARTMENT DUTIES.--The department, in consultation with the board, shall:

A. evaluate the qualifications of applicants and review any required examination results of applicants;

B. issue licenses and provisional permits to applicants who meet the requirements of the Athletic Trainer Practice Act;

C. administer, coordinate and enforce the provisions of the Athletic Trainer Practice Act and investigate persons engaging in practices which may violate the provisions of that act;

D. conduct any required examinations of applicants;

E. hire staff as may be necessary to carry out the actions of the board; and

F. maintain board records, including financial records."

Section 9

Section 9. A new Section 61-14D-9 NMSA 1978 is enacted to read:

"61-14D-9. BOARD DUTIES.--In addition to any other authority provided by law, the board shall have the authority to:

A. adopt and file, in accordance with the State Rules Act, rules and regulations necessary to carry out the provisions of the Athletic Trainer Practice Act, in accordance with the provisions of the Uniform Licensing Act, including the procedures for an appeal of an examination failure;

B. establish fees;

C. approve administration of exams;

D. adopt rules implementing continuing education requirements;

E. conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license; and

F. adopt a code of ethics."

Section 10

Section 10. A new Section 61-14D-10 NMSA 1978 is enacted to read:

"61-14D-10. REQUIREMENTS FOR LICENSURE.--The department shall issue a license to practice as an athletic trainer to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the applicant:

A. has completed an athletic training curriculum approved by the national athletic trainers association or has completed a baccalaureae degree and an approved

internship of at least fifteen hundred clinical hours from an accredited college or university;

B. has submitted a letter of recommendation from either an athletic trainer licensed in New Mexico or a member of the national athletic trainers association;

C. submits proof of current competence in cardiopulmonary resuscitation; and

D. demonstrates professional competence by satisfactorily passing a national certification examination recognized by the board and an examination on New Mexico laws and regulations pertaining to athletic trainers prescribed by the board."

Section 11

Section 11. A new Section 61-14D-11 NMSA 1978 is enacted to read:

"61-14D-11. EXAMINATIONS.--

A. If there are applicants for examinations, written examinations shall be held at least twice each year on a date and at a location established by the department. Applicants who have been found to meet the education and experience requirements for licensure shall be scheduled for the next examination following the filing of the application. The board shall establish by rule the examination application deadline and other rules relating to taking and retaking of licensure examinations.

B. The board shall determine the passing grade on examinations.

C. The board shall require each applicant to pass an examination on the state laws and regulations pertaining to the practice of athletic training.

D. The board may accept examinations which are used for national certification or other examinations administered by the department."

Section 12

Section 12. A new Section 61-14D-12 NMSA 1978 is enacted to read:

"61-14D-12. PROVISIONAL PERMIT.--

A. Prior to taking any other examinations, an applicant for licensure who has passed the jurisprudence examination may obtain a provisional permit to engage in the practice of athletic training, provided that the applicant meets all the requirements for licensure except completion of the professional knowledge examination.

B. The provisional permit is valid until the results of the next scheduled examination on professional knowledge are available.

C. No more than two provisional permits may be issued to an individual and no third provisional permit shall be issued to an applicant who has previously failed the professional knowledge examination."

Section 13

Section 13. A new Section 61-14D-13 NMSA 1978 is enacted to read: "61-14D-13. LICENSE RENEWAL.--

A. Each licensee shall renew his license annually as provided by regulation, by submitting a renewal application on a form provided by the board.

B. The board may require proof of continuing education and proof of current cardiopulmonary resuscitation certification as a requirement for renewal."

Section 14

Section 14. A new Section 61-14D-14 NMSA 1978 is enacted to read:

"61-14D-14. FEES.--The board shall establish a schedule of reasonable fees for applications, licenses, provisional permits, renewal of licenses, placement on inactive status and necessary administrative fees. Initial licensing fees may be prorated."

Section 15

Section 15. A new Section 61-14D-15 NMSA 1978 is enacted to read:

"61-14D-15. CRIMINAL OFFENDERS EMPLOYMENT ACT.--The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted by the Athletic Trainer Practice Act."

Section 16

Section 16. A new Section 61-14D-16 NMSA 1978 is enacted to read:

"61-14D-16. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW--APPLICATION OF UNIFORM LICENSING ACT.--

A. In accordance with the provisions of the Uniform Licensing Act, the board may deny, revoke or suspend any license held or applied for under the Athletic Trainer Practice Act upon findings by the board that the licensee or applicant:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license;

(2) has been convicted of a felony.

A certified copy of the record of conviction shall be conclusive evidence of such conviction;

(3) is guilty of incompetence;

(4) is guilty of unprofessional conduct;

(5) is guilty of dispensing, administering, distributing or using a controlled substance, as defined in the Controlled Substances Act, or is addicted to any vice to such a degree that it renders him unfit to practice as an athletic trainer;

(6) has violated any provisions of the Athletic Trainer Practice Act;

(7) is guilty of willfully or negligently practicing beyond the scope of athletic training as defined in the Athletic Trainer Practice Act;

(8) is guilty of aiding or abetting the practice of athletic training by a person not licensed by the board;

(9) is guilty of practicing without a provisional permit or license in violation of the Athletic Trainer Practice Act and its regulations; or

(10) has had a license, certificate or registration to practice as an athletic trainer revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking such disciplinary action shall be conclusive evidence of the revocation, suspension or denial.

B. Disciplinary proceedings may be instituted by the sworn complaint of any person and shall conform to the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. Any person filing a sworn complaint shall be immune from liability arising out of civil action provided the complaint is filed in good faith and without actual malice."

Section 17

Section 17. A new Section 61-14D-17 NMSA 1978 is enacted to read:

"61-14D-17. PENALTIES.--Any person who violates any provision of the Athletic Trainer Practice Act is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 31-19-1 NMSA 1978."

Section 18

Section 18. A new Section 61-14D-18 NMSA 1978 is enacted to read:

"61-14D-18. FUND ESTABLISHED.--

A. There is created in the state treasury the "athletic trainer practice board fund".

B. All money received by the board under the Athletic Trainer Practice Act shall be deposited with the state treasurer for credit to the fund. The state treasurer shall invest the fund as other state funds are invested. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary. Balances credited to the fund shall remain in the fund and shall not revert to the general fund.

C. Money in the fund is appropriated to the board and shall be used only for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Athletic Trainer Practice Act."

Section 19

Section 19. A new Section 61-14D-19 NMSA 1978 is enacted to read:

"61-14D-19. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The athletic trainer practice board is terminated on July 1, 1999, pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Athletic Trainer Practice Act until July 1, 2000. Effective July 1, 2000, the Athletic Trainer Practice Act is repealed."

Section 20

Section 20. REPEAL.--Sections 61-14D-1 through 61-14D-12 NMSA 1978 (being Laws 1983, Chapter 147, Sections 1 through 12, as amended) are repealed.SB 707

CHAPTER 326

RELATING TO LICENSES; AMENDING THE IMPAIRED PHYSICIAN ACT.

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

Section 1

Section 1. Section 61-7-4 NMSA 1978 (being Laws 1976, Chapter 3, Section 4, as amended) is amended to read:

"6l-7-4. NEW MEXICO BOARD OF MEDICAL EXAMINERS--BOARD OF OSTEOPATHIC MEDICAL EXAMINERS--ADDITIONAL POWERS AND DUTIES.--

A. If the board has reasonable cause to believe that a physician licensed to practice medicine in this state is unable to practice medicine with reasonable skill and safety to patients because of a condition described in Section 6l-7-3 NMSA l978, the board shall appoint an examining committee as described in Subsection B of this section to examine the physician and shall, following such examination, take appropriate action within the provisions of the Impaired Physician Act.

B. The board shall designate three licensed physicians to be members of an examining committee. The examining committee shall include at least one psychiatrist if a question of mental illness is involved."

Section 2

Section 2. Section 61-7-5 NMSA 1978 (being Laws 1976, Chapter 3, Section 5) is amended to read:

"61-7-5. EXAMINATION BY COMMITTEE.--

A. The examining committee assigned to examine a physician pursuant to referral by the board under Section 61-7-4 NMSA 1978 shall conduct an examination of the physician for the purpose of determining the physician's fitness to practice medicine with reasonable skill or safety to patients, either on a restricted or unrestricted basis, and shall report its findings and recommendations to the board. The findings and recommendations shall be based on findings by the examining committee that the physician examined possesses one or more of the impairments set forth in Section 61-7-3 NMSA 1978 and such impairment does, in fact, affect the ability of the physician to skillfully or safely practice medicine. The examining committee shall order the physician to appear before it for examination and give the physician ten days' notice of time and place of the examination, together with a statement of the cause for examination. Notice shall be served upon the physician either personally or by registered or certified mail with return receipt requested.

B. If the examining committee, in its discretion, deems a mental or physical examination of the physician necessary to its determination of the fitness of the physician to practice, the committee shall order the physician to submit to such examination. Any person licensed to practice medicine in this state shall, by so practicing or by making or filing of registration to practice medicine in this state, be deemed to have:

(1) given his consent to submit to mental or physical examination when so directed by the examining committee; and

(2) waived all objections to the admissibility of the examining committee's report to the board on the grounds of privileged communication.

C. Any physician ordered to an examination before the committee under the provisions of Subsection A of this section may present the results of an independent mental or physical examination to the committee.

D. Any physician who submits to a diagnostic mental or physical examination as ordered by the examining committee shall have a right to designate another physician to be present at the examination and make an independent report to the board.

E. Failure of a physician to comply with a committee order under Subsection B of this section to appear before it for examination by the committee or to submit to mental or physical examination under this section shall be reported by the committee to the board and, unless due to circumstances beyond the control of the physician, shall be grounds for the immediate and summary suspension by the board of the physician's license to practice medicine in this state until the further order of the board."

Section 3

Section 3. Section 61-7-6 NMSA 1978 (being Laws 1976, Chapter 3, Section 6) is amended to read:

"61-7-6. VOLUNTARY RESTRICTION OF LICENSURE.--A physician may request in writing to the board a restriction of the physician's license to practice medicine. The board may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the licensure of the physician to practice medicine within specified limitations and waive the commencement of any proceeding under Section 61-7-8 NMSA 1978. Removal of a voluntary restriction on licensure to practice medicine shall be subject to the procedure for reinstatement of license in Section 61-7-9 NMSA 1978."

Section 4

Section 4. Section 61-7-7 NMSA 1978 (being Laws 1976, Chapter 3, Section 7) is amended to read:

"61-7-7. REPORT TO THE BOARD--ACTION.--

A. The examining committee shall report to the board its findings on the examination of the physician under Section 61-7-5 NMSA 1978, the determination of the

committee as to the fitness of the physician to engage in the practice of medicine with reasonable skill or safety to patients, either on a restricted or unrestricted basis, and any management that the committee may recommend. Recommendation by the committee shall be advisory only and shall not be binding on the board.

B. The board may accept or reject any finding, determination or recommendation of the examining committee regarding the physician's ability to continue to practice medicine with or without any restriction on the physician's license. The board may refer the matter back to an examining committee for further examination and report thereon.

C. In the absence of a voluntary agreement by a physician under Section 61-7-6 NMSA 1978 for restriction of the licensure of the physician to practice medicine, any physician shall be entitled to a hearing under and in accordance with the procedure contained in the Uniform Licensing Act before the board and a determination on the evidence as to whether restriction, suspension or revocation of licensure shall be imposed."

Section 5

Section 5. Section 61-7-8 NMSA 1978 (being Laws 1976, Chapter 3, Section 8) is amended to read:

"61-7-8. PROCEEDINGS.--

A. The board may formally proceed against a physician under the Impaired Physician Act in accordance with the procedures contained in the Uniform Licensing Act.

B. At the conclusion of the hearing, the board shall make the following findings:

(1) whether the physician is impaired by one of the grounds for restriction, suspension or revocation listed in Section 61-7-3 NMSA 1978;

(2) whether the impairment, if found in Paragraph (1) of this subsection, does in fact limit the physician's ability to practice medicine skillfully or safely;

(3) to what extent the impairment limits the physician's ability to practice medicine skillfully or safely and whether the board finds that the impairment is such that the physician should be suspended, revoked or restricted in the physician's practice of medicine; and

(4) if the finding in Paragraph (3) of this subsection recommends suspension or restriction of the physician's ability to practice medicine, the board shall

make specific recommendations as to the length and nature of the suspension or restriction and shall recommend how the suspension or restriction shall be carried out and supervised.

C. At the conclusion of the hearing, the board shall make a determination of the merits and may order one or more of the following:

(1) placement of the physician on probation on such terms and conditions as it deems proper for the protection of the public;

(2) suspension or restriction of the license of the physician to practice medicine for the duration of the physician's impairment;

(3) revocation of the license of the physician to practice medicine; or

(4) reinstatement of the physician's license to practice medicine without restriction.

D. The board may temporarily suspend the license of any physician without a hearing, simultaneously with the institution of proceedings under the Uniform Licensing Act, if it finds that the evidence in support of the examining committee's determination is clear and convincing and that the physician's continuation in practice would constitute an imminent danger to public health and safety.

E. Neither the record of the proceeding nor any order entered against a physician may be used against him in any other legal proceeding except upon judicial review as provided in Section 61-7-10 NMSA 1978."

Section 6

Section 6. Section 61-7-9 NMSA 1978 (being Laws 1976, Chapter 3, Section 9) is amended to read:

"61-7-9. REINSTATEMENT OF LICENSE.--A physician whose licensure has been restricted, suspended or revoked under the Impaired Physician Act, voluntarily or by action of the board, shall have a right, at reasonable intervals, to petition for reinstatement of the physician's license and to demonstrate that the physician can resume the competent practice of medicine with reasonable skill and safety to patients. Petition shall be made in writing and on a form prescribed by the board. Action of the board on the petition shall be initiated by referral to and examination by an examining committee pursuant to the provisions of Sections 61-7-4 and 61-7-5 NMSA 1978. The board may, in its discretion, upon written recommendation of the examining committee, restore the licensure of the physician on a general or limited basis."

Section 7

Section 7. Section 61-7-10 NMSA 1978 (being Laws 1976, Chapter 3, Section 10) is amended to read:

"61-7-10. JUDICIAL REVIEW.--All orders of the board under Subsection C of Section 61-7-8 NMSA 1978 shall be subject to judicial review as provided for under the Uniform Licensing Act. The decision of the board shall not be stayed or enjoined pending review by a district court but may be stayed or enjoined pending review by the court of appeals or the New Mexico supreme court."

Section 8

Section 8. Section 61-7-11 NMSA 1978 (being Laws 1976, Chapter 3, Section 11) is amended to read:

"61-7-11. PROTECTED ACTION AND COMMUNICATION.--There shall be no liability on the part of and no action for damages against any person providing information to the committee or to the board in good faith in the reasonable belief that the information is accurate." SB 726

CHAPTER 327

RELATING TO THE ENVIRONMENT; ASSISTING GROUND WATER PROTECTION EFFORTS BY PROVIDING FINANCIAL RELIEF TO CERTAIN OWNERS OF PROPERTIES WITH UNDERGROUND STORAGE TANKS; AMENDING A CERTAIN SECTION OF THE GROUND WATER PROTECTION ACT.

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

Section 1

Section 1. Section 74-6B-13 NMSA 1978 (being Laws 1992, Chapter 64, Section 10) is amended to read:

"74-6B-13. PAYMENT PROGRAM.--

A. Unless provided otherwise in this section, all costs in excess of ten thousand dollars ($10,000) that are necessary to perform a minimum site assessment in accordance with the regulations of the board shall be paid from the corrective action fund. In the event that an owner or operator has performed a minimum site assessment after March 7, 1990 but prior to March 9, 1992 and has expended more than ten thousand dollars ($10,000), the owner or operator may apply to the department for reimbursement of the costs of the minimum site assessment in excess of ten thousand dollars ($10,000) and shall be entitled to reimbursement of those costs.

B. An owner or operator who has performed or who has made arrangements to perform corrective action after March 7, 1990 and in accordance with applicable environmental laws and regulations may apply to the department for payment of the costs of corrective action, other than a minimum site assessment, and shall be entitled to payment of those costs from the corrective action fund, if he has proven to the department that he has complied with the requirements of Section 74-6B-8 NMSA 1978.

C. Payment of the cost of corrective action, including the cost of a minimum site assessment, shall be made by the department following application and proper documentation of the costs and in accordance with regulations adopted by the secretary establishing eligible and ineligible costs. Eligible costs for payment are those reasonable and necessary costs actually incurred after March 7, 1990 in the performance of a site assessment and for corrective action that are consistent with the department's fee schedule. Ineligible costs include attorneys' fees, repair or upgrade of tanks, loss of revenue and costs of monitoring a contractor.

D. The department shall adopt regulations to provide for payments from the corrective action fund to persons who cannot afford to pay all or a portion of the initial ten thousand dollar ($10,000) cost of a minimum site assessment otherwise required in this section. The department shall develop a financial assistance means test, including a sliding scale of financial relief as the department deems appropriate, that allows some or all of the minimum site assessment costs to be paid from the corrective action fund. This financial assistance relief shall be available to owners or operators who performed or made arrangements to perform corrective action after March 7, 1990.

E. All department determinations concerning the manner of payment, compliance and cost eligibility shall be made in accordance with department regulations.

F. If the owner or operator is in compliance with the requirements of Subsection B of Section 74-6B-8 NMSA 1978, payment of costs from the corrective action fund shall occur not later than ninety days after the submission of the application and proper documentation of costs by the owner or operator, except as provided in Section 74-6B-14 NMSA 1978.

G. The department shall reserve not less than twenty-five percent of the unexpended, unencumbered balance of the corrective action fund on July 1 of each year for the payment of claims made on the fund." SB 783

CHAPTER 328

RELATING TO MOTOR VEHICLES; CHANGING CERTAIN PROVISIONS OF THE MOTOR VEHICLE CODE RELATING TO REGISTRATION AND SIZE AND WEIGHT LIMITS OF COMMERCIAL VEHICLES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 66-3-19 NMSA 1978 (being Laws 1978, Chapter 35, Section 39, as amended) is amended to read:

"66-3-19. RENEWAL OF REGISTRATION--STAGGERED PERIOD FOR VEHICLES--EXCEPTION FOR MANUFACTURED HOMES, FREIGHT TRAILERS AND PRORATED VEHICLES--LATE REGISTRATION.--

A. The department, in order to operate a more uniform system of vehicle registration, is authorized for ertain or all vehicles to:

(1) prorate registration fees by monthly increments, but after the initial registration adjustment period, renewals of registration shall be for a full twelve-month period;

(2) determine the specific registered vehicle owners and the numbers of these to be assigned to each registration period in order to maintain the system;

(3) notify each registered vehicle owner by mail at the last known address within an appropriate period prior to the beginning of the registration period to which the owner has been assigned. The notice shall include a renewal-of-registration application form specifying the amount of registration fees due and the specific dates of the registration period covered by the renewal application;

(4) provide for the retention of registration plates and for the issuance of validating stickers to be affixed to the retained plates to signify the registration of the vehicles for the current registration period; and

(5) provide for identification purposes clearly recognizable distinctions between current and expired registration plates. To this end, the department, by whatever system or device the secretary may direct and which is approved by the commanding officer of the New Mexico state police division of the department of public safety, shall ensure a practicable display of the proper and current registration of vehicles.

B. Certificates of title need not be renewed annually but shall remain valid until canceled by the department for cause or upon transfer of any interest shown in the certificate of title.

C. The vehicle registration of vehicles registered under the provisions of Subsection A of this section expires on the last day of the twelve-month period for which the vehicle has been registered. Every vehicle registration other than vehicles

registered in accordance with Subsection A of this section, manufactured homes and freight trailers expires December 31. The department may receive applications for renewal of registration and may issue new registration evidence and plates or validating stickers at any time prior to expiration of registration.

D. The registration of a manufactured home or freight trailer need not be renewed annually, and the initial registration shall be effective and considered a current registration for the purpose of the Motor Vehicle Code as long as the ownership of the vehicle is not transferred. The transfer of title provisions of the Motor Vehicle Code do apply to manufactured homes and freight trailers, and the transferee is required to register the vehicle in accordance with Section 66-3-103 NMSA 1978. The department is authorized and directed to issue distinctive registration plates for manufactured homes and freight trailers that identify the plates as permanent registration plates.

E. It is unlawful to operate or transport or cause to be transported upon any highways in this state any vehicle, except a manufactured home, subject to registration under the provisions of the Motor Vehicle Code without having paid the registration fee or without having secured and constantly displayed the plate required by the Motor Vehicle Code. If a vehicle, other than a manufactured home, is operated or transported after the expiration of the vehicle registration, the owner of the vehicle is subject to a penalty of one dollar ($1.00) a day not to exceed twice the registration fee. Any duly appointed deputy or agent of the department has the authority to seize the vehicle and hold it until the fee, penalty and any fine that may be imposed for violation of law are paid and may sell the vehicle in the manner provided by law for the distraint and sale of personal property.

F. It is unlawful to operate, transport or cause to be transported upon any highways in this state or to maintain in any place in this state a manufactured home subject to registration under the provisions of the Motor Vehicle Code without having paid the registration fee or without having secured and constantly displayed the plate required by the Motor Vehicle Code. Violation of this subsection subjects the owner to a penalty of five dollars ($5.00), and no other administrative penalty for failure to register under the Motor Vehicle Code shall be imposed upon manufactured homes that are subject to the provisions of Section 66-6-10 NMSA 1978. Any duly appointed deputy or agent of the department has authority to seize the manufactured home and hold it until the fee, penalties and any fine that may be imposed for violation of law are paid and may sell the manufactured home in the manner provided by law for the distraint and sale of personal property.

G. This section authorizes a staggered system of registration of vehicles."

Section 2

Section 2. Section 66-3-20 NMSA 1978 (being Laws 1978, Chapter 35, Section 40) is amended to read:

"66-3-20. RENEWAL OF REGISTRATION--VEHICLES REGISTERED BY DECLARED GROSS WEIGHT.--All motor vehicles registered by declared gross weight, including vehicles subject to proportional registration or registration under reciprocal agreement with another state, shall register with the department on a calendar year basis. Registration for all such vehicles expires on December 31 of each year. Application for renewal of registration shall be submitted to the department between October 1 and December 31 of the expiring registration year. Vehicle identification for the ensuing registration year shall not be honored before December 15 of the expiring registration year."

Section 3. Section 66-5-402 NMSA 1978 (being Laws 1978, Chapter 35, Section 329, as amended) is amended to read:

"66-5-402. PERSONS ELIGIBLE FOR IDENTIFICATION CARDS.--The department shall issue an identification card only to:

A. a person who is a New Mexico resident and who does not have a valid New Mexico driver's license and only upon the furnishing of a birth certificate, a certificate of baptism or other evidence that the department deems sufficient as documentary evidence of the age and identity of the person; or

B. a person over age sixty-five who is a New Mexico resident and who is surrendering a valid New Mexico driver's license, which license shall be sufficient documentary evidence of the age and identity of the person."

Section 4

Section 4. Section 66-7-404 NMSA 1978 (being Laws 1978, Chapter 35, Section 475, as amended) is amended to read:

"66-7-404. HEIGHT AND LENGTH OF VEHICLES AND LOADS.--

A. No vehicle shall exceed a height of fourteen feet.

B. No vehicle shall exceed a length of forty feet extreme overall dimension, exclusive of front and rear bumpers, except when operated in combination with another vehicle as provided in this section. No combination of vehicles, unless otherwise exempted in this section, shall exceed an overall length of sixty-five feet, exclusive of front and rear bumpers.

C. No combination of vehicles coupled together shall consist of more than two units, except:

(1) a truck tractor and semitrailer shall be permitted to pull one trailer;

(2) a vehicle shall be permitted to pull two units, provided that the middle unit is equipped with brakes and has a weight equal to or greater than the last unit and the total combined gross weight of the towed units does not exceed the manufacturer's stated gross weight of the towing units;

(3) a double or triple saddle-mount or fifth wheel mount of vehicles in transit by driveaway-towaway methods shall be permitted;

(4) vehicles and trailers operated by or under contract for municipal refuse systems;

(5) farm trailers, implements of husbandry and fertilizer trailers operated by or under contract to a farmer or rancher in his farming or ranching operations; and

(6) as provided in Subsections D and E of this section.

D. Exclusive of safety and energy conservation devices, refrigeration units and other devices such as coupling devices, vehicles operating a truck tractor semitrailer or truck tractor semitrailer-trailer combinations on the interstate highway system and those qualifying federal aid primary system highways designated by the secretary of the United States department of transportation, pursuant to the United States Surface Transportation Assistance Act of 1982, Public Law 97-424, Section 411, and on those highways designated by the department by rule or regulation with the concurrence of the state highway and transportation department may exceed an overall length limitation of sixty-five feet, provided that the length of the semitrailer in a truck tractor semitrailer combination does not exceed fifty-seven feet six inches and the length of the semitrailer or trailer in a truck tractor semitrailer-trailer combination does not exceed twenty-eight feet six inches. The department shall adopt rules and regulations granting reasonable access to terminals, facilities for food, fuel, repairs and rest and points of loading and unloading for household goods carriers to vehicles operating in combination pursuant to this subsection. As used in this subsection, "truck tractor" means a non-cargo carrying power unit designed to operate in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the truck tractor.

E. Notwithstanding any other subsection of this section, any trailer or semitrailer combination of such dimensions as those that were in actual and lawful use in this state on December 1, 1982 may be lawfully operated on the highways of this state."

Section 5

Section 5. Section 66-7-409 NMSA 1978 (being Laws 1978, Chapter 35, Section 480) is amended to read:

"66-7-409. LOAD LIMITS ON SINGLE AXLES, WHEELS AND TIRES.--

A. The gross weight imposed on the highway by the wheels of any one axle of a vehicle shall not exceed twenty-one thousand six hundred pounds nor shall any one wheel carry a load in excess of eleven thousand pounds.

B. For the purposes of Sections 66-7-401 through 66-7-416 NMSA 1978, a single-axle load is defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches or less apart extending across the full width of the vehicle. A tandem axle load is defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes more than forty inches apart but less than one hundred twenty inches apart, extending across the full width of the vehicle. The allowed load on tandem axles shall not exceed the gross weight given in Section 66-7-410 NMSA 1978 for the respective distance between the axles.

C. No wheel equipped with pneumatic, solid rubber or cushion tires shall carry a load in excess of six hundred pounds for each inch of tire width. The width of pneumatic tires shall be taken at the manufacturer's rating. The width of solid rubber and cushion tires shall be measured at the flange of the rim."

Section 6

Section 6. Section 66-7-413.1 NMSA 1978 (being Laws 1985, Chapter 4, Section 1) is amended to read:

"66-7-413.1. FARM CARRIERS--EXCESSIVE SIZE--LIMITATION.--Farm carriers, as defined in Sections 65-2-82 and 65-2-116 NMSA 1978, may, without securing permits or escorts, transport loads up to twelve feet in width only if the load consists of hay tied in bales over five feet in either length or width and the load is not transported for any distance greater than fifty miles; provided that the farm carriers display a sign across the front and rear stating "WIDE LOAD" in large visible letters."

Section 7

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 192

CHAPTER 329

RELATING TO ALCOHOLIC BEVERAGES; CHANGING CERTAIN LICENSE APPLICATION REQUIREMENTS, FEES AND PROCEDURES; AUTHORIZING THE ISSUANCE OF TEMPORARY DISPENSER'S AND RETAILER'S LICENSES PENDING CERTAIN INVESTIGATIONS; PROVIDING A PENALTY; AMENDING AND REPEALING CERTAIN SECTIONS OF THE LIQUOR CONTROL ACT.

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

Section 1

Section 1. A new section of the Liquor Control Act, Section 60-4B-4.1 NMSA 1978, is enacted to read:

"60-4B-4.1. LOCAL LAW ENFORCEMENT--DEPARTMENT OF PUBLIC SAFETY--REPORTING REQUIREMENTS--AUTHORITY TO REQUEST INVESTIGATIONS.--

A. Within thirty days following the date of issuance of a citation pursuant to the provisions of the Liquor Control Act, the department of public safety or the law enforcement agency of a municipality or county shall report alleged violations of that act to the alcohol and gaming division of the regulation and licensing department.

B. The director of the alcohol and gaming division of the regulation and licensing department may request the investigators of the special investigations division of the department of public safety to investigate licensees or activities that the director has reasonable cause to believe are in violation of the Liquor Control Act."

Section 2

Section 2. Section 60-6A-11 NMSA 1978 (being Laws 1981, Chapter 39, Section 28, as amended) is amended to read:

"60-6A-11. WINEGROWER'S LICENSE.--

A. Exempt from the procurement of any other license under the terms of the Liquor Control Act, but not from the procurement of a winegrower's license, is any person in this state who produces wine. Except during periods of shortage or reduced availability, at least fifty percent of a winegrower's overall annual production of wine shall be produced from grapes or other agricultural products grown in this state pursuant to regulations adopted by the director.

B. Any person issued a winegrower's license pursuant to Subsection A of this section may do any of the following:

(1) produce wine, including blending, mixing, flavoring, coloring, bottling and labeling, whether the wine is produced by or for the winegrower;

(2) store, transport, import or export wines;

(3) sell wines to a holder of a New Mexico winegrower's, winer's, wine wholesaler's, wholesaler's or wine exporter's license;

(4) sell wines in other states or foreign jurisdictions to the holders of any license issued under the authority of that state or foreign jurisdiction authorizing such a purchase of wine;

(5) buy wine or distilled wine products from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, mixing or bottling of wines;

(6) conduct wine tastings and sell, by the glass or in unbroken packages, wine of his own production on the winegrower's premises; and

(7) at no more than two off-premises locations, conduct wine tastings and sell in unbroken packages for consumption off premises, but not for resale, wine of his own production after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and the department regulations for new liquor license locations.

C. Except as limited by Subsections C and D of Section 60-7A-1 NMSA 1978, sales of wine as provided in Paragraphs (6) and (7) of Subsection B of this section shall be permitted between the hours of 7:00 a.m. and midnight Monday through Saturday and, in local option districts in which Sunday sales are permitted, the holder of a winegrower's license may conduct wine tastings and sell, by the glass or in unbroken packages, wine of his own production on the winegrower's premises between the hours of 12:00 noon and midnight on Sunday.

D. At public celebrations off the winegrower's premises in any local option district permitting the sale of alcoholic beverages, the holder of a winegrower's license, upon the payment of ten dollars ($10.00) to the department for a "winegrower's public celebration permit", to be issued under rules adopted by the director, may conduct tastings,
sell in unbroken packages for consumption at other than the public celebration, but not for resale, and sell, for consumption at a public celebration, wine of his own production. Upon request, the department may issue to a holder of a winegrower's license a public celebration permit for a location at the public celebration that is to be shared with other permittees. As used in this subsection, "public celebration" includes any state or county fair, community fiesta, cultural or artistic event or sporting competition of a seasonal nature or activities held on an intermittent basis.

E. Every application for the issuance or annual renewal of a winegrower's license shall be on a form prescribed by the director and accompanied by a license fee to be computed as follows on the basis of total annual wine produced or blended:

(1) less than five thousand gallons per year, twenty-five dollars ($25.00) per year;

(2) between five thousand and one hundred thousand gallons per year, one hundred dollars ($100) per year; and

(3) over one hundred thousand gallons per year, two hundred fifty dollars ($250) per year."

Section 3

Section 3. Section 60-6B-1 NMSA 1978 (being Laws 1981, Chapter 39, Section 37, as amended) is amended to read:

"60-6B-1. PERSONS PROHIBITED FROM RECEIVING OR HOLDING LICENSES.--The following classes of persons shall be prohibited from receiving or holding licenses under the provisions of the Liquor Control Act:

A. a person who has been convicted of two separate misdemeanor or petty misdemeanor violations of the Liquor Control Act in any calendar year or of any felony, unless the person is restored to the privilege of receiving and holding licenses by the governor or unless the director determines that the person merits the public trust, in which case the person shall receive licenses under reasonable terms and conditions fixed by the director, which shall include that the person pay an administrative penalty of two thousand five hundred dollars ($2,500) for each license held by that person;

B. a person whose spouse had been convicted of a felony unless the person demonstrates that the convicted spouse will have no involvement in the operation of the license;

C. a minor; or

D. a corporation that is not duly qualified to do business in New Mexico, unless the licensee holds a public service license or a nonresident license issued under Section 60-6A-7 NMSA 1978; provided, however, that a corporation that owns stock in a corporation that owns a New Mexico liquor license does not need to be qualified to do business in New Mexico regardless of the size of the ownership interest."

Section 4

Section 4. Section 60-6B-2 NMSA 1978 (being Laws 1981, Chapter 39, Section 38, as amended) is amended to read:

"60-6B-2. APPLICATIONS.--

A. Before any new license authorized by the Liquor Control Act may be issued by the director, the applicant for the license shall:

(1) submit to the director a written application for the license under oath, in the form prescribed by and stating the information required by the director, together with a nonrefundable application fee of one hundred fifty dollars ($150);

(2) submit to the director for his approval a description, including floor plans, in a form prescribed by the director, which shows the proposed licensed premises for which the license application is submitted. The area represented by the approved description shall become the licensed premises;

(3) if the applicant is a corporation, be required to submit as part of its application the following:

(a) a certified copy of its articles of incorporation or, if a foreign corporation, a certified copy of its certificate of authority;

(b) the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation and the amounts of stock held by each stockholder; provided, however, a corporation may not be licensed if an officer, manager, director or holder of more than ten percent of the
stock would not be eligible to hold a license pursuant to the Liquor Control Act, except that the provision of Subsection B of Section 60-6B-1 NMSA 1978 shall not apply if the stock is listed with a national securities exchange;

(c) the name of the resident agent of the corporation authorized to accept service of process for all purposes, including orders and notices of the director, which agent shall be approved by the director with respect to his character;

(d) a duly executed power of attorney authorizing the agent described in Subparagraph (c) of this paragraph to exercise full authority, control and responsibility for the conduct of all business and transactions of the corporation within the state relative to the sale of alcoholic beverages under authority of the license requested; and

(e) such additional information regarding the corporation as the director may require to assure full disclosure of the corporation's structure and financial responsibility;

(4) if the applicant is a limited partnership, submit as part of its application the following:

(a) a certified copy of its certificate of limited partnership;

(b) the names and addresses of all general partners and of all limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or

other income paid by the limited partnership. No limited partnership shall receive a license if any partner designated in this subsection would not be eligible to hold a license issued pursuant to the Liquor Control Act; and

(c) such additional information regarding the limited partnership as the director may require to assure full disclosure of the limited partnership's structure and financial responsibility; and

(5) obtain approval for the issuance from the governing body of the local option district in which the proposed licensed premises are to be located in accordance with the provisions of the Liquor Control Act.

B. Every applicant for a new license or for a transfer of ownership of a license, if an individual or general partnership, shall file with the application two complete sets of fingerprints of each individual, taken under the supervision of and certified to by an officer of the New Mexico state police, a county sheriff or a municipal chief of police. If the applicant is a corporation, it shall file two complete sets of fingerprints for each stockholder holding ten percent or more of the outstanding stock, principal officer, director and the agent responsible for the operation of the licensed business. The fingerprints shall be taken and certified to as provided for an individual or partnership. If the applicant is a limited partnership, it shall file two complete sets of fingerprints for each general partner and for each limited partner contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other compensation by way of income paid by the limited partnership. The fingerprints shall be taken and certified to as provided for an individual or partnership.

C. Upon submission of a sworn affidavit from each person who is required to file fingerprints stating that the person has not been convicted of a felony in any jurisdiction and pending the results of background investigations, a temporary license for ninety days may be issued. The temporary license may be extended by the director for an additional ninety days if the director determines there is not sufficient time to complete the background investigation or obtain reviews of fingerprints from appropriate agencies. A temporary license shall be surrendered immediately upon order of the director.

D. An applicant who files a false affidavit shall be denied a license. When the director determines a false affidavit has been filed, he shall refer the matter to the attorney general or district attorney for prosecution of perjury.

E. If an applicant is not a resident of New Mexico, fingerprints may be taken under supervision and certification of comparable officers in the state of residence of the applicant.

F. Before issuing a license, the department shall hold a public hearing within thirty days after receipt of the application pursuant to Subsection H of this section.

G. An application for transfer of ownership shall be filed with the department no later than thirty days after
the date a person acquired an ownership interest in a license; shall contain documentation of the actual purchase price paid for the license, and the actual date of sale of the license; and shall be accompanied by a sworn affidavit from the owner of record of the license agreeing to the sale of the license to the applicant as well as attesting to the accuracy of the information required by this section to be filed with the department. No license shall be transferred unless it will be placed into operation in an actual location within one hundred twenty days of issuance of the license, unless for good cause shown the director grants an additional extension not to exceed one hundred twenty days.

H. Whenever it appears to the director that there will be more applications for new licenses than the available number of new licenses during any time period, a random selection method for the qualification, approval and issuance of new licenses shall be provided by the director. The random selection method shall allow each applicant an equal opportunity to obtain an available license, provided that all dispenser's and retailer's licenses issued in any calendar year shall be issued to residents of the state. For the purposes of random selection, the director shall also set a reasonable deadline by which applications for the available licenses shall be filed. No person shall file more than one application for each available license and no more than three applications per calendar year.

I. After the deadline set in accordance with Subsection H of this section, no more than ten applications per available license shall be selected at random for priority of qualification and approval. Within thirty days after the random selection for the ten priority positions for each license, a hearing pursuant to Subsection K of this section shall be held to determine the qualifications of the applicant having the highest priority for each available license. If necessary, such a hearing shall be held on each selected application by priority until a qualified applicant for each available license is approved. Further random selections for priority positions shall also be held pursuant to this section as necessary.

J. All applications submitted for a license shall expire upon the director's final approval of a qualified applicant for that available license.

K. The director shall notify the applicant by certified mail of the date, time and place of the hearing. The hearing shall be held in Santa Fe. The director may designate a hearing officer to take evidence at the hearing. The director or the hearing officer shall have the power to administer oaths.

L. In determining whether a license shall be issued, the director shall take into consideration all requirements of the Liquor Control Act. In the issuance of a license, the director shall specifically consider the nature and number of prior violations of the Liquor Control Act by the applicant or of any citations issued within the prior five years against a license held by the applicant or in which the applicant had an ownership

interest required to be disclosed under the Liquor Control Act. The director shall disapprove the issuance or give preliminary approval of the issuance of the license based upon a review of all documentation submitted and any investigation deemed necessary by the director.

M. Before any new license is issued for a location, the director shall cause a notice of the application therefor to be posted conspicuously, on a sign not smaller than thirty inches by forty inches, on the outside of the front wall or front entrance of the immediate premises for which the license is sought or, if no building or improvements exist on the premises, the notice shall be posted at the front entrance of the immediate premises for which the license is sought, on a billboard not smaller than five feet by five feet. The contents of the notice shall be in the form prescribed by the department, and such posting shall be over a continuous period of twenty days prior to preliminary approval of the license.

N. No license shall be issued until the posting requirements of Subsection M of this section have been met.

O. All costs of publication and posting shall be paid by the applicant.

P. It is unlawful for any person to remove or deface any notice posted in accordance with this section. Any person convicted of a violation of this subsection shall be punished by a fine of not more than three hundred dollars ($300) or by imprisonment in the county jail for not more than one hundred twenty days or by both.

Q. Any person aggrieved by any decision made by the director as to the approval or disapproval of the issuance of a license may appeal to the district court of jurisdiction by filing a petition in the court within thirty
days from the date of the decision of the director, and a hearing on the matter may be held in the district court. If the disapproval is based upon local option district disapproval pursuant to Subsection H of Section 60-6B-4 NMSA 1978, the local option district shall be a necessary party to any appeal. The decision of the director shall continue in force, pending a reversal or modification by the district court, unless otherwise ordered by the court. Any appeal from the decision of the district court to the supreme court shall be permitted as in other cases of appeals from the district court to the supreme court."

Section 5

Section 5. Section 60-6C-5 NMSA 1978 (being Laws 1981, Chapter 39, Section 101) is amended to read:

"60-6C-5. ADMINISTRATION OF OATHS--PRODUCTION OF DOCUMENTS--WITNESSES.--The director shall have the power to administer oaths and compel the attendance of witnesses and the production of documents, records and physical exhibits in any hearing held under the provisions of the Liquor Control Act by the issuance and service of subpoenas and subpoenas duces tecum. The hearing officer shall have

authority to rule upon offers of proof and receive relevant evidence, take, allow or cause depositions to be taken, regulate the course of the hearing, hold conferences for the settlement or simplification of the issues by consent of the parties, dispose of procedural requests or similar matters and reopen the hearing for the taking of additional evidence at any time prior to the taking of an appeal."

Section 6

Section 6. Section 60-6C-6 NMSA 1978 (being Laws 1981, Chapter 39, Section 102, as amended) is amended to read:

"60-6C-6. NO INJUNCTION OR MANDAMUS PERMITTED--APPEAL--PREFERENCE--NOTICE OF APPEAL.--

A. No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action or proceeding to prevent or enjoin any finding of guilt or order of suspension or revocation or fine made by a liquor control hearing officer under the provisions of Section 60-6C-4 NMSA 1978. Any licensee aggrieved or adversely affected by any order of revocation, suspension or fine shall have the right to appeal to the district court of the county in which the licensed premises are located for a judicial review of the order within thirty days of the entry of the order. The appeal shall be taken by filing a petition for review setting forth the grounds of complaint against the order of suspension, revocation or fine. The matter on appeal shall be heard by the court without a jury, and the court shall grant the matter a preference on the docket. The court shall set aside any order of suspension, revocation or fine found to be:

(1) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;

(2) in excess of statutory jurisdiction, authority or limitations or short of statutory right; or

(3) unsupported by substantial evidence.

B. In making the determinations, the court shall review the entire record or such portions as may be cited by any party. The director shall be given at least ten days' notice before hearing on an appeal may be held. A complete copy of the record of hearing shall be filed in the office of the clerk of the court before the hearing on the appeal, which copy shall be furnished by the department at the request of the licensee or his attorney. The cost of preparation of the hearing record shall be borne by the losing party.

C. No appeal shall have the effect of suspending the operation of the order of suspension, revocation or fine, but the liquor control hearing officer may, for good cause shown and upon such terms and conditions as he may find are just, in his

discretion suspend the operation of the order of suspension, revocation or fine pending the appeal. The court shall tax costs against the losing party.

D. Appeals from the decision of the court to the supreme court of the state may be made in accordance with the rules of the supreme court." HB 753

CHAPTER 330

RELATING TO ORGANIC FOOD; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE ORGANIC COMMODITY ACT.

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

Section 1

Section 1. Section 76-22-1 NMSA 1978 (being Laws 1990, Chapter 122, Section 1) is amended to read:

"76-22-1. SHORT TITLE.--Chapter 76, Article 22 NMSA 1978 may be cited as the "Organic Commodity Act"."

Section 2

Section 2. Section 76-22-2 NMSA 1978 (being Laws 1990, Chapter 122, Section 2) is amended to read:

"76-22-2. PURPOSE OF ACT.--The purpose of the Organic Commodity Act is to:

A. establish standards governing the labeling and advertising of food articles and agricultural commodities as organically produced;

B. establish an organic certification program;

C. educate the public regarding those products that are organically produced;

D. provide access for New Mexico producers and processors into the expanding intrastate and interstate markets in organically produced food articles;

E. make available, to the widest extent possible, consumer freedom of choice within New Mexico; and

F. create an entity of competent jurisdiction to establish a state organic certification program and implement the powers and responsibilities of a state organic certification program under the Organic Foods Production Act of 1990."

Section 3

Section 3. Section 76-22-3 NMSA 1978 (being Laws 1990, Chapter 122, Section 3) is amended to read:

"76-22-3. FINDINGS.--The legislature finds and declares that:

A. consumers are demanding fresh and processed foods produced using organic methods;

B. organic farming methods promote more sustainable agricultural practices than conventional farming methods;

C. existing agricultural grading standards as contained in Chapter 76 NMSA 1978 governing the contracting and sale of food articles do not provide standards for food articles that are organically produced;

D. due to the proliferation of labeling and advertising claims utilizing and relying on terms such as "organic", "organically grown", "natural", "naturally grown", "ecological", "ecologically grown", "pesticide-residue free" and derivatives of those terms, a need exists to establish organic grading standards to clarify the use of such terms in labeling and advertising; and

E. in order to protect the public from misrepresentation, to secure the general health, to suppress unfair competition in the production and sale of organic food articles, to ensure the purity of the food article imported and to protect the food supply of the state, the Organic Commodity Act is enacted."

Section 4

Section 4. Section 76-22-4 NMSA 1978 (being Laws 1990, Chapter 122, Section 4) is amended to read:

"76-22-4. DEFINITIONS.--As used in the Organic Commodity Act:

A. "advertise" means to present a commercial message in any medium, including but not limited to print, radio, television, sign, display, label, tag or oral statement;

B. "agricultural commodity" means any distinctive type f agricultural, horticultural, floricultural, viticultural, vegetable or animal product of any class, in its natural or processed state;

C. "assessment" means funds collected by the commission as provided for under the Organic Commodity Act;

D. "certification" means formal verification by the commission that food articles are organically produced;

E. "certification handbook" means a collection of production and handling standards and rules adopted and promulgated by the commission;

F. "commission" means the organic commodity commission;

G. "food article" means any raw or processed agricultural commodity or product derived from livestock, including any fruits, vegetables, berries, eggs, seeds or dairy or grain products marketed in New Mexico for human or animal consumption;

H. "handle" means to sell, process, transport or package organically produced food articles;

I. "handler" means any individual in the business of handling organically produced food articles;

J. "handling operation" means any operation or portion of an operation that:

(1) receives or otherwise acquires organically produced food articles from the producer of those organically produced food articles;

(2) prepares organically produced food articles for market; or

(3) processes, packages, transports or stores organically produced food articles;

K. "label" means a commercial message in a printed medium that is affixed by any method to a receptacle, including a container or package;

L. "materials list" means a list of approved and prohibited substances to be determined by the commission, in compliance with the national materials list, and set forth in the certification handbook;

M. "ombudsman" means a member of the commission, who has the function of facilitating communication between certified persons and the commission by addressing certified persons' complaints, participating in the fact-finding process, investigating complaints, arbitrating when possible and advocating for the certified person when necessary; except that, the ombudsman shall not represent a certified person before the commission or any other fact-finding body;

N. "organic certification program" means a program designed to ensure that a product is produced, handled, transported and marketed in compliance with the Organic Commodity Act and the Organic Foods Production Act of 1990;

O. "organically certified farm" means a farm, or portion of a farm, that is certified by the commission as utilizing organic productive techniques as set forth by the commission in the certification handbook provided for under the Organic Commodity Act;

P. "organically certified handling operation" means any handling operation, or portion of any handling operation, that is certified by the commission and operated by organically certified handlers;

Q. "organically produced label" means a label established for the purpose of indicating compliance with the certification standards promulgated under the Organic Commodity Act;

R. "organically produced" means food articles produced using organic productive techniques on an organically certified farm and handled by an organically certified handling operation;

S. "organic productive technique" means a system of farming that substitutes appropriate farm management practices for chemical and technological methods and enhances rather than replaces existing biological systems to ensure minimum adverse effects on human health and the environment;

T. "person" means any individual, group of individuals, corporation, association, cooperative or other entity;

U. "processing" means cooking, baking, heating, drying, mixing, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing or otherwise manufacturing food articles and includes packaging, canning, jarring or otherwise enclosing such food articles in a container;

V. "producer" means a person who engages in the business of growing or producing organically produced agricultural commodities; and

W. "steward" means an individual appointed by the commission to oversee the verification component of the certification program."

Section 5

Section 5. Section 76-22-6 NMSA 1978 (being Laws 1990, Chapter 122, Section 6) is amended to read:

"76-22-6. ORGANIC COMMODITY COMMISSION CREATED.--

A. There is created the "organic commodity commission" to achieve the purposes set forth in Section 76-22-2 NMSA 1978.

B. The commission shall be composed of five members appointed by the governor with the advice and consent of the senate.

C. The commission shall elect one of its members to serve as chairman, one to serve as vice chairman, one to serve as secretary and one to serve as ombudsman. A majority of the members of the commission constitutes a quorum for the transaction of business.

D. All commission members shall be residents of New Mexico.

E. The commission shall be appointed by the governor from a list of producers and handlers certified under the provisions of the Organic Commodity Act and the standards promulgated in the certification handbook. The commission members shall serve staggered terms beginning on March 1, 1992, with two terms ending on December 31, 1995, two ending on December 31, 1996 and one ending on December 31, 1997. Thereafter, appointments shall be for staggered terms of four years.

F. Members of the commission shall be compensated as provided in the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance."

Section 6

Section 6. Section 76-22-7 NMSA 1978 (being Laws 1990, Chapter 122, Section 7) is amended to read:

"76-22-7. ORGANIC COMMODITY COMMISSION--DUTIES.--The commission:

A. shall adopt and promulgate certification standards for the production and handling of organically produced food articles in the state. The certification standards shall include agricultural commodities used but not consumed as foods by humans and animals. The standards shall be compiled in a certification handbook to be included in the annual report to the legislature;

B. shall conduct studies to increase commercial value of and discover new markets for organically produced food articles;

C. shall disseminate reliable information relative to market conditions, current prices and sources of supply and demand for organically produced food articles;

D. may sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred under the Organic Commodity Act;

E. may enter into contracts;

F. may appoint subordinate officers and employees of the commission, prescribe their duties and fix their compensation;

G. shall cooperate with local, state or national organizations or government agencies engaged in activities similar to that of the commission;

H. shall adopt, rescind, modify or amend regulations, orders and resolutions for the exercise of its powers and duties after providing public notice and the opportunity for public comment on the action; and

I. shall adopt the federal materials list upon its promulgation and shall prepare a registration program for all purveyors of these materials and an assessment schedule for the purveyors of the class of materials appearing on that list."

Section 7

Section 7. Section 76-22-8 NMSA 1978 (being Laws 1990, Chapter 122, Section 8) is amended to read:

"76-22-8. REPORT OF THE COMMISSION.--The commission shall review the statutes under which it operates, the state certification program and the contents of the materials list for any conflict with federal statutory enactments or actions of the United States secretary of agriculture at least every two years."

Section 8

Section 8. Section 76-22-12 NMSA 1978 (being Laws 1990, Chapter 122, Section 12) is amended to read:

"76-22-12. STANDARDS.--To fulfill the purposes of the Organic Commodity Act, the commission may prescribe and adopt standards relating to the production, handling, processing and distribution of organically produced food articles. Under this section, the commission is empowered to adopt and promulgate certification standards for the production, handling, processing and distribution of organically produced food articles, and agricultural commodities, including setting reasonable application fees and requirements. Where a production or handling practice is not prohibited or otherwise restricted, the practice shall be permitted unless the commission determines that the practice would be inconsistent with the purposes of the Organic Commodity Act."

Section 9

Section 9. Section 76-22-13 NMSA 1978 (being Laws 1990, Chapter 122, Section 13) is amended to read:

"76-22-13. ORGANIC CERTIFICATION PROGRAM--GENERALLY.--

A. The commission shall certify any farm or handling operation in New Mexico that meets the requirements of the Organic Commodity Act and standards set forth in the certification handbook.

B. In order for the certification program to be consistent with the provisions of the Organic Commodity Act, the certification program may:

(1) provide that each food article bearing an organically produced label must be produced on an organically certified farm and handled through an organically certified handling operation in accordance with the Organic Commodity Act;

(2) require the establishment of an organic farm plan;

(3) provide for procedures that allow producers and handlers to appeal an adverse determination under the Organic Commodity Act;

(4) provide for an annual, on-site inspection of each farm and handling operation that has been certified under this section;

(5) make and publish rules and standards for soil inspection and tissue sampling designed to detect prohibited pesticide or fertilizer residues; and

(6) provide for periodic residue testing of food articles and agricultural commodities that have been produced on organically certified farms and handled by organically certified handling operations to determine whether those products contain any unacceptable residue or otherwise indicate whether the provisions of the organic certification program or the Organic Commodity Act have been violated."

Section 10

Section 10. Section 76-22-14 NMSA 1978 (being Laws 1990, Chapter 122, Section 14) is amended to read:

"76-22-14. CERTIFICATION.--Each producer and handler covered by the organic certification program shall certify to the commission, on an annual basis, that he has not produced, processed or marketed any food article or agricultural commodity bearing an organically produced label not in compliance with the Organic Commodity Act and the standards set forth in the certification handbook."

Section 11

Section 11. Section 76-22-16 NMSA 1978 (being Laws 1990, Chapter 122, Section 16) is amended to read:

"76-22-16. LEVY OF ASSESSMENT--ORGANICALLY PRODUCED FOOD ARTICLES--SALES.--The commission may impose and collect assessments as follows:

A. producers and handlers shall be assessed at an annual rate of one-half of one percent of the total gross sales of the organically produced food articles;

B. retailers shall be assessed at an annual rate of one-quarter of one percent of the total gross sales of organically produced food articles;

C. purveyors of materials as set forth in the federal materials list shall be registered with the commission and assessed at an annual rate of one-half of one percent of the total gross sales of the class of materials appearing on that list; and

D. the commission, following notice and comment, may adjust the assessment rate up or down by no more than one hundred percent."

Section 12

Section 12. Section 76-22-18 NMSA 1978 (being Laws 1990, Chapter 122, Section 18) is repealed and a new Section 76-22-18 NMSA 1978 is enacted to read:

"76-22-18. COLLECTION OF ASSESSMENT.--

A. The commission shall set forth in the certification handbook a schedule for payment of all assessments due the commission.

B. The commission may adopt rules providing for an exemption from all or part of assessments due the commission under the provisions of the Organic Commodity Act.

C. Failure to pay a due assessment shall result in revocation of certification or assessment of other penalties prescribed by law, upon notice from the commission."

Section 13

Section 13. Section 76-22-23 NMSA 1978 (being Laws 1990, Chapter 122, Section 23) is amended to read:

"76-22-23. STEWARDS--POWERS AND DUTIES--REVIEW.-- The powers and duties of the stewards appointed by the commission shall conform to the minimum standards contained in the Organic Foods Production Act of 1990 and shall be set forth in the state certification program."

Section 14

Section 14. Section 76-22-24 NMSA 1978 (being Laws 1990, Chapter 122, Section 24) is amended to read:

"76-22-24. STEWARDS--AUTHORITY TO INSPECT.--Stewards appointed by the commission under the Organic Commodity Act may inspect any production, handling, processing or distribution place or vehicle that is certified by the commission or is being considered for certification or any other place or vehicle believed to be in violation of the federal or state provisions that the commission implements. Any inspection shall be conducted during normal business hours."

Section 15

Section 15. Section 76-22-26 NMSA 1978 (being Laws 1990, Chapter 122, Section 26) is amended to read:

"76-22-26. LABELING.--

A. The commission shall establish a label to be affixed to agricultural products that have been produced on organically certified farms and have been handled by organically certified handlers.

B. The label shall state that a food article has been organically produced and shall bear the seal of the commission.

C. Except as otherwise provided in the Organic Commodity Act, the terms "organic", "organically produced", "certified organic", "certified organically grown", "natural", "naturally grown", "pesticide-residue free" or derivatives of these terms shall not be used by any person for advertising, labeling or otherwise affixing the terms to a food article or its container, unless the food article has been produced and marketed in compliance with the provisions of the Organic Commodity Act and the certificate standards promulgated under that act.

D. The commission shall have the exclusive authority under the state certification program to approve the affixing of labels to food articles."

Section 16

Section 16. Section 76-22-27 NMSA 1978 (being Laws 1990, Chapter 122, Section 27) is amended to read:

"76-22-27. VIOLATIONS AND ENFORCING AUTHORITY.--

A. Any producer or handler of organically produced food articles who issues a false certification, attempts to have an organically produced label affixed to a food article that the producer or handler knows, or should have known, to have been produced in a manner that is not in compliance with the Organic Commodity Act or otherwise violates the purposes of the certification program under that act, as determined by the commission, shall be subject to the following procedures and penalties:

(1) the commission shall cause notice of the violations to be given to the producer or handler having responsibility for the violation in the form of a complaint; any person so notified shall be given an opportunity to be heard under the rules prescribed by the commission. If the commission finds no violation has occurred, it shall dismiss the complaint and notify the parties to the complaint;

(2) if, at the conclusion of the hearing, the commission finds that a violation has occurred, either in the presence or absence of the person notified, it shall enter findings to that effect and notify the parties to the complaint. If such a finding is made, the person shall not be eligible to receive certification under the Organic Commodity Act for a period of five years with respect to any farm or handling operation in which the producer has an interest; and

(3) notwithstanding Paragraph (2) of this subsection, the commission may reduce or eliminate the period of ineligibility if the commission determines that modification or waiver would be in the best interest of the certification program established under the Organic Commodity Act.

B. No person shall be subject to the penalties and procedures described in Subsection A of this section for having violated the provisions of the Organic Commodity Act or the standards contained in the certification handbook if he possesses a guaranty that states that the food article is labeled in compliance with the Organic Commodity Act and the standards contained in the certification handbook.

C. The commission may apply for, and the court may grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of the Organic Commodity Act or any certification standard adopted and promulgated under that act, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond."

Section 17

Section 17. Section 76-22-28 NMSA 1978 (being Laws 1990, Chapter 122, Section 28) is amended to read:

"76-22-28. APPLICABILITY TO OTHER LAWS.--

A. Any transactions involving food articles bearing an organically produced label shall be subject to Sections 57-15-1 through 57-15-10 NMSA 1978.

B. Any transactions involving food articles bearing an organically produced label shall be subject to the New Mexico Food Act.

C. Any transactions involving food articles bearing an organically produced label shall be subject to the provisions of the federal Organic Foods Production Act of 1990."

Section 18

Section 18. REPEAL.--Sections 76-22-10 and 76-22-15 NMSA 1978 (being Laws 1990, Chapter 122, Sections 10 and 15) are repealed. HB 826

CHAPTER 331

RELATING TO THE STATE GAME COMMISSION; AMENDING A SECTION OF THE NMSA 1978 RELATING TO THE POWERS AND DUTIES OF THE STATE GAME COMMISSION.

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

Section 1

Section 1. Section 17-1-14 NMSA 1978 (being Laws 1921, Chapter 35, Section 7, as amended) is amended to read:

"17-1-14. GENERAL POWERS AND DUTIES OF STATE GAME COMMISSION--GAME PROTECTION FUND.--

A. The state game commission shall have general control over the collection and disbursement of all money collected or received under the state laws for the protection and propagation of game and fish, which money shall be paid over to the state treasurer to the credit of the game protection fund, and the fund, including all earned income therefrom, shall not be transferred to another fund. Chapter 17 NMSA 1978 shall be guaranty to the person who pays for hunting and fishing licenses and permits that the money in that fund shall not be used for any purpose other than as provided in Chapter 17 NMSA 1978. The state game commission shall have authority:

(1) to establish and, through the director of the department of game and fish, to operate fish hatcheries for the purpose of stocking public waters of the state and to furnish fish fry and fingerlings to stock private waters, receipts from such sources to go into the game protection fund;

(2) to declare closed seasons in any specified locality and on any species of game or fish threatened with undue depletion from any cause;

(3) to establish game refuges for the purpose of providing safe sanctuaries in which game may breed and replenish adjacent hunting ranges, it being the purpose of this provision to establish small refuges rather than large preserves, or to close large areas to hunting;

(4) to purchase lands for game refuges where suitable public lands do not exist, to purchase lands for fish hatcheries and to purchase lands to be

maintained perpetually as public hunting grounds, particularly lands suitable for waterfowl hunting, all such lands to be paid for from the game protection fund;

(5) to receive by gift or bequest, in the name and on behalf of the state, lands suitable for game refuges, hunting grounds, fish hatcheries or for any other purpose necessary to carry out the provisions of Chapter 17 NMSA 1978;

(6) to apply for and accept any state, federal or private funds, grants or donations from any source for game and fish programs and projects;

(7) to designate certain areas as rest grounds for migratory birds, in which hunting shall be forbidden at all times or at such times as the state game commission shall provide, it being the purpose of this provision not to interfere unduly with the hunting of waterfowl but to provide havens in which they can rest and feed without molestation;

(8) to close any public stream or lake or portion thereof to fishing when such action is necessary to protect a recently stocked water, to protect spawning waters or to prevent undue depletion of the fish;

(9) to propagate, capture, purchase, transport or sell any species of game or fish needed for restocking any lands or streams of the state;

(10) after reasonable notice and hearing, to suspend or revoke any license or permit issued pursuant to the provisions of Chapter 17 NMSA 1978 and withhold license privileges for a definite period not to exceed three years from any person procuring a license through misrepresentation, violating any provisions of Chapter 17 NMSA 1978 or hunting without a proper license;

(11) to adopt regulations establishing procedures that provide reasonable notice and a hearing before the state game commission for the suspension, revocation or withholding of license privileges of any person charged with violating the provisions of Chapter 17 NMSA 1978, subject to such judicial review as may be provided by law;

(12) to conduct studies of programs for the management of endangered and nongame species of wildlife; and

(13) to establish licenses, permits and certificates not otherwise provided for in Section 17-3-13 NMSA 1978 and to charge and collect just and reasonable fees for them; provided the fees shall not exceed the costs of administration associated with the licenses, permits or certificates.

B. The director of the department of game and fish shall exercise all the powers and duties conferred upon the state game and fish warden by all previous statutes now in force not in conflict with Chapter 17 NMSA 1978.

C. The state game commission shall have authority to prohibit all hunting in periods of extreme forest fire danger, at such times and places as may be necessary to reduce the danger of destructive forest fires.

D. The hunting, pursuing, capturing, killing or wounding of any game animals, birds or fish in or upon any game refuge, rest ground or closed water or closed area or during any closed season established or proclaimed by the state game commission in accordance with the authority conferred in Chapter 17 NMSA 1978 constitutes a misdemeanor and shall be punishable as prescribed in Chapter 17 NMSA 1978." HB 897

CHAPTER 332

RELATING TO TAXATION; EXEMPTING SCHOOL DISTRICTS FROM THE GOVERNMENTAL GROSS RECEIPTS TAX.

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

Section 1

Section 1. Section 7-9-4.3 NMSA 1978 (being Laws 1991, Chapter 8, Section 2, as amended by Laws 1992, Chapter 49, Section 1 and also by Laws 1992, Chapter 100, Section 2) is amended to read:

"7-9-4.3. IMPOSITION AND RATE OF TAX--DENOMINATION AS "GOVERNMENTAL GROSS RECEIPTS TAX".--For the privilege of engaging in certain activities by governments, there is imposed on every agency, institution, instrumentality or political subdivision of the state, except any school district and any entity licensed by the department of health that is principally engaged in providing health care services, an excise tax of five percent of governmental gross receipts. The tax imposed by this section shall be referred to as the "governmental gross receipts tax"."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. HB 979

CHAPTER 333

RELATING TO RULES OF EVIDENCE OF THE DISTRICT COURT; PROVIDING FOR PROCEDURES TO DETERMINE COMPETENCY OF WITNESSES WITH MENTAL RETARDATION; ENACTING A NEW SECTION OF THE NMSA 1978.

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

Section 1

Section 1. WITNESSES WITH MENTAL RETARDATION--COMPETENCY EVALUATION.--

A. As used in this section:

(1) "witness with mental retardation" means a witness in a proceeding whom the court has found after hearing, as provided in Subsection B of this section, to have mental retardation; and

(2) "mental retardation" means substantial limitations in present functioning characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.

B. In any judicial proceeding wherein a witness with mental retardation may or will testify, the court on its own motion or on motion of the proponent of the witness with mental retardation, and after hearing, may order the use of one of the alternative procedures for determining competency to testify or for taking the testimony of the witness with mental retardation described below, provided that the court finds at the time of the order, by a preponderance of the evidence in the case, that the witness with mental retardation is likely, as a result of submitting to usual procedures for determining competency or as a result of testifying in open court:

(1) to suffer unreasonable and unnecessary mental or emotional harm; or

(2) to suffer a temporary loss of or regression in cognitive or behavioral functioning or communicative abilities such that his ability to testify will be significantly impaired.

C. If the court orders the use of an alternative procedure pursuant to this section, the court shall make and enter specific findings on the record describing the reasons for such order.

D. A court that makes findings in accordance with Subsection B of this section may order any of the following suitable alternative procedures for determining

the competency to testify or for taking the testimony of the witness with mental retardation:

(1) taking the testimony of the witness with mental retardation while permitting a person familiar to the witness such as a family member, clinician, counselor, social worker or friend to sit near or next to him;

(2) taking the testimony of the witness with mental retardation in court but off the witness stand;

(3) if the proceeding is a bench proceeding, taking the testimony of the witness with mental retardation in a setting familiar to the witness;

(4) if the proceeding is a jury trial, videotaping of testimony, out of the presence of the jury or in a location chosen by the court or by agreement of the parties; or

(5) the procedure set forth in Paragraph (1) in combination with Paragraph (2), (3) or (4) of this subsection.

E. Testimony taken by a videotape pursuant to an order under Subsection B of this section shall be taken in the presence of the judge, counsel for all parties and such other persons as the court may allow. Counsel shall be given the opportunity to examine, confront or cross-examine the witness with mental retardation to the same extent as would be permitted if ordinary procedures had been followed, subject to such protection of the mentally retarded witness as the judge deems necessary.

F. An order issued under Subsection B of this section that the testimony of the witness with mental retardation be videotaped out of the presence of the jury shall provide that the videotape be shown in court to the jury in the presence of the judge, the parties and the parties' counsel. At such courtroom showing, the audio portion of the video shall be entered into the record as would any oral testimony and shall be treated in all respects as oral testimony to the jury.

G. The videotape or giving of testimony taken by an alternative procedure pursuant to an order issued under Subsection B of this section shall be admissible as substantive evidence to the same extent as and in lieu of live testimony by the witness in any proceeding for which the order is issued or in any related proceeding against the same party when consistent with the interests of justice, provided that such an order is entered or re-entered based on current findings at the time when, or within a reasonable time before, the videotape or testimony is offered into evidence, and provided, in the case of a related criminal proceeding, that the requirements of Subsection E of this section were satisfied when the videotape was recorded or the alternative procedure was used.

H. Whenever, pursuant to an order issued under Subsection B of this section, testimony is recorded on videotape, the court shall ensure that:

(1) the recording equipment is capable of making an accurate recording and is operated by a competent operator;

(2) the recording is in color and is taken in well-lit conditions;

(3) the presence of the presiding judge, the attorneys, the defendant or parties, if in the room, and all other persons present is stated on the recording;

(4) the witness with mental retardation is visible at all times and, to the extent reasonably possible, the recording shows all persons present in the room as a jury would perceive them in open court;

(5) every voice on the recording is audible and identifiable;

(6) the recording is accurate, undistorted in picture or sound quality and has not been altered except as ordered by the court; and

(7) each party is afforded the opportunity to view the recording before it is shown in the courtroom.

I. The fact that the witness with mental retardation has been found in a court proceeding to be incompetent to make informed decisions of a personal, medical or financial nature, or is under a guardianship or conservatorship shall not preclude the witness from testifying if found competent to testify and, further, shall not preclude a determination of competency to testify.

J. The use of alternative procedures shall not be denied because they may take significantly more time than conventional procedures.

K. Expert opinion shall be admissible at any hearing held pursuant to this section, including hearings to determine the competency of a witness with mental retardation to testify.

L. Nothing in this section shall be deemed to prohibit the court from using other appropriate means, consistent with this section and other laws and with the defendant's rights, to protect a witness with mental retardation from trauma during a court proceeding. HB 988

CHAPTER 334

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; CREATING A JOINT INTERIM LEGISLATIVE REVENUE STABILIZATION, TAX POLICY,

TELECOMMUNICATIONS AND BUSINESS DEVELOPMENT COMMITTEE; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1

Section 1. REVENUE STABILIZATION, TAX POLICY, TELECOMMUNICATIONS AND BUSINESS DEVELOPMENT COMMITTEE CREATED--TERMINATION.--There is created a joint interim legislative committee which shall be known as the "revenue stabilization, tax policy, telecommunications and business development committee". The committee shall function from the date of its appointment until the fifteenth day of December prior to the second session of the forty-first legislature.

Section 2

Section 2. MEMBERSHIP--APPOINTMENT--VACANCIES.--

A. The committee shall be composed of eighteen members. Nine members of the house of representatives shall be appointed by the speaker of the house of representatives and nine members of the senate shall be appointed by the committees' committee of the senate, or, if the senate appointments are made in the interim, by the president pro tempore of the senate after consultation with and agreement of a majority of the members of the committees' committee.

B. Members shall be appointed from each house so as to give the two major political parties in each house the same proportional representation on the committee as prevails in each house; however, in no event shall either party have less than one member from each house on the committee. Vacancies on the committee shall be filled by appointment in the same manner as the original appointments. The chairman and vice chairman of the committee shall be elected by the committee.

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

Section 3

Section 3. DUTIES.--After its appointment, the committee shall hold one organizational meeting to develop a workplan and budget for the ensuing interim. The workplan and budget shall be submitted to the legislative council for approval. Upon approval of the workplan and budget by the legislative council, the committee shall examine the
statutes, constitutional provisions, regulations and court decisions governing revenue stabilization, tax policy, telecommunications and business development in New Mexico

and recommend legislation or changes, if any are found to be necessary, to the second session of the forty-first legislature.

Section 4

Section 4. SUBCOMMITTEES.--Subcommittees shall be created only by majority vote of all members appointed to the cmmittee and with the prior approval of the legislative council. A subcommittee shall be composed of at least one member from the senate and one member from the house of representatives, and at least one member of the minority party shall be a member of the subcommittee. All meetings and expenditures of a subcommittee shall be approved by the full committee in advance of such meeting or expenditure, and the approval shall be shown in the minutes of the committee.

Section 5

Section 5. REPORT.--The committee shall make a report of its findings and recommendations for the consideration of the second session of the forty-first legislature. The report and suggested legislation shall be made available to the legislative council on or before December 15 preceding that session.

Section 6

Section 6. STAFF.--The staff for the committee shall be provided by the legislative council service.

Section 7

Section 7. APPROPRIATION.--Twenty thousand dollars ($20,000) is appropriated from the legislative interim expense funds appropriated in Laws 1993, Chapter 1, Section 7 to the legislative council service for expenditure in the eighty-first and eighty-second fiscal years for the purpose of paying the salaries and expenses of the technical, legal, clerical and stenographic assistants, for necessary equipment and supplies used in carrying out the provisions of this act and for reimbursing the per diem and mileage expenses of the committee. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund. Payments from the appropriation shall be made upon vouchers signed by the director of the legislative council service or his authorized representative.

Section 8

Section 8. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.HB 1031

CHAPTER 335

RELATING TO THE BORDER; AMENDING AND ENACTING CERTAIN SECTIONS OF THE BORDER DEVELOPMENT ACT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 58-27-3 NMSA 1978 (being Laws 1991, Chapter 131, Section 3) is amended to read:

"58-27-3. DEFINITIONS.--As used in the Border Development Act:

A. "authority" means the border authority;

B. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;

C. "project" means any land or building, any enterprise engaged in the wholesale or retail distribution of water or the collection and the treatment of wastewater, water rights or any other improvements acquired as a part of a port of entry or to aid commerce in connection therewith, and all real and personal property deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use by the following or by any combination of the following:

(1) a port of entry and other facilities to be leased by the United States department of commerce or by any other agency or entity of the United States;

(2) any industry for the manufacturing, processing or assembling of any agricultural or manufactured product;

(3) a railroad switching yard or airport;

(4) any commercial or business enterprise engaged in storing, warehousing, distributing or selling products of manufacturing, agriculture, mining or related industries, not including facilities designed for the sale of goods or commodities at retail or for distribution to the public of electricity, gas or telephone; and

(5) any business in which all or part of the activities of the business involve supplying services to the general public or to governmental agencies or to a specific industry or customer, not including establishments primarily engaged in the sale of goods or commodities at retail; and

D. "property" means any land, improvements to the land, buildings and any improvements to the buildings, machinery and equipment of any kind necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project."

Section 2

Section 2. Section 58-27-10 NMSA 1978 (being Laws 1991, Chapter 131, Section 10) is amended to read:

"58-27-10. POWERS AND DUTIES OF AUTHORITY.--

A. The authority may:

(1) advise the governor and his staff on methods, proposals, programs and initiatives involving the New Mexico-Chihuahua border area that may further stimulate the border economy and provide additional employment opportunities for New Mexico citizens;

(2) subject to the provisions of the Border Development Act, initiate, develop, acquire, own, construct and maintain border development projects;

(3) create programs to expand economic opportunities beyond the New Mexico-Chihuahua border area to other areas of the state;

(4) create avenues of communication between New Mexico and Chihuahua and the republic of Mexico concerning economic development, trade and commerce, transportation and industrial affairs;

(5) promote legislation that will further the goals of the authority and development of the border region;

(6) produce or cause to have produced promotional literature related to explanation and fulfillment of the authority's goals;

(7) actively recruit industries and establish programs that will result in the location and relocation of new industries in the state;

(8) coordinate and expedite the involvement of the executive department's border area efforts; and

(9) perform or cause to be performed environmental, transportation, communication, land use and other technical studies necessary or advisable to secure port-of-entry approval by the United States and the Mexican governments and other appropriate governmental agencies.

B. The authority may also:

(1) solicit and accept federal, state, local and private funds for the purpose of carrying out the provisions of the Border Development Act;

(2) adopt regulations governing the manner in which its business shall be transacted and the manner in which the powers of the authority shall be exercised and its duties performed; and

(3) act as an applicant for and operator of port-of-entry facilities and, as the applicant, carry out all tasks and functions, including filing all necessary documents and follow-up of such filings with appropriate agencies."

Section 3

Section 3. Section 58-27-11 NMSA 1978 (being Laws 1991, Chapter 131, Section 11) is amended to read:

"58-27-11. ADDITIONAL POWERS OF THE AUTHORITY.--

A. Subject to prior approval by the state board of finance, the authority shall have the following powers:

(1) to acquire, whether by construction, purchase, gift or lease, one or more projects that shall be located within the state; provided, the authority shall not have the power to operate any projects engaged in any enterprise of wholesale or retail distribution of water or collection and treatment of wastewater or any other water or wastewater improvements that serve or will serve residents of an area that has been approved for annexation to an incorporated municipality by the municipal boundary commission, if any of the boundaries of the incorporated municipality touch the boundary of El Paso, Texas;

(2) to sell, lease or otherwise dispose of any or all of its projects upon such terms and conditions as the authority may deem advisable and not in conflict with the provisions of the Border Development Act;

(3) to issue revenue bonds and borrow money from financial institutions for the purpose of defraying the cost of acquiring, by construction or purchase, or both, any project and to secure the payment of the bonds or the loan as provided in the Border Development Act. The authority shall not have the power to operate any project as a business or in any manner except as lessor thereof; and

(4) to refinance one or more projects.

B. The authority shall neither expend funds nor incur any indebtedness for any improvement, repair, maintenance or addition to any real or personal property owned by anyone other than the authority."

Section 4

Section 4. A new section of the Border Development Act, Section 58-27-16.1 NMSA 1978, is enacted to read:

"58-27-16.1. AUTHORITY LOANS--TERMS.--If the authority borrows money from a financial institution:

A. the interest, principal payments or any part thereof shall be payable at intervals as may be determined by the authority;

B. the loan shall mature at any time not exceeding thirty years from the date of origination;

C. the loan shall be limited to the maximum rate of interest permitted for bonds by the Public Securities Act; D. the property to be acquired by the authority is acquired in fee simple;

E. the principal amount of the loan shall not exceed the fair market value of the real or personal property to be acquired with the proceeds of the loan as evidenced by a certified appraisal in accordance with the Real Estate Appraisers Act; and

F. the loan shall be subject to the approval of the state board of finance."

Section 5

Section 5. Section 58-27-17 NMSA 1978 (being Laws 1991, Chapter 131, Section 17) is amended to read:

"58-27-17. AUTHORITY REVENUE BONDS AND BORROWED FUNDS NOT GENERAL OBLIGATIONS--AUTHORIZATION--AUTHENTICATION.--

A. Revenue bonds or refunding revenue bonds issued as authorized in the Border Development Act and other loans to the authority are:

(1) not obligations of the state, any other agency of the state or general obligations of the authority; and

(2) collectible only from the proper pledged revenues, and each bond or loan shall state that it is payable solely from the proper pledged revenues and that the bondholders or lenders may not look to any other fund for the payment of the interest and principal of the bond or the loan.

B. Revenue or refunding bonds or loans may be authorized by resolution of the authority, which resolution shall be approved by a majority of the voting members of the authority and by the state board of finance.

C. The bonds or loans shall be executed by the chairman and secretary of the authority and may be authenticated by any public or private transfer agent or registrar, or its successor, named or otherwise designated by the authority. Bonds, notes or other certificates of indebtedness of the authority may be executed as provided under the Uniform Facsimile Signature of Public Officials Act, and the coupons, if any, shall bear the facsimile signature of the chairman of the authority."

Section 6

Section 6. Section 58-27-18 NMSA 1978 (being Laws 1991, Chapter 131, Section 18) is amended to read:

"58-27-18. SECURITY FOR BONDS, NOTES OR CERTIFICATES OF INDEBTEDNESS.--The principal of and interest on any bonds, notes o other certificates of indebtedness issued pursuant to the provisions of the Border Development Act shall be secured by a pledge of the revenues out of which the bonds shall be made payable, may be secured by a mortgage, note or other certificate of indebtedness covering all or any part of the project from which the revenues so pledged may be derived and may be secured by a pledge of the lease or income of the project. The resolution of the authority under which such bonds, notes or certificates of indebtedness are authorized to be issued or any such mortgage, notes or certificates of indebtedness may contain any agreement and provisions customarily contained in instruments securing bonds, notes or certificates of indebtedness, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of all revenues from any project covered by such proceedings or mortgage, the terms to be incorporated in the lease of the project, the maintenance and insurance of the project, the creation and maintenance of special funds from the revenues from the project and the rights and remedies available in the event of default to the bondholders, to the trustee under a mortgage or to a lender, all as the authority shall deem advisable and not in conflict with the provisions of the Border Development Act; provided, however, that in making any such agreements or provisions, the authority shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom and shall not have the power to incur a pecuniary liability or a charge upon the state general credit or against the state taxing powers. The resolution authorizing any bonds and any mortgage securing such bonds, any note or other certificate of indebtedness may set forth the procedure and remedies in the event of default in payment of the principal of or the interest on the bond, note or certificate of indebtedness or in the performance of any agreement. No breach of any agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing powers."

Section 7

Section 7. Section 58-27-19 NMSA 1978 (being Laws 1991, Chapter 131, Section 19) is amended to read:

"58-27-19. REQUIREMENTS RESPECTING RESOLUTION AND LEASE.--

A. Prior to approving a resolution for the issuance of bonds or the closing of a loan for any project, the authority shall determine and find the following in the resolution approving the issuance of the bonds or the closing of the loan:

(1) if the resolution is for the issuance of bonds, the principal and interest of the bonds to be issued will be fully and unconditionally guaranteed by a lease agreement executed by an agency of the United States government, by a corporation organized and operating within the United States, that corporation or the long-term debt of that corporation being rated not less than "A" by a national rating service, or by an irrevocable letter of credit issued by a financial institution or insurance company rated not less than "AA" by a national rating service;

(2) the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued or the loan proposed to be obtained to finance the project; and

(3) the amount necessary to be paid each year into any reserve funds that the governing body may deem advisable to establish in connection with the retirement of the proposed bonds or the repayment of the loan and, in either case, the maintenance of the project. Unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect thereto, the resolution shall set forth the estimated cost of maintaining the project in good repair and keeping it properly insured.

B. If the resolution is for the issuance of bonds, the determinations and findings of the authority required to be made by this section shall be set forth in the proceedings under which the proposed bonds are to be issued.

C. Prior to the issuance of the bonds or the closing of the loan, the authority shall lease or sell the project to a lessee or purchaser under an agreement conditioned upon completion of the project and providing for payment to the authority of such rentals or payments as, upon the basis of such determinations and findings, will be sufficient to:

(1) pay the principal of and interest on the bonds issued or on the loan to be obtained to finance the project;

(2) build up and maintain any reserve deemed by the authority to be advisable in connection with the financing of the project; and

(3) pay the costs of maintaining the project in good repair and keeping it properly insured, unless the agreement of lease obligates the lessee to pay for the maintenance and insurance of the project.

D. With prior approval of the state board of finance, the authority may borrow an amount not to exceed five million dollars ($5,000,000) to purchase water rights, a water system or a wastewater collection and treatment system provided:

(1) the proceeds of any loan shall be paid into a special account in the border authority fund for acquisition of the project;

(2) sufficient revenues must be derived from the project and paid into a special account in the border authority fund for payment of all principal, interest and all other costs and fees associated with the project;

(3) the authority does not obligate itself or the state to any debt or obligation which cannot be paid from funds derived from the project;

(4) if the authority purchases either a water system or wastewater collection and treatment system:

(a) it must, prior to closing on the purchase agreement, enter into a lease agreement with a qualified person to operate the system;

(b) the lessee operator of the system must obtain any certificates of convenience and necessity or other certificates, permits or approvals which may be required under the Public Utility Act, the Water Quality Act or other applicable state or federal laws;

(c) sufficient cash reserves must have been established and an environmental damage liability policy purchased to indemnify and protect the authority and the state from any liabilities or liquidated or unliquidated claims arising in connection with the system prior to its acquisition by the authority;

(d) the authority must acquire with the water system or wastewater collection and treatment system all present water wells providing water to the system or wastewater collection and treatment system and its customers and such additional wells as may be necessary to meet foreseeable future needs; and

(e) the authority must acquire water rights with the acquisition of any water system or wastewater collection and treatment system as provided in this subsection;

(5) if the authority purchases water rights:

(a) the rights must be acquired in fee simple;

(b) the owner of the water rights must have a permit issued by the state engineer for the water rights;

(c) the water rights acquired by the authority must be sufficiently senior in priority to other water rights to attract business enterprises to develop in the border area;

(d) the quality of any water acquired must meet state and federal standards or be capable of meeting said standards with reasonable treatment; and

(e) the quantity of the water rights acquired must be sufficient for the project and foreseeable future needs; and

(6) the water from any system acquired must be certified by the department of environment to meet all state and federal water quality standards for human consumption.

E. Upon prior approval of the state board of finance, the authority may obtain a commitment from a financial institution to borrow funds, provided that closing of the loan and disbursement of the proceeds is conditional upon compliance with the requirements of the Border Development Act. Nothing in this section shall be deemed to authorize the authority to incur any debt obligation of the authority in connection with a loan commitment prior to the closing of the loan."

Section 8

Section 8. Section 58-27-25 NMSA 1978 (being Laws 1991, Chapter 131, Section 25) is amended to read:

"58-27-25. FUND CREATED.--

A. The "border authority fund" is created in the state treasury. Separate accounts within the fund may be created for any project. Money in the fund is appropriated to the authority for the purposes of carrying out the provisions of the Border Development Act. Money in the fund shall not revert at the end of a fiscal year.

B. Any money received by the authority shall be deposited in the fund, including, but not limited to:

(1) the proceeds of any bonds issued by the authority or from any loan to the authority made pursuant to the Border Development Act;

(2) interest earned upon any money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of such property or securities;

(5) all lease or rental payments received from the authority from any project;

(6) all other money received by the authority from any public or private source; and

(7) any tolls, fees, rents or other charges imposed by the authority.

C. Any tolls, fees, rents or other charges imposed by the authority in excess of those collected for an approved project may be expended only as appropriated and in accordance with a budget approved by the budget division of the department of finance and administration. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the executive director of the authority or his designee pursuant to the Border Development Act; provided that in the event the position of executive director is vacant, vouchers may be signed by the chairman of the authority.

D. Earnings on the balance in the fund shall be credited to the fund. In addition, when the proceeds from the issuance of bonds or from money borrowed by the authority are deposited in the state treasury, interest earned on that money during the period commencing with the deposit in the state treasury until the actual transfer of the money to the fund shall be credited to the fund."

Section 9

Section 9. A new section of the Border Development Act is enacted to read:

"USE OF PROCEEDS FROM BORROWED FUNDS.--The proceeds from borrowed funds shall be paid into a special account within the border authority fund and utilized only for the purpose for which the funds were borrowed; provided, however, that if for any reason any portion of the proceeds shall not be needed for the purpose for which the funds were borrowed, the balance of the proceeds shall be applied to the payment of the principal of or the interest on the borrowed funds. The cost of acquiring any project shall be deemed to include the following:

A. the actual cost of construction of any part of a project that may be constructed, including architects', attorneys' and engineers' fees;

B. the purchase price of any part of a project that may be acquired by purchase;

C. the actual cost of the extension of any utility to the project site and all expenses in connection with the borrowing of funds to finance such acquisition; and

D. the interest on the debt for a reasonable time prior to construction, during construction and not exceeding six months after completion of construction."

Section 10

Section 10. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effct immediately. HB 992

CHAPTER 336

RELATING TO ELECTIONS; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 36-1-8.2 NMSA 1978 (being Laws 1981, Chapter 25, Section 1) is amended to read:

"36-1-8.2. ELEVENTH JUDICIAL DISTRICT--TWO DISTRICT ATTORNEY DIVISIONS.--The eleventh judicial district is divided into two separate district attorney divisions which shall constitute two separate election divisions, as follows:

A. district attorney division 1, to be composed of San Juan county; and

B. district attorney division 2, to be composed of McKinley county."

Section 2

Section 2. Section 36-1-8.3 NMSA 1978 (being Laws 1981, Chapter 25, Section 2) is amended to read:

"36-1-8.3. DISTRICT ATTORNEYS--ELECTION--RESIDENCE.-- The district attorney in division 1 shall be elected by the registered qualified electors of San Juan county and the district attorney in division 2 shall be elected by the registered qualified electors in McKinley county. Each district attorney shall have all the duties and powers vested in a district attorney." HB 1010

CHAPTER 337

CREATING A JOINT INTERIM LEGISLATIVE HEALTH CARE TASK FORCE; DECLARING AN EMERGENCY.

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

Section 1

Section 1. HEALTH CARE TASK FORCE CREATED--TERMINATION.--There is created a joint interim legislative task force which shall be known as the "health care task force". The task force shall function from the date of its appointment until the first day of December prior to the second session of the forty-first legislature.

Section 2

Section 2. MEMBERSHIP--APPOINTMENT--VACANCIES.--

A. The task force shall be composed of twelve legislative members and eight non-legislative members. Six members of the house of representatives, one of whom shall be a member of the interim health and human services committee, shall be appointed by the speaker of the house of representatives, and six members of the senate shall be appointed by the committees' committee of the senate, or, if the senate appointments are made in the interim, by the president pro tempore of the senate after consultation with and agreement of a majority of the members of the committees' committee.

B. Members shall be appointed from each house so as to give the two major political parties in each house the same proportional representation on the task force as prevails in each house; however, in no event shall either party have less than one member from each house on the task force. Vacancies on the task force shall be filled by appointment in the same manner as the original appointments. The speaker of the house of representatives and the president pro tempore of the senate shall each appoint a co-chairman.

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

D. The non-legislative members of the task force who do not serve ex officio shall be appointed by the speaker of the house of representatives and the president pro tempore of the senate as follows:

(1) two public members representing the business community, one representing small employers and one representing large employers;

(2) a public member who is an attorney with expertise in the area of health care; and

(3) a health care reform advocate.

E. The additional non-legislative members shall be:

(1) the secretary of human services or his designee;

(2) the secretary of health or his designee;

(3) a representative of the New Mexico health policy commission appointed by the governor; and

(4) the superintendent of insurance or his designee.

F. The public members shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

G. Additionally, the speaker of the house of representatives and the president pro tempore of the senate may appoint an advisory group to the task force composed of representatives of health care providers, the New Mexico medical society, the New Mexico hospital association, the nursing profession, the association of counties, the municipal league, community-based providers, the insurance industry, consumers, employers, the workers' compensation administration, the retiree health care authority, the public school insurance authority and the risk management division of the general services department.

Section 3

Section 3. DUTIES.--After its appointment, the task force shall hold one organizational meeting to develop a workplan and budget for the ensuing interim. The workplan and budget shall be submitted to the legislative council for approval. Upon approval of the workplan and budget by the legislative council, the task force shall:

A. bring together the various groups working on issues related to health care reform to facilitate the development and implementation of a comprehensive health care delivery system for New Mexico;

B. receive regular briefings from the New Mexico health policy commission on the status of health policy research and planning recommendations related to the development of a comprehensive state health delivery system, including:

(1) the identification of the necessary elements for development of a comprehensive plan;

(2) identification of the necessary sequencing of the development of the plan; and

(3) the identification of the appropriate network for the delivery of services;

C. receive regular testimony from the New Mexico health policy commission and the Robert Wood Johnson foundation grant staff on the status of their work on health care reform;

D. receive information or testimony from the national health care reform task force and other states on federal or state health care initiatives;

E. receive testimony from experts responsible for peer review of statistical, financial and social assumptions and models and other areas of study performed by the health policy commission, the Robert Wood Johnson foundation grant staff and the health care task force;

F. receive and compare data on the different elements of the various health care models, including but not limited to the cooperative model, the single payer model, the pay or play model, the health trust fund model, the small insurance reform model and the market-oriented competitive model; and

G. generally establish a process to make recommendations to the legislature on access, availability, quality and cost issues relating to the development of a comprehensive health care delivery system. The task force shall recommend legislation or changes if any are found to be necessary to the second session of the forty-first legislature.

Section 4

Section 4. SUBCOMMITTEES.--Subcommittees shall be created only by majority vote of all members appointed to the task force and with the prior approval of the legislative council. A subcommittee shall be composed of at least one member from the senate and one member from the house of representatives, and at least one member of the minority party shall be a member of the subcommittee. All meetings and expenditures of a subcommittee shall be approved by the full task force in advance of such meeting or expenditure, and the approval shall be shown in the minutes of the task force.

Section 5

Section 5. REPORT.--The task force shall make a report of its findings and recommendations for the consideration of the second session of the forty-first legislature. The report and suggested legislation shall be made available to the legislative council, the legislative finance committee, the interim health and human services committee and the health policy commission on or before November 30 preceding that session.

Section 6

Section 6. STAFF.--The staff for the task force shall be provided by the legislative council service. The legislative council service at the direction of the task force may hire additional staff as necessary and may contract with experts, including economists, actuaries and the bureau of business and economic research to assist the task force in carrying out its tasks.

Section 7

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. HB 1023

CHAPTER 338

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; AMENDING EMINENT DOMAIN AND GATHERING LINE PROVISIONS FOR NATURAL GAS OR PETROLEUM PIPELINES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 70-3-5 NMSA 1978 (being Laws 1953, Chapter 42, Section 8, as amended) is amended to read:

"70-3-5. EMINENT DOMAIN POWER.--

A. Any person, firm, association or corporation may exercise the right of eminent domain to take and acquire the necessary right-of-way for the construction, maintenance and operation of pipelines, including microwave systems and structures and other necessary facilities for the purpose of conveyance of petroleum, natural gas, carbon dioxide gas and the products derived therefrom, but any such right-of-way shall in all cases be so located as to do the least damage to private or public property consistent with proper use and economical construction. Such land and right-of-way shall be acquired in the manner provided by the Eminent Domain Code. Pursuant to the requirements of Sections 42A-1-8 through 42A-1-12 NMSA 1978, the engineers, surveyors and other employees of such person, firm, association or corporation shall have the right to enter upon the lands and property of the state and of private persons and of private and public corporations for the purpose of making necessary surveys and examinations for selecting and locating suitable routes for such pipelines, microwave systems, structures and other necessary facilities, subject to responsibility for any damage done to such property in making surveys and examinations.

B. The authorization provided for pursuant to Subsection A of this section for pipelines conveying petroleum, natural gas, carbon dioxide gas and products derived therefrom shall apply to trunk lines, including lines owned or operated by public utilities or interstate pipelines connecting a well or wells under a purchase or conveying contract, and shall not apply to gathering lines other than pipelines owned or operated by public utilities or their affiliates or interstate pipelines or to operators of pipelines whose rates are prescribed or whose operations are licensed by the state corporation commission pursuant to Section 70-3-1 or 70-3-2 NMSA 1978. For the purposes of this subsection, the term "trunk line" is defined as the main transmission line which

transports petroleum, natural gas, carbon dioxide gas and the products derived therefrom from a producing area to the area where the petroleum, natural gas, carbon dioxide gas and the products derived therefrom are to be used. All other pipelines used in connection with such transportation of petroleum, natural gas, carbon dioxide gas and the products derived therefrom are defined as "gathering lines"."

Section 2

Section 2. Section 70-3A-2 NMSA 1978 (being Laws 1988, Chapter 26, Section 2) is amended to read:

"70-3A-2. DEFINITIONS.--As used in the Gathering Line Land Acquisition Act:

A. "mineral developer" means a mineral owner, operator, lessee or natural gas or petroleum pipeline company that is engaged in the production or conveyance by pipeline of natural gas or petroleum; and

B. "property owner" means the person who holds an ownership interest in the property to be acquired for the purpose of constructing a natural gas or petroleum gathering line or an associated disposal line, other than the property on which the well to be connected to a natural gas or petroleum gathering line or to be connected to an associated disposal line is to be located." HB 1062

CHAPTER 339

RELATING TO CAPITAL EXPENDITURES; CONTINUING THE AUTHORIZATIONS PROVIDED IN PARAGRAPH (2) OF SUBSECTION U OF SECTION 2 OF CHAPTER 6 OF LAWS 1990 (SS) AND SECTION 20 OF CHAPTER 113 OF LAWS 1992.

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

Section 1

Section 1. CAPITAL PROGRAM FUND--CONTINUED AUTHORIZATION.--Notwithstanding the provisions of Section 3 of Chapter 6 of Laws 1990 (SS), the authorization provided in Paragraph (2) of Subsection U of Section 2 of Chapter 6 of Laws 1990 (SS) for the New Day shelter for troubled youth in Bernalillo county is continued and shall not revert to the capital projects fund by the end of the eighty-first fiscal year. The authorization is continued until the end of the eighty-fourth fiscal year.

Section 2

Section 2. SEVERANCE TAX BONDS--CONTINUED AUTHORIZATION.--Notwithstanding the provisions of Subsection C of Section 1 of Chapter 113 of Laws 1992, the authorization provided in Section 20 of Chapter 113 of Laws 1992 for the New

Day shelter for troubled youth in Bernalillo county is continued and shall not be void by the end of the eighty-third fiscal year. If the general services department has not certified to the state board of finance the need for the issuance of the bonds by the end of the eighty-fourth fiscal year, the authorization for the issuance of the bonds for that project is void. SB 732

CHAPTER 340

RELATING TO PUBLIC ACCOUNTANCY; AMENDING CERTAIN SECTIONS OF THE PUBLIC ACCOUNTANCY ACT; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 61-28A-8 NMSA 1978 (being Laws 1992, Chapter 10, Section 8) is amended to read:

"61-28A-8. BOARD--POWERS AND DUTIES.--

A. The board shall retain or arrange for the retention of all applications, all documents under oath that are filed with the board and all records of its proceedings, and it shall maintain a registry of the names and addresses of all certificate and permit holders and registered firms.

B. The board may employ an executive director as an exempt employee and such other personnel as it deems necessary for its administration and enforcement of the Public Accountancy Act.

C. The board may retain its own counsel to advise and assist it in addition to such advice and assistance as is provided by the attorney general.

D. The board may sue and be sued in its official name as an agency of New Mexico. To promote fair and complete investigations and hearings, the board may issue subpoenas to compel the attendance of witnesses and the production of documents, administer oaths, take testimony and receive evidence concerning all matters within its jurisdiction according to the provisions of the Uniform Licensing Act and pursuant to rules adopted by the board.

E. The board shall adopt rules governing its administration and enforcement of the Public Accountancy Act. All rule making activities shall be carried out pursuant to the provisions of the Uniform Licensing Act.

F. The board may conduct investigations and hearings upon its own motion or after receiving notice from any person of an alleged violation of the Public Accountancy Act. All hearings regarding alleged violations of that act shall be conducted

pursuant to the provisions of the Uniform Licensing Act. Injunctions and appeals from board orders or decisions shall be pursued according to the provisions of the Uniform Licensing Act and the rules of civil procedure in the district courts.

G. The board shall promulgate rules governing the professional and ethical conduct of practitioners.

H. The board shall exercise such powers as are necessary to carry out the provisions of the Public Accountancy Act.

I. The board shall establish by rule the standards and means by which a practitioner may use a title, designation or abbreviation that indicates he is a specialist or has special expertise in conjunction with the practice of public accountancy."

Section 2

Section 2. Section 61-28A-9 NMSA 1978 (being Laws 1992, Chapter 10, Section 9) is amended to read:

"61-28A-9. CERTIFICATION--GENERAL.--The board shall grant a certificate to any person who:

A. has reached the age of majority;

B. meets the examination, education and experience requirements of the Public Accountancy Act; and

C. pays the fees prescribed in the Public Accountancy Act."

Section 3

Section 3. Section 61-28A-13 NMSA 1978 (being Laws 1992, Chapter 10, Section 13) is amended to read:

"61-28A-13. CERTIFICATION BY RECIPROCITY.--

A. The board shall grant a certificate by reciprocity to an individual seeking to practice in New Mexico after the applicant furnishes satisfactory evidence to the board that:

(1) the applicant holds a valid certificate from a reciprocal jurisdiction and has completed education, examination and experience requirements acceptable to the board; or

(2) the applicant meets all current requirements in New Mexico for issuance of a certificate at the time the application is made or that the applicant has:

(a) held a valid permit to practice public accountancy in the reciprocal jurisdiction for at least one year immediately preceding his application; and

(b) after passing the examination upon which his certificate was based and within ten years immediately preceding his application, had three years of experience in the practice of public accountancy or equivalent experience that meets requirements set forth in the Public Accountancy Act and in board rule.

B. A certified public accountant from a reciprocal jurisdiction who is authorized to practice in that jurisdiction and who applies for a certificate by reciprocity in New Mexico shall, from the date of filing a completed application that satisfies all requirements of the board, be deemed qualified to apply for a permit to practice and may practice public accountancy in New Mexico on a temporary permit until the board has acted upon his application; however, temporary authority to practice under this subsection shall not prevent the board from refusing, after complying with the provisions of the Uniform Licensing Act, to issue a certificate or permit if the applicant otherwise fails to qualify for a certificate under the Public Accountancy Act.

C. No certificate of registered public accountant shall be granted by reciprocity.

D. The board may collect from each applicant for a certificate by reciprocity a fee in an amount prescribed by board rule not to exceed one hundred fifty dollars ($150)."

Section 4

Section 4. Section 61-28A-15 NMSA 1978 (being Laws 1992, Chapter 10, Section 15) is amended to read:

"61-28A-15. REGISTRATION--FIRMS.--

A. All firms that are engaged in the practice of public accountancy in New Mexico shall register annually with the board.

B. Registration of firms shall require that:

(1) a sole practitioner shall be a holder of a current permit;

(2) any partnership desiring registration as a firm shall be composed solely of partners who hold current permits;

(3) any corporation shall be organized under the Professional Corporation Act or similar provisions of the laws of another state, and all shareholders shall hold current permits;

(4) if any partner, shareholder or member is a partnership, corporation or other form of business entity permitted by state law, that partnership, corporation or other form of business entity permitted by state law shall be a registered firm; and

(5) any partnership, corporation or other form of business entity permitted by state law seeking registration as a firm to allow it to engage in the practice of public accountancy in New Mexico shall provide documentation to the board that all partners, shareholders or members practicing in New Mexico hold current permits and that all partners, shareholders or members in the firm not practicing in New Mexico are duly authorized to practice public accountancy in a reciprocal jurisdiction.

C. Application for registration under this section shall be made upon affidavit of individuals and in a form specified by the board.

D. Registration shall be denied to any firm that has failed to comply with any provision of the Public Accountancy Act.

E. Failure of a firm practicing public accountancy in this state to file an annual application for registration renewal is cause for suspension or revocation of the right of the firm to practice in New Mexico.

F. The board may collect a registration fee prescribed by board rule not to exceed fifty dollars ($50.00) from firms required to register under this section.

G. Any registered firm whose registration has been cancelled for failure to pay the annual renewal fee may secure reinstatement of its registration at any time within three months following June 30 of the year of the delinquent payment upon payment of the annual renewal fee and of a delinquency fee prescribed by board rule not to exceed fifty dollars ($50.00). After the three-month period, no registration shall be reinstated except upon application and examination satisfactory to the board."

Section 5. Section 61-28A-17 NMSA 1978 (being Laws 1992, Chapter 10, Section 17) is amended to read:

"61-28A-17. ENFORCEMENT--UNLAWFUL ACTS.--

A. Except as provided in Subsection C of this section and in Section 61-28A-18 NMSA 1978, it is unlawful for any person to engage in practice in New Mexico unless he is the holder of a current permit to practice issued by the board.

B. Except as provided in Subsection C of this section and in Section 61-28A-18 NMSA 1978, no person or accountant shall issue a report or financial statement of any individual, firm, organization or governmental unit, or issue a report using any form of language conventionally used respecting a compilation or review of financial statements, unless he holds a current permit or firm registration issued under the Public

Accountancy Act. The state auditor and his auditing staff are considered to be in the practice of public accountancy.

C. With the exception of those individuals cited in Section 61-28A-18 NMSA 1978, any person or accountant who prepares any financial accounting and related statements and who is not the holder of a certificate or of a permit or registration under the provisions of the Public Accountancy Act shall include the following statement prominently on each page of any financial accounting, related statement and accompanying compilation or review transmittal letter: "The preparer of this statement is not the holder of a certificate or of a permit or registration under the Public Accountancy Act.".

D. No person or accountant shall indicate by title, designation, abbreviation, sign, card or device that he is a cerified public accountant, a registered public accountant or a public accountant unless he is currently certified by the board pursuant to the Public Accountancy Act or if he is a firm currently registered with the board pursuant to that act. Unless he is a holder of a current certificate or permit, no person or accountant shall utilize any title, initials or designation intended to or substantially likely to indicate to the public that he is a certified public accountant, registered public accountant or public accountant.

E. No individual holding a certificate shall engage in practice unless:

(1) he also holds a valid permit issued under the Public Accountancy Act; or

(2) he is an employee, and not a partner, officer, shareholder, or member of a firm registered with the board pursuant to that act.

F. No person holding a permit or registered with the board under the Public Accountancy Act shall engage in practice using a professional or firm name or designation that is misleading about the legal form of the firm; provided, however, that names of one or more former partners, shareholders or members may be included in the name of a firm or its successors.

G. No person shall sell, offer to sell or fraudulently obtain or furnish any certificate or permit of a certified public accountant or registered public accountant or a firm registration, nor shall he fraudulently register as a certified public accountant or registered public accountant or practice in this state without being granted a permit or registration as provided in the Public Accountancy Act.

H. A practitioner shall not pay a commission to obtain a client, nor accept a commission for a referral to a client of products or services of others; provided, however, that this subsection shall not prohibit payments for the purchase of all, or a material part, of an accounting practice, or retirement payments to persons formerly

engaged in the practice of public accountancy, or payment to the heirs or estates of such persons.

I. A practitioner shall not offer or perform professional services for a fee that is contingent upon the findings or results of such services; provided, however, that this subsection shall not apply to professional services involving federal, state or other taxes in which the findings are those of the tax authorities and not those of the practitioner or to professional services for which the fees are to be fixed by courts or other public authorities and which are therefore indeterminate in amount at the time the professional services are undertaken.

J. No practitioner shall sign or certify any financial statements if he knows the same to be materially false or fraudulent."

Section 6

Section 6. Section 61-28A-18 NMSA 1978 (being Laws 1992, Chapter 10, Section 18) is amended to read:
"61-28A-18. EXEMPTIONS--UNLAWFUL ACTS.--

A. Subsection B of Section 61-28A-17 NMSA 1978 does not prohibit:

(1) an officer, partner, shareholder, member or employee of any firm or organization from affixing his own signature to any statement or report in reference to the financial affairs of his firm or organization with any wording designating the position, title or office that he holds within the firm or organization;

(2) any act of a public official or employee in the performance of his duties; or

(3) the performance by any persons of other services, including management, financial advisory or consulting services, the preparation of tax returns, or the furnishing of advice on tax matters, and the preparation of financial statements without the issuance of reports thereon.

B. Nothing contained in the Public Accountancy Act shall prevent any individual from serving as an employee of or as an assistant to a certified public accountant, a registered public accountant or a firm engaged in practice; provided that such employee or assistant shall work under the control and supervision of a certified public accountant or registered public accountant who holds a permit issued pursuant to that act."

Section 7

Section 7. Section 61-28A-19 NMSA 1978 (being Laws 1992, Chapter 10, Section 19) is amended to read:

"61-28A-19. BUSINESS NAMES--PROHIBITIONS.--

A. No person engaged in practice shall use in a business name the words "company" or "and company" or a similar designation or any abbreviations thereof unless the person is a registered firm pursuant to the Public Accountancy Act and has more than one partner, shareholder or member and the business name contains the name of at least one current or former partner, shareholder or member. A business name may contain only the name or initials of a present or former partner, shareholder or member and the words "and company" or "company" or a similar designation or any abbreviation thereof.

B. Nothing contained in this section shall apply to, affect or limit the right of the remaining partner,
shareholder or member or added partners, shareholders or members in the continuous use of a business name adopted before the enactment of the Public Accountancy Act, even though the person whose name is included in the business name is no longer a partner, shareholder or member."

Section 8

Section 8. Section 61-28A-24 NMSA 1978 (being Laws 1992, Chapter 10, Section 24) is amended to read:

"61-28A-24. PAPERS--CLIENT'S RECORDS--CONFIDENTIAL COMMUNICATIONS.--

A. All statements, records, schedules, working papers and memoranda in practice by a practitioner or under the supervision of a practitioner incident to or in the course of rendering services to a client, except the reports submitted by the practitioner to the client and except for records that are part of the client's records, shall remain the property of the practitioner in the absence of an express agreement to the contrary.

B. A practitioner shall furnish to his client or former client, upon request with reasonable notice and reimbursement to the practitioner for the costs of providing such copies and information:

(1) a copy of the practitioner's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; and

(2) any accounting or other records belonging to or obtained from or on behalf of the client that the practitioner removed from the client's premises or received for the client's account; the practitioner may make and retain copies of such documents of the client when they form the basis for work done by him.

C. Except by permission of the client engaging a practitioner, or the heirs, successors or personal representatives of that client, a practitioner or any partner, officer, shareholder, member or employee of a practitioner shall not voluntarily disclose information communicated to him by the client relating to and in connection with services rendered to the client by the practitioner in the practice of public accountancy. All information communicated to a practitioner in his official capacity by his client shall be deemed confidential; provided, however, that nothing in this section shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the audit, review or compilation of financial statements or as prohibiting disclosures in court proceedings, in investigations of an official nature, in proceedings pursuant to provisions of the Public Accountancy Act, in ethical investigations conducted by private professional organizations or in the course of quality reviews. All financial statements, working papers or other documents utilized in connection with a quality review shall be confidential.

D. Nothing in this section shall be construed either to limit or expand the legal doctrines of discovery, privilege or confidentiality as recognized by the courts in New Mexico or the United States."

Section 9

Section 9. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. SB 789

CHAPTER 341

RELATING TO HEALTH; REQUIRING A TEST FOR SEXUALLY TRANSMITTED DISEASES FOR PERSONS CONVICTED OF CERTAIN CRIMINAL OFFENSES; AMENDING AND ENACTING SECTIONS OF THE PUBLIC HEALTH ACT.

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

Section 1

Section 1. Section 24-1-7 NMSA 1978 (being Laws 1973, Chapter 359, Section 7) is amended to read:

"24-1-7. SEXUALLY TRANSMITTED DISEASES--REPORTS OF CASES.--

A. Every physician who makes a diagnosis of or treats or prescribes for a case of a sexually transmitted disease, every superintendent or manager of a clinic, dispensary or charitable or penal institution in which there is a case of a sexually transmitted disease and every laboratory performing a positive laboratory test for a sexually transmitted disease shall report the case immediately, in writing, on a form

supplied by the department to the district health officer in the district in which they are located.

B. All district health officers shall make weekly reports to the department on forms supplied by the department of all cases of a sexually transmitted disease reported to them during the preceding week."

Section 2

Section 2. Section 24-1-8 NMSA 1978 (being Laws 1973, Chapter 359, Section 8) is amended to read:

"24-1-8. COMMUNICATION REGARDING SEXUALLY TRANSMITTED DISEASES.--If any attending physician knows or has good reason to suspect that a person having a sexually transmitted disease may conduct himself so as to expose other persons to infection, he shall notify the district health officer of the name and address of the diseased person and the facts of the case."

Section 3

Section 3. Section 24-1-9 NMSA 1978 (being Laws 1973, Chapter 359, Section 9) is amended to read:

"24-1-9. CAPACITY TO CONSENT TO EXAMINATION AND TREATMENT FOR A SEXUALLY TRANSMITTED DISEASE.--Any person regardless of age has the capacity to consent to an examination and treatment by a licensed physician for any sexually transmitted disease."

Section 4

Section 4. A new section of the Public Health Act, Section 24-1-9.1 NMSA 1978, is enacted to read:

"24-1-9.1. SEXUALLY TRANSMITTED DISEASES--TESTING OF PERSONS CONVICTED OF CERTAIN CRIMINAL OFFENSES.--

A. A test designed to identify any sexually transmitted disease may be performed on an offender convicted pursuant to state law of any criminal offense:

(1) involving contact between the penis and the vulva;

(2) involving contact between the penis and anus;

(3) involving contact between the mouth and penis;

(4) involving contact between the mouth and vulva;

(5) involving contact between the mouth and anus; or

(6) when the court determines from the facts of the case that there was a transmission or likelihood of transmission of bodily fluids from the offender to the victim of the criminal offense.

B. When consent to perform a test on an offender cannot be obtained, the victim of a criminal offense described in Subsection A of this section may petition the court to order that a test be performed on the offender. When the victim of the criminal offense is a minor or an incompetent, the parent or legal guardian of the victim may petition the court to order that a test be performed on the offender. The court shall order and the test shall be administered to the offender within ten days after the petition is filed by the victim, his parent or guardian. The results of the test shall be disclosed only to the offender and to the victim or the victim's parent or legal guardian."

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. SB 807

CHAPTER 342

RELATING TO HUMAN SERVICES; AMENDING A SECTION OF THE HUMAN SERVICES DEPARTMENT ACT AND A SECTION OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT ACT TO PROVIDE FOR INTERIM RULES AND REGULATIONS WHEN THERE ARE INSUFFICIENT STATE FUNDS TO OPERATE DEPARTMENT PROGRAMS; DECLARING AN EMERGENCY.

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

Section 1

Section 1. Section 9-2A-7 NMSA 1978 (being Laws 1992, Chapter 57, Section 7) is amended to read:

"9-2A-7. SECRETARY--DUTIES AND GENERAL POWERS.--

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

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

(1) except as otherwise provided in the Children, Youth and Families Department Act, exercise general supervisory and appointing power over all department employees, subject to applicable personnel laws and regulations;

(2) delegate power to subordinates as he deems necessary and appropriate, clearly delineating such delegated power and the limitations to that power;

(3) organize the department into organizational units as necessary to enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

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

(5) take administrative action by issuing orders and instructions, not inconsistent with law, to assure implementation of and compliance with the provisions of law for which administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operation of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objectives of improving the operations and efficiency of administration and of promoting comprehensive, coordinated, culturally sensitive services that address the whole child;

(8) prepare an annual budget for the department;

(9) provide cooperation, at the request of administratively attached agencies and adjunct agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, recordkeeping and related clerical assistance to administratively attached agencies; and

(10) provide for surety bond coverage for all employees of the department as provided in the Surety Bond Act. The department shall pay the costs of such bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation or proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act.

E. If the secretary certifies to the secretary of finance and administration and gives contemporaneous notice of such certification through the human services register that the department has insufficient state funds to operate any of the programs it administers and that reductions in services or benefit levels are necessary, the secretary may engage in interim rulemaking. Notwithstanding any provision to the contrary in the State Rules Act, interim rulemaking shall be conducted pursuant to Subsection D of this section, except:

(1) the period of notice of public hearing shall be fifteen days;

(2) the department shall send individual notices of the interim rulemaking and of the public hearing to affected providers and beneficiaries;

(3) rules and regulations promulgated under this subsection shall be in effect not less than five days after the public hearing;

(4) rules and regulations promulgated under this subsection shall not be in effect for more than ninety days; and

(5) if final rules and regulations are necessary to replace the interim rules and regulations, the department shall give notice of intent to promulgate final rules and regulations at the time of notice herein. The final rules and regulations shall be promulgated not more than forty-five days after the public hearing filed in accordance with the State Rules Act."

Section 2

Section 2. Section 9-8-6 NMSA 1978 (being Laws 1977, Chapter 252, Section 7, as amended) is amended to read:

"9-8-6. SECRETARY--DUTIES AND GENERAL POWERS.--

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

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

(1) except as otherwise provided in the Human Services Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

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

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

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

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

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

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies;

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary, except as provided in Section 9-8-9 NMSA 1978;

(11) give bond in the penal sum of twenty-five thousand dollars ($25,000) and require directors to each give bond in the penal sum of ten thousand dollars ($10,000) conditioned upon the faithful performance of duties as provided in the Surety Bond Act. The department shall pay the costs of these bonds; and

(12) require performance bonds of such department employees and officers as he deems necessary as provided in the Surety Bond Act. The department shall pay the costs of these bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap or a function assigned to one department could better be performed by another department, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the

secretary unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing.

F. In he event the secretary anticipates that adoption, amendment or repeal of a rule or regulation will be required by a cancellation, reduction or suspension of federal funds or order by a court of competent jurisdiction:

(1) if the secretary is notified by appropriate federal authorities at least sixty days prior to the effective date of such cancellation, reduction or termination of federal funds, the department is required to promulgate regulations through the public hearing process to be effective on the date mandated by the appropriate federal authority; or

(2) if the secretary is notified by appropriate federal authorities or court less than sixty days prior to the effective date of such cancellation, reduction or suspension of federal funds or court order, the department is authorized without a public hearing to promulgate interim rules or regulations effective for a period not to exceed ninety days. Such interim regulations shall not be promulgated without first providing a written notice twenty days in advance to providers of medical services andbeneficiaries of department programs. At the time of the promulgation of the interim rules or regulations, the department shall give notice of the public hearing on the final rules or regulations in accordance with Subsection E of this section.

G. If the secretary certifies to the secretary of finance and administration and gives contemporaneous notice of such certification through the human services register that the department has insufficient state funds to operate any of the programs it administers and that reductions in services or benefit levels are necessary, the secretary may engage in interim rulemaking. Notwithstanding any provision to the contrary in the State Rules Act, interim rulemaking shall be conducted pursuant to Subsection E of this section, except:

(1) the period of notice of public hearing shall be fifteen days;

(2) the department shall also send individual notices of the interim rulemaking and of the public hearing to affected providers and beneficiaries;

(3) rules and regulations promulgated under this subsection shall be in effect not less than five days after the public hearing;

(4) rules and regulations promulgated under this subsection shall not be in effect for more than ninety days; and

(5) if final rules and regulations are necessary to replace the interim rules and regulations, the department shall give notice of intent to promulgate final rules and regulations at the time of notice herein. The final rules and regulations shall be promulgated not more than forty-five days after the public hearing filed in accordance with the State Rules Act.

At the time of the promulgation of the interim rules or regulations, the department shall give notice of the public hearing on the final rules or regulations in accordance with Subsection E of this section.

H. All rules and regulations shall be filed in accordance with the State Rules Act."

Section 3

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. SB 819

CHAPTER 343

RELATING TO TAXATION; AMENDING A SECTION OF THE NMSA 1978 RELATING TO PROPERTY TAX; EXPANDING THE DEFINITION OF HEAD OF FAMILY.

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

Section 1

Section 1. Section 7-37-4 NMSA 1978 (being Laws 1973, Chapter 258, Section 37, as amended) is amended to read:

"7-37-4. HEAD-OF-FAMILY EXEMPTION.--

A. Up to two thousand dollars ($2,000) of the taxable value of residential property subject to the tax is exempt from the imposition of the tax if the property is owned by the head of a family who is a New Mexico resident or if the property is held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code, as those sections may be amended or renumbered, by a head of a family who is a New Mexico resident. The exemption allowed shall be in the following amounts for the specified property tax years:

(1) for the property tax years 1989 and 1990, the exemption shall be eight hundred dollars ($800);

(2) for the property tax years 1991 and 1992, the exemption shall be one thousand four hundred dollars ($1,400); and

(3) for the 1993 and subsequent tax years, the exemption shall be two thousand dollars ($2,000).

B. The exemption shall be deducted from taxable value of property to determine net taxable value of property.

C. The head-of-family exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and regulations of the department.

D. As used in this section, "head of a family" means an individual New Mexico resident who is either:

(1) a married person, but only one spouse in a household may qualify as a head of a family;

(2) a widow or a widower;

(3) a head of household furnishing more than one-half the cost of support of any related person;

(4) a single person, but only one person in a household may qualify as a head of family; or

(5) a member of a condominium association or like entity who pays property tax through the association.

E. A head of a family is entitled to the exemption allowed by this section only once in any tax year and may claim the exemption in only one county in any tax year even though the claimant may own property subject to valuation for property taxation purposes in more than one county." SB 832

CHAPTER 344

RELATING TO OFF-CAMPUS INSTRUCTION; PROVIDING FOR THE DISPOSITION OF PROPERTY; ENACTING A NEW SECTION OF THE OFF-CAMPUS INSTRUCTION ACT.

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

Section 1

Section 1. A new section of the Off-Campus Instruction Act is enacted to read:

"TITLE TO PROPERTY ACQUIRED.--All property acquired using the proceeds of a bond issue and all property acquired by gift, devolution or bequest shall be taken in the name of the local school board in the district in which the property is situate. All property held by the local school board pursuant to this section shall be used solely for the purpose of carrying out the provisions of the Off-Campus Instruction Act until such time as the off-campus instruction program ceases to exist. At such time, the property so held by the local school board may be utilized for other purposes within the scope of authority of the local school board." HB 532

CHAPTER 345

RELATING TO MAGISTRATE COURT; AMENDING A CERTAIN SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 35-1-24 NMSA 1978 (being Laws 1968, Chapter 62, Section 26, as amended) is amended to read:

"35-1-24. MAGISTRATE COURT--RIO ARRIBA DISTRICT.--There shall be two magistrates in Rio Arriba magistrate district, divisions 1 and 2 operating as a single court in Espanola. The magistrates shall rotate riding circuit to Chama as needed." HB 548

CHAPTER 346

RELATING TO TAXATION; ENACTING THE MUNICIPAL LOCAL OPTION GROSS RECEIPTS TAXES ACT; AMENDING AND RECOMPILING CERTAIN PROVISIONS OF CERTAIN MUNICIPAL GROSS RECEIPTS TAX ACTS; AMENDING, REPEALING, ENACTING AND RECOMPILING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. A new section of the Municipal Local Option Gross Receipts Taxes Act, Section 7-19D-1 NMSA 1978, is enacted to read:

"7-19D-1. SHORT TITLE.--Chapter 7, Article 19D NMSA 1978 may be cited as the "Municipal Local Option Gross Receipts Taxes Act"."

Section 2

Section 2. A new section of the Municipal Local Option Gross Receipts Taxes Act, Section 7-19D-2 NMSA 1978, is enacted to read:

"7-19D-2. DEFINITIONS.--As used in the Municipal Local Option Gross Receipts Taxes Act:

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

B. "governing body" means the city council or city commission of a city, the board of trustees of a town or village and the board of county commissioners of H-class counties;

C. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, and an H-class county;

D. "person" means an individual or any other legal entity; and

E. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act."

Section 3

Section 3. A new section of the Municipal Local Option Gross Receipts Taxes Act, Section 7-19D-3 NMSA 1978, is enacted to read:

"7-19D-3. EFFECTIVE DATE OF ORDINANCE.--An ordinance imposing, amending or repealing a tax or an increment of tax authorized by the Municipal Local Option Gross Receipts Taxes Act shall be effective on July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the adopted ordinance is mailed or delivered to the department. The ordinance shall include that effective date."

Section 4

Section 4. A new section of the Municipal Local Option Gross Receipts Taxes Act, Section 7-19D-4 NMSA 1978, is enacted to read:

"7-19D-4. ORDINANCE SHALL CONFORM TO CERTAIN PROVISIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND REQUIREMENTS OF THE DEPARTMENT.--

A. An ordinance imposing a tax under the provisions of the Municipal Local Option Gross Receipts Taxes Act shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act then in effect and as it may be amended from time to time.

B. The governing body of any municipality imposing a tax under the Municipal Local Option Gross Receipts Taxes Act shall impose the tax by adopting the model ordinance with respect to the tax furnished to the municipality by the department. An ordinance that does not conform substantially to the model ordinance of the department is not valid."

Section 5

Section 5. A new section of the Municipal Local Option Gross Receipts Taxes Act, Section 7-19D-5 NMSA 1978, is enacted to read:

"7-19D-5. SPECIFIC EXEMPTIONS.--No tax authorized under the provisions of the Municipal Local Option Gross Receipts Taxes Act shall be imposed on the gross receipts arising from:

A. the transmission of messages by wire or other means from one point within the municipality to another point outside the municipality;

B. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or

C. a business located outside the boundaries of a municipality on land owned by that municipality for which a state gross receipts tax distribution is made pursuant to Subsection C of Section 7--6.4 NMSA 1978."

Section 6

Section 6. A new section of the Municipal Local Option Gross Receipts Taxes Act, Section 7-19D-6 NMSA 1978, is enacted to read:

"7-19D-6. COPY OF ORDINANCE TO BE SUBMITTED TO DEPARTMENT.--A certified copy of the ordinance imposing or repealing a tax authorized under the Municipal Local Option Gross Receipts Taxes Act or changing the tax rate imposed shall be mailed or delivered to the department within five days after the later of the date

the ordinance is adopted or the date the results of any election held with respect to the ordinance are certified to be in favor of the ordinance."

Section 7

Section 7. A new section of the Municipal Local Option Gross Receipts Taxes Act, Section 7-19D-7 NMSA 1978, is enacted to read:

"7-19D-7. COLLECTION BY DEPARTMENT--TRANSFER OF PROCEEDS--DEDUCTIONS.--

A. The department shall collect each tax imposed under the provisions of the Municipal Local Option Gross Receipts Taxes Act in the same manner and at the same time it collects the state gross receipts tax.

B. Except as provided in Subsection C of this section, the department may deduct an amount not to exceed three percent of each tax collected under the provisions of the Municipal Local Option Gross Receipts Taxes Act as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the state general fund each month. The department shall transfer to each municipality for which it is collecting a tax under the provisions of the Municipal Local Option Gross Receipts Taxes Act the amount of each tax collected for that municipality, less any disbursement for administrative charges made pursuant to this section, tax credits, refunds and the payment of interest applicable to the tax. The transfer to the municipality shall be made within the month following the month in which the tax is collected.

C. With respect to the municipal gross receipts tax imposed by a municipality pursuant to Section 7-19D-9 NMSA 1978, the department may deduct as a charge for administration an amount equal to three percent of the portion of the municipal gross receipts tax arising from a municipal gross receipts tax rate in excess of one-half of one percent."

Section 8

Section 8. A new section of the Municipal Local Option Gross Receipts Taxes Act, Section 7-19D-8 NMSA 1978, is enacted to read:

"7-19D-8. INTERPRETATION OF ACT--ADMINISTRATION AND ENFORCEMENT OF ACT.--

A. The department shall interpret the provisions of the Municipal Local Option Gross Receipts Taxes Act.

B. The department shall administer and enforce the collection of each tax authorized under the provisions of the Municipal Local Option Gross Receipts Taxes

Act, and the Tax Administration Act applies to the administration and enforcement of each tax."

Section 9

Section 9. Section 7-19-4 NMSA 1978 (being Laws 1978, Chapter 151, Section 1, as amended) is recompiled as Section 7-19D-9 NMSA 1978 and is amended to read:

"7-19D-9. MUNICIPAL GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE RATE.--

A. The majority of the members of the governing body of any municipality may impose by ordinance an excise tax not to exceed a rate of one and one-fourth percent of the gross receipts of any person engaging in business in the municipality for the privilege of engaging in business in the municipality. A tax imposed pursuant to this section shall be imposed by the enactment of one or more ordinances, each imposing any number of municipal gross receipts tax rate increments, but the total municipal gross receipts tax rate imposed by all ordinances shall not exceed an aggregate rate of one and one-fourth percent of the gross receipts of a person engaging in business. Municipalities with a population of at least forty-five thousand according to the last federal decennial census may impose increments of one-eighth of one percent. All other municipalities may impose increments of one-fourth of one percent.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "municipal gross
receipts tax".

C. The governing body of a municipality may, at the time of enacting an ordinance imposing the tax authorized in Subsection A of this section, dedicate the revenue for a specific purpose or area of municipal government services, including but not limited to police protection, fire protection, public transportation or street repair and maintenance. If the governing body proposes to dedicate such revenue, the ordinance and, if any election is held, the ballot shall clearly state the purpose to which the revenue will be dedicated, and any revenue so dedicated shall be used by the municipality for that purpose unless a subsequent ordinance is adopted to change the purpose to which dedicated or to place the revenue in the general fund of the municipality.

D. An election shall be called on the questions of disapproval or approval of any ordinance enacted pursuant to Subsection A of this section or any ordinance amending such ordinance:

(1) if the governing body chooses to provide in the ordinance that it shall not be effective until the ordinance is approved by the majority of the registered voters voting on the question at an election to be held pursuant to the provisions of a

home-rule charter or on a date set by the governing body and pursuant to the provisions of the Municipal Election Code governing special elections; or

(2) if the ordinance does not contain a mandatory election provision as provided in Paragraph (1) of this subsection, upon the filing of a petition requesting such an election if the petition is filed:

(a) pursuant to the requirements of a referendum provision contained in a municipal home-rule charter and signed by the number of registered voters in the municipality equal to the number of registered voters required in its charter to seek a referendum; or

(b) in all other municipalities, with the municipal clerk within thirty days after the adoption of such ordinance and the petition has been signed by a number of registered voters in the municipality equal to at least five percent of the number of the voters in the municipality who were registered to vote in the most recent regular municipal election.

E. The signatures on the petition filed in accordance with Subsection D of this section shall be verified by the municipal clerk. If the petition is verified by the municipal clerk as containing the required number of signatures of registered voters, the governing body shall adopt an election resolution calling for the holding of a special election on the question of approving or disapproving the ordinance unless the ordinance is repealed before the adoption of the election resolution. An election held pursuant to Subparagraph (a) or (b) of Paragraph 2 of Subsection D of this section shall be called, conducted and canvassed as provided in the Municipal Election Code for special elections, and the election shall be held within seventy-five days after the date the petition is verified by the municipal clerk or it may be held in conjunction with a regular municipal election if such election occurs within seventy-five days after the date of verification by the municipal clerk.

F. If at an election called pursuant to Subsection D of this section a majority of the registered voters voting on the question approves the ordinance imposing the tax, then the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act. If at such an election a majority of the registered voters voting on the question disapproves the ordinance, then the ordinance imposing the tax shall be deemed repealed, and the question of imposing any increment of the municipal gross receipts tax authorized in this section shall not be considered again by the governing body for a period of one year from the date of the election.

G. Any municipality that has lawfully imposed by the requirements of the Special Municipal Gross Receipts Tax Act a rate of at least one-fourth of one percent shall be deemed to have imposed one-fourth of one percent municipal gross receipts tax pursuant to this section. Any rate of tax deemed to be imposed pursuant to this subsection shall continue to be dedicated to the payment of outstanding bonds issued

by the municipality that pledged the tax revenues by ordinance until such time as the bonds are fully paid. A municipality may by ordinance change the purpose for any rate of tax deemed to be imposed at any time the revenues are not committed to payment of bonds.

H. Any law which imposes or authorizes the imposition of a municipal gross receipts tax or which affects the municipal gross receipts tax, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds which may be secured by a pledge of such municipal gross receipts tax unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor."

Section 10

Section 10. Section 7-19B-3 NMSA 1978 (being Laws 1990, Chapter 99, Section 51) is recompiled as Section 7-19D-10 NMSA 1978 and is amended to read:

"7-19D-10. MUNICIPAL ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE--ORDINANCE REQUIREMENTS.--

A. The majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business. The rate of the tax shall be one-sixteenth of one percent of the gross receipts of the person engaging in business. The imposition of this tax is not subject to referendum of any kind unless required by a municipal charter.

B. The tax imposed in accordance with Subsection A of this section may be referred to as the "municipal environmental services gross receipts tax".

C. The governing body of a municipality shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for acquisition, construction, operation and maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities."

Section 11

Section 11. Section 7-19C-3 NMSA 1978 (being Laws 1991, Chapter 9, Section 3, as amended) is recompiled as Section 7-19D-11 NMSA 1978 and is amended to read:

"7-19D-11. MUNICIPAL INFRASTRUCTURE GROSS RECEIPTS TAX--AUTHORITY BY MUNICIPALITY TO IMPOSE--ORDINANCE REQUIREMENTS.--

A. A majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business. The rate of the tax shall not exceed one-eighth of one percent of the gross receipts of the person engaging in business and prior to July 1, 1993 may be imposed in one-sixteenth of one percent increments by separate ordinances. Any ordinance enacted is not subject to a referendum of any kind, notwithstanding any requirement of any charter municipality.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "municipal infrastructure gross receipts tax".

C. The governing body of a municipality, at the time of enacting any ordinance imposing the rate of the tax authorized in Subsection A of this section, may dedicate the revenue either for payment of special obligation bonds issued pursuant to a revenue bond act or for repair, replacement, construction or acquisition of infrastructure improvements, including but not limited to sanitary sewer lines, storm sewers and other drainage improvements, water, water rights, water lines and utilities, streets, alleys, rights of way, easements, international ports of entry and land within the municipality or within the extraterritorial zone of the municipality, or may use the revenue for municipal general purposes."

Section 12

Section 12. REPEAL.--

A. Sections 7-19-1, 7-19-2 and 7-19-4.1 through 7-19-9 NMSA 1978 (being Laws 1975 (S.S.), Chapter 16, Sections 1 and 2, Laws 1979, Chapter 155, Section 2 and Laws 1975 (S.S.), Chapter 16, Sections 4 through 8, as amended) are repealed.

B. Sections 7-19B-1, 7-19B-2 and 7-19B-4 through 7-19B-7 NMSA 1978(being Laws 1990, Chapter 99, Sections 49, 50 and 52 through 55) are repealed.

C. Sections 7-19C-1, 7-19C-2 and 7-19C-4 through 7-19C-7 NMSA 1978 (being Laws 1991, Chapter 9, Sections 1, 2 and 4 through 7) are repealed.

Section 13

Section 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. SB 16

CHAPTER 347

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE MOTOR VEHICLE EXCISE TAX ACT TO REQUIRE ADDITIONAL INFORMATION ON A

REQUIRED REPORT, TO ASSESS PENALTIES AND INTEREST, TO PROVIDE FOR PROTESTS UPON IMPOSITION OF PENALTIES AND INTEREST AND TO PROVIDE FOR REFUNDS IN CERTAIN CIRCUMSTANCES; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-14-7.1 NMSA 1978 (being Laws 1991, Chapter 197, Section 4) is amended to read:

"7-14-7.1. CREDIT--VEHICLES USED FOR SHORT-TERM LEASING--REQUIREMENTS-- REPORTS.--

A. Upon application of the owner, the secretary shall suspend payment of the motor vehicle excise tax and issue a certificate of title without payment of the motor vehicle excise tax for any vehicle the leasing of which is subject to the Leased Vehicle Gross Receipts Tax Act, if:

(1) the vehicle is acquired by the owner on or after July 1, 1991;

(2) the vehicle is required to be registered in this state;

(3) the owner presents proof satisfactory to the secretary that the owner is registered with the department to pay the leased vehicle gross receipts tax; and

(4) the owner declares that the vehicle for which issuance of a certificate of title is being applied will be part of a vehicle fleet of at least five vehicles, will be used primarily as a short-term rental vehicle and that each period of rental or lease will not exceed six months.

B. If an owner has paid the motor vehicle excise tax after July 1, 1991 with respect to a vehicle that qualifies for suspension of the motor vehicle excise tax pursuant to Subsection A of this section, the owner may apply for a refund of the motor vehicle excise tax paid, but the application for refund must be made within one year of the date certificate of title was issued to the owner for the vehicle. If application is made after that time, the claim for refund is not timely and the motor vehicle excise tax paid shall not be refunded.

C. By the end of the month following the end of each calendar quarter, the owner of any vehicle for which payment of the motor vehicle excise tax is suspended pursuant to Subsection A of this section shall submit a report to the department in a form prescribed by the secretary. The report shall show for each vehicle owned at the end of the calendar quarter for which payment of the motor vehicle excise

tax is suspended pursuant to Subsection A of this section at any time during the quarter: the vehicle identification number; the date on which the certificate of title was issued; the amount of motor vehicle excise tax suspended; the amount of leased vehicle gross receipts tax paid with respect to each vehicle during the quarter; the total cumulative amount of leased vehicle gross receipts tax paid with respect to each vehicle; and any other information the secretary may require.

D. The amount of leased vehicle gross receipts tax paid with respect to a vehicle for which payment of the motor vehicle excise tax is suspended pursuant to Subsection A of this section shall be credited against the amount of motor vehicle excise tax due on that vehicle.

E. Once the total amount of leased vehicle gross receipts tax credited with respect to a vehicle for which payment of the motor vehicle excise tax is suspended pursuant to Subsection A of this section equals or exceeds the amount of motor vehicle excise tax due on that vehicle, the secretary shall cause the records of the department to indicate that the motor vehicle excise tax due with respect to that vehicle is paid in full and that payment is no longer suspended.

F. If, by the end of the fourth calendar quarter following the quarter in which a vehicle is acquired for which payment of the motor vehicle excise tax is suspended pursuant to Subsection A of this section, the total amount of leased vehicle gross receipts tax credited with respect to that vehicle is less than the amount of motor vehicle excise tax suspended for that vehicle, the owner of the vehicle shall pay the difference to the department. Payment shall accompany the report required by Subsection C of this section for that quarter.

G. A vehicle for which payment of the motor vehicle excise tax is suspended pursuant to Subsection A of
this section shall not be transferred to another person and a new certificate of title shall not be issued until the owner of the vehicle pays to the department the excess, if any, of the amount of motor vehicle excise tax suspended pursuant to Subsection A of this section and the amount of leased vehicle gross receipts tax credited with respect to that vehicle."

Section 2

Section 2. Section 7-14-9 NMSA 1978 (being Laws 1988, Chapter 73, Section 19) is amended to read:

"7-14-9. REFUNDS--PROCEDURES.--

A. If any person believes that the person has made payment of any motor vehicle excise tax in excess of that for which the person was liable or has been denied any credit against motor vehicle excise tax, that person may claim a refund by directing

to the secretary a claim for refund in accordance with the provisions of Section 7-1-26 NMSA 1978.

B. The department may authorize refunds of the motor vehicle excise tax in accordance with the provisions of Section 7-1-29 NMSA 1978."

Section 3

Section 3. Section 7-14-10 NMSA 1978 (being Laws 1988, Chapter 73, Section 20, as amended) is amended to read:

"7-14-10. DISTRIBUTION OF PROCEEDS.--The receipts from the motor vehicle excise tax and any associated interest and penalties shall be deposited in the "motor vehicle suspense fund", hereby created in the state treasury. As of the end of each month, the net receipts attributable to the motor vehicle excise tax and associated penalties and interest shall be distributed as follows:

A. three-fourths to the general fund; and

B. one-fourth to the local governments road fund."

Section 4

Section 4. A new section of the Motor Vehicle Excise Tax Act is enacted to read:

"PROTESTS.--

A. Any person upon whom a penalty is imposed by the Motor Vehicle Excise Tax Act may protest the imposition of the penalty in accordance with the provisions of Sections 7-1-24 and 7-1-25 NMSA 1978.

B. Any person whose claim for refund of motor vehicle excise tax is denied in whole or in part may protest the denial in accordance with the provisions of Sections 7-1-24 and 7-1-25 NMSA 1978."

Section 5

Section 5. A new section of the Motor Vehicle Excise Tax Act is enacted to read:

"PENALTIES FOR FAILURE TO SUBMIT REPORT OR TO PAY--INTEREST.--

A. Any person required to submit the report required by Subsection C of Section 7-14-7.1 NMSA 1978 who does not file the report in the manner and by the date required shall pay a penalty in an amount equal to five percent of the total amount of motor vehicle excise tax suspended pursuant to Subsection A of Section 7-14-7.1 NMSA 1978 for vehicles required to be included in the report.

B. Any person required to pay any amount of motor vehicle excise tax pursuant to Subsection F or G of Section 7-14-7.1 NMSA 1978 who fails to pay the amount by the date required is liable for penalty in an amount equal to the greater of five dollars ($5.00) or two percent per month or any fraction of a month from the date the tax was due multiplied by the amount of motor vehicle excise tax due but not paid, not to exceed a maximum of ten percent of the tax due but not paid.

C. If any person required to pay any amount of motor vehicle excise tax pursuant to Subsection F or G of Section 7-14-7.1 NMSA 1978 fails to pay the amount by the date required, interest shall be paid to the state on such amount in accordance with the provisions of Section 7-1-67 NMSA 1978."

Section 6

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 59

CHAPTER 348

RELATING TO COUNTIES; CHANGING CERTAIN DISTRIBUTIONS TO SMALL COUNTIES FROM THE SMALL COUNTIES ASSISTANCE FUND; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 4-61-2 NMSA 1978 (being Laws 1982, Chapter 44, Section 2, as amended) is amended to read:

"4-61-2. DEFINITIONS.--As used in the Small Counties Assistance Act:

A. "population" means the official population shown by the most recent federal decennial census or, if there is a change in boundaries after the date of the census, "population" for each affected unit shall be the most current estimated population for that unit provided in writing by the bureau of business and economic research at the university of New Mexico; provided that after five years from the first day of the calendar year of the most recent federal decennial census, that census shall not be used, and "population" for the period from that date until the date when the next following official final decennial census population data are available shall be the most current estimated population provided in writing by the bureau of business and economic research at the university of New Mexico; and

B. "qualifying county" means a county that has:

(1) for the property tax year in which any distribution under the Small Counties Assistance Act is made to the county, imposed a property tax rate for general county purposes pursuant to Paragraph (1) of Subsection B of Section 7-37-7 NMSA 1978 as limited by Section 7-37-7.1 NMSA 1978 of at least eight dollars eighty-five cents ($8.85) per one thousand dollars ($1,000) of net taxable value;

(2) by July 1 of the property tax year in which any distribution under the Small Counties Assistance Act is made to the county, received a written certification from the director of the property tax division of the taxation and revenue department that the county assessor of that county has implemented an acceptable program of maintaining current and correct property values for property taxation purposes as required by Section 7-36-16 NMSA 1978 or has submitted to the director an acceptable plan for the implementation of such a program; and

(3) on July 1 of the year in which any distribution under the Small Counties Assistance Act is made to the county, a population of not more than forty-five thousand five hundred."

Section 2

Section 2. Section 4-61-3 NMSA 1978 (being Laws 1982, Chapter 44, Section 3, as amended) is amended to read:

"4-61-3. SMALL COUNTIES ASSISTANCE FUND--DISTRIBUTION.--

A. The "small counties assistance fund" is created within the state treasury.

B. On July 1, 1982 and on July 1 of each year thereafter, the local government division of the department of finance and administration shall certify to the state treasurer the population of the state and the population of each county in the state.

C. On September 1, 1982 and on September 1 of each year thereafter, the local government division of the department of finance and administration shall certify to the state treasurer the revenue amounts received by each qualifying county in the fiscal year ended on the preceding June 30 fromproperty taxes for general county purposes imposed under the Property Tax Code and taxes imposed under the Oil and Gas Ad Valorem Production Tax Act, the Oil and Gas Production Equipment Ad Valorem Tax Act and the Copper Production Ad Valorem Tax Act for general county purposes.

D. On or before September l5, l982 and on or before September l5 of each year thereafter, the state treasurer shall distribute to each qualifying county from the small counties assistance fund an amount certified to him by the director of the local government division of the department of finance and administration. The distribution to a qualifying county shall be an amount equal to the amount by which the product of

multiplying a county's population by twenty-five dollars ($25.00) exceeds thirty percent of the total of the revenue amounts certified for that county under Subsection C of this section, subject to the following:

(1) if the calculated distribution for a class C or first class county exceeds two hundred thousand dollars ($200,000), it shall be reduced to two hundred thousand dollars ($200,000);

(2) if the calculated distribution for a class B county exceeds one hundred fifty thousand dollars ($150,000), it shall be reduced to one hundred fifty thousand dollars ($150,000);

(3) if the calculated distribution for a first class county is:

(a) zero or less than zero or that county has a population of not more than twelve thousand five hundred, it shall be two hundred thousand dollars ($200,000); or

(b) greater than zero but less than two hundred thousand dollars ($200,000), it shall be increased to two hundred thousand dollars ($200,000);

(4) if the calculated distribution for a class C county is greater than zero but less than two hundred thousand dollars ($200,000) or that county has a population of not more than twelve thousand five hundred, it shall be increased to two hundred thousand dollars ($200,000); and

(5) if the calculated distribution for a class B county is greater than zero but less than one hundred thousand dollars ($100,000) or that county has a population of not more than twelve thousand five hundred, it shall be increased to one hundred thousand dollars ($100,000).

E. If the balance in the small counties assistance fund as of the preceding August 31 is less than the sum of the distributions to be made to qualifying counties, the director of the local government division of the department of finance and administration shall reduce each qualifying county's calculated distribution by a percentage computed by dividing the amount by which the fund is insufficient by the sum of all the calculated distributions, and he shall certify the reduced amounts as the qualifying counties' distributions.

F. Any interest accruing from the temporary investment of the small counties assistance fund prior to September 15 shall be credited to the general fund.

G. Immediately after distribution to qualifying counties from the small counties assistance fund, but no later than September 20 of each year, the unexpended or unencumbered balance in the fund shall revert to the general fund."

Section 3

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 89

CHAPTER 349

RELATING TO MOTOR VEHICLES; PROVIDING THAT FAILURE TO BE SECURED BY A SAFETY DEVICE SHALL NOT CONSTITUTE FAULT OR NEGLIGENCE AND SHALL NOT LIMIT DAMAGES; AMENDING A SECTION OF THE SAFETY BELT USE ACT.

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

Section 1

Section 1. Section 66-7-373 NMSA 1978 (being Laws 1985, Chapter 131, Section 4, as amended) is amended to read:

"66-7-373. ENFORCEMENT PROGRAMS.--

A. Failure to be secured by a child passenger restraint device or by a safety belt as required by the Safety Belt Use Act shall not in any instance constitute fault or negligence and shall not limit or apportion damages.

B. The traffic safety bureau of the state highway and transportation department, in cooperation with the state department of public education and the department of health shall, to the extent that funding allows, provide education to encourage compliance with the use of restraint devices in reducing the risk of harm to their users as well as to others.

C. The traffic safety bureau of the state highway and transportation department shall evaluate the effectiveness of the Safety Belt Use Act and shall include a report of its findings in the annual evaluation report on its highway safety plan that it submits to the national highway traffic safety administration and the federal highway administration under 23 U.S.C. 402.

D. The provisions of the Safety Belt Use Act shall be enforced whether or not associated with the enforcement of any other statute."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. SB 171

CHAPTER 350

RELATING TO INSURANCE; PROVIDING FOR HOMEOWNER'S CASUALTY INSURANCE PROTECTION; ENACTING A NEW SECTION OF THE NEW MEXICO INSURANCE CODE.

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

Section 1

Section 1. A new section of the New Mexico Insurance Code is enacted to read:

"HOMEOWNER'S CASUALTY INSURANCE--PREMIUM RATE AND POLICY--PROTECTION AFTER NATURAL DISASTER.--

A. A homeowner's casualty insurance policy shall not be canceled or denied renewal because of a homeowner's claim made as a result of damages caused by a natural disaster to the homeowner's private residence provided that the homeowner's policy expressly provides for such coverage.

B. The provisions of this section apply to all insurance carriers authorized under the Insurance Code to transact homeowner's casualty insurance policies." SB 388

CHAPTER 351

RELATING TO UTILITIES; PROVIDING A DEFINITION; CLARIFYING THE POWER OF THE NEW MEXICO PUBLIC SERVICE COMMISSION TO OBTAIN CERTAIN MATERIALS FROM A UTILITY; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 62-13-1 NMSA 1978 (being Laws 1941, Chapter 84, Section 80) is amended to read:

"62-13-1. SHORT TITLE.--Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978 may be cited as the "Public Utility Act"."

Section 2

Section 2. Section 62-3-3 NMSA 1978 (being Laws 1967, Chapter 96, Section 3, as amended) is amended to read:

"62-3-3. DEFINITIONS, WORDS AND PHRASES.--Unless otherwise specified, when used in the Public Utility Act, as amended:

A. "affiliated interest" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a public utility. Control includes instances where a person is an officer, director, partner, trustee or person of similar status or function, or who owns directly or indirectly or has a beneficial interest in ten percent or more of any class of securities of a person;

B. "commission" means the New Mexico public service commission;

C. "commissioners" means any member of the commission;

D. "municipality" means any municipal corporation organized under the laws of the state and H class counties;

E. "person" means individuals, firms, partnerships, companies, rural electric cooperatives organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, as amended, corporations and lessees, trustees or receivers appointed by any court. It shall not mean any municipality as defined in this section unless the municipality has elected to come within the terms of the Public Utility Act, as amended, as provided in Section 62-6-5 NMSA 1978. In the absence of such voluntary election by any municipality to come within the provisions of the Public Utility Act, as amended, the municipality shall be expressly excluded from the operation of that act and from the operation of all of its provisions, and no such municipality shall for any purpose be considered a public utility;

F. "securities" means stock, stock certificates, bonds, notes, debentures, mortgages or deeds of trust or other evidences of indebtedness issued, executed or assumed by any utility;

G. "public utility" or "utility" means every person not engaged solely in interstate business and, except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that now does or hereafter may own, operate, lease or control:

(1) any plant, property or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses;

(2) any plant, property or facility for the manufacture, storage, distribution, sale or furnishing to or for the public of natural or manufactured gas or mixed or liquefied petroleum gas, for light, heat or power or for other uses; but the term "public utility" or "utility" shall not include any plant, property or facility used for or in connection with the business of the manufacture, storage, distribution, sale or furnishing of liquefied petroleum gas in enclosed containers or tank truck for use by others than

consumers who receive their supply through any pipeline system operating under municipal authority or franchise, and distributing to the public;

(3) any plant, property or facility for the supplying, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, domestic or other uses; provided, however, nothing contained in this paragraph shall be construed to apply to irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(4) any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam for heat or power or other uses; or

(5) any plant, property or facility for the supplying and furnishing to or for the public of sanitary sewers for transmission and disposal of sewage produced by manufacturing, municipal, domestic or other uses;

H. "rate" means every rate, tariff, charge or other compensation for utility service rendered or to be rendered by any utility and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, tariff, charge or other compensation and any schedule or tariff or part of a schedule or tariff thereof;

I. "service" or "service regulation" means every rule, regulation, practice, act or requirement in any way relating to the service or facility of a utility;

J. "Class I transaction" means the sale, lease or provision of real property, water rights or other goods or services by an affiliated interest to any public utility with which it is affiliated or by a public utility to its affiliated interest;

K. "Class II transaction" means:

(1) the formation after the effective date of this 1982 act of a corporate subsidiary by a public utility or a public utility holding company by a public utility or its affiliated interest;

(2) the direct acquisition of the voting securities or other direct ownership interests of a person by a public utility if such acquisition would make the utility the owner of ten percent or more of the voting securities or other direct ownership interests of that person;

(3) the agreement by a public utility to purchase securities or other ownership interest of a person other than a nonprofit corporation, contribute additional equity to, aquire additional equity interest in or pay or guarantee any bonds, notes, debentures, deeds of trust or other evidence of indebtedness of any such person; provided, however, that a public utility may honor all agreements entered into by such utility prior to the effective date of this 1982 act; or

(4) the divestiture by a public utility of any affiliated interest which is a corporate subsidiary of the public utility;

L. "corporate subsidiary" means any person ten percent or more of whose voting securities or other ownership interests are directly owned by a public utility; and

M. "public utility holding company" means an affiliated interest which controls a public utility through the direct or indirect ownership of voting securities of such public utility."

Section 3

Section 3. Section 62-6-17 NMSA 1978 (being Laws 1941, Chapter 84, Section 29, as amended) is amended to read:

"62-6-17. OFFICE, BOOKS AND RECORDS--SANCTION--PENALTY.--

A. Every utility furnishing service within the state shall maintain an office located in the state. The commission by order may require any utility or any officer or agent of any utility to produce within the state or provide access to, at such reasonable time and place as the commission may designate, any books, records, accounts or documents kept in any office or place within or without the state, or certified copies thereof, whenever the production thereof is reasonably required and pertinent to any matter under investigation before the commission.

B. Whenever the production of books, records, accounts or documents is reasonably required by the commission and pertinent to any matter under investigation before the commission, the commission may require the utility or any affiliated interest participating in a Class I or II transaction to produce or provide access to, at such reasonable time and place as the commission may designate, such books, records, accounts or documents.

C. Any person whose interest may be adversely affected by the production of any books, records, accounts or documents may petition the commission for a protective order for confidential or proprietary information. The commission shall determine the materiality and relevancy of the books, records, accounts or documents to any matter before the commission and determine whether such books, records, accounts or documents contain confidential or proprietary information. If the commission determines such books, records, accounts or documents contain confidential or proprietary information that is material and relevant to the proceeding, it shall determine whether the public interest requires that such books, records, accounts or documents be produced in any hearing or investigation held under the Public Utility Act or that an abstract of or the extraction of specific information from such books, records, accounts or documents be produced for use in any such hearing or investigation. Any books, records, accounts or documents determined under this section to contain confidential or proprietary information are not subject to the Public Records Act.

D. For so long as such information determined by the commission to contain confidential or proprietary information retains its confidential or proprietary character, any person who intentionally discloses such confidential or proprietary information is guilty of a misdemeanor and upon conviction shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000)." SB 545

CHAPTER 352

RELATING TO TAXATION; EXEMPTING SCHOOL DISTRICTS FROM THE GOVERNMENTAL GROSS RECEIPTS TAX.

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

Section 1

Section 1. Section 7-9-4.3 NMSA 1978 (being Laws 1991, Chapter 8, Section 2, as amended by Laws 1992, Chapter 49, Section 1 and also by Laws 1992, Chapter 100, Section 2) is amended to read:

"7-9-4.3. IMPOSITION AND RATE OF TAX--DENOMINATION AS "GOVERNMENTAL GROSS RECEIPTS TAX".--For the privilege of engaging in certain activities by governments, there is imposed on every agency, institution, instrumentality or political subdivision of the state, except any school district and any entity licensed by the department of health that is principally engaged in providing health care services, an excise tax of five percent of governmental gross receipts. The tax imposed by this section shall be referred to as the "governmental gross receipts tax"."

Section 2

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 680

CHAPTER 353

RELATING TO ELECTIONS; ENACTING A CERTAIN SECTION OF THE NMSA 1978 PERTAINING TO ABSENTEE VOTING.

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

Section 1

Section 1. A new section of the Absent Voter Act, Section 1-6-16.2 NMSA 1978, is enacted to read:

"1-6-16.2. ADDITIONAL EMERGENCY PROCEDURE FOR VOTING.--

A. After the close of the period for requesting absentee voter ballots by mail, any voter unable to go to the polls due to unforeseen illness or disability resulting in his confinement in a hospital, sanatorium, nursing home or residence who is unable to vote at his polling place, voting booth, or voting apparatus or machinery, may request in writing that an alternative ballot be made available to him. The written request shall be signed by the voter and a health care provider under penalty of perjury.

B. The alternative ballot shall be made available by the clerk of the county in which the voter resides to any authorized representative of the voter who through his representative has presented the written request to the office of the clerk.

C. Before releasing the alternative ballot, the county clerk shall compare the signature on the written request with the signature on the voter's affidavit of registration. If the county clerk determines that the signature on the written request is not the signature of the voter, he shall reject the request for an alternative ballot.

D. The voter shall mark the alternative ballot, place it in an identification envelope similar to that used for absentee ballots, fill out and sign the envelope and return the ballot to the office of the clerk of the county in which the voter resides no later than the time of closing of the polls on election day. The voter's name shall be compared to the roster of voters and the ballot shall only be counted if there is no signature for that voter on the roster of the precinct where that voter's name appears.

E. Alternative ballots shall be processed and counted in the same manner as absentee ballots.

F. The secretary of state shall prescribe the form of alternative ballots and shall distribute an appropriate number of alternative ballots to each county clerk." SB 685

CHAPTER 354

RELATING TO TAXATION; ENACTING THE COUNTY LOCAL OPTION GROSS RECEIPTS TAXES ACT; AMENDING AND RECOMPILING CERTAIN SECTIONS OF CERTAIN COUNTY LOCAL OPTION GROSS RECEIPTS TAX ACTS; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. A new section of the County Local Option Gross Receipts Taxes Act, Section 7-20E-1 NMSA 1978, is enacted to read:

"7-20E-1. SHORT TITLE.--Chapter 7, Article 20E NMSA 1978 may be cited as the "County Local Option Gross Receipts Taxes Act"."

Section 2

Section 2. A new section of the County Local Option Gross Receipts Taxes Act, Section 7-20E-2 NMSA 1978, is enacted to read:

"7-20E-2. DEFINITIONS.--As used in the County Local Option Gross Receipts Taxes Act:

A. "county" means, unless specifically defined otherwise in the County Local Option Gross Receipts Taxes Act, a county, including an H-class county;

B. "county area" means that portion of a county located outside the boundaries of any municipality;

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

D. "governing body" means the county commission of the county;

E. "person" means an individual or any other legal entity; and

F. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act."

Section 3

Section 3. A new section of the County Local Option Gross Receipts Taxes Act, Section 7-20E-3 NMSA 1978, is enacted to read:

"7-20E-3. EFFECTIVE DATE OF ORDINANCE.--An ordinance imposing, amending or repealing a tax or an increment of tax authorized by the County Local Option Gross Receipts Taxes Act shall be effective on July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the adopted ordinance is mailed or delivered to the department. The ordinance shall include that effective date."

Section 4

Section 4. A new section of the County Local Option Gross Receipts Taxes Act, Section 7-20E-4 NMSA 1978, is enacted to read:

"7-20E-4. ORDINANCE SHALL CONFORM TO CERTAIN PROVISIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND REQUIREMENTS OF THE DEPARTMENT.--

A. An ordinance imposing a tax under the provisions of the County Local Option Gross Receipts Taxes Act shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act then in effect and as it may be amended from time to time.

B. The governing body of any county imposing a tax under the County Local Option Gross Receipts Taxes Act shall impose the tax by adopting the model ordinance with respect to the tax furnished to the county by the department. An ordinance that does not conform substantially to the model ordinance of the department is not valid."

Section 5

Section 5. A new section of the County Local Option Gross Receipts Taxes Act, Section 7-20E-5 NMSA 1978, is enacted to read:

"7-20E-5. SPECIFIC EXEMPTIONS.--No tax authorized under the provisions of the County Local Option Gross Receipts Taxes Act shall be imposed on the gross receipts arising from:

A. the transmission of messages by wire or other means from one point within the county to another point outside the county; or

B. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county."

Section 6

Section 6. A new section of the County Local Option Gross Receipts Taxes Act, Section 7-20E-6 NMSA 1978, is enacted to read:

"7-20E-6. COPY OF ORDINANCE TO BE SUBMITTED TO DEPARTMENT.--A certified copy of any ordinance imposing or repealing a tax or an increment of a tax authorized under the County Local Option Gross Receipts Taxes Act or changing the tax rate imposed shall be mailed or delivered to the department within five days after the later of the date the ordinance is adopted or the date the results of any election held with respect to the ordinance are certified to be in favor of the ordinance."

Section 7

Section 7. A new section of the County Local Option Gross Receipts Taxes Act, Section 7-20E-7 NMSA 1978, is enacted to read:

"7-20E-7. COLLECTION BY DEPARTMENT--TRANSFER OF PROCEEDS--DEDUCTIONS.--

A. The department shall collect each tax imposed under the provisions of the County Local Option Gross Receipts Taxes Act in the same manner and at the same time it collects the state gross receipts tax.

B. The department may deduct an amount not to exceed three percent of each tax collected under the provisions of the County Local Option Gross Receipts Taxes Act as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the state general fund each month. The department shall transfer to each county for which it is collecting a tax under the provisions of the County Local Option Gross Receipts Taxes Act the amount of each tax collected for that county, less any disbursement for the administrative charge provided by this section, tax credits, refunds and the payment of interest applicable to the tax. The transfer to the county shall be made within the month following the month in which the tax is collected."

Section 8

Section 8. A new section of the County Local Option Gross Receipts Taxes Act, Section 7-20E-8 NMSA 1978, is enacted to read:

"7-20E-8. INTERPRETATION OF ACT--ADMINISTRATION AND ENFORCEMENT OF ACT.--

A. The department shall interpret the provisions of the County Local Option Gross Receipts Taxes Act.

B. The department shall administer and enforce the collection of each tax authorized under the provisions of the County Local Option Gross Receipts Taxes Act, and the Tax Administration Act applies to the administration and enforcement of each tax."

Section 9

Section 9. Section 7-20-3 NMSA 1978 (being Laws 1983, Chapter 213, Section 30, as amended) is recompiled as Section 7-20E-9 NMSA 1978 and is amended to read:

"7-20E-9. COUNTY GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE RATE--INDIGENT FUND REQUIREMENTS.--

A. The majority of the members of the governing body of any county may enact an ordinance or ordinances imposing an excise tax not to exceed a rate of three-eighths of one percent of the gross receipts of any person engaging in business in the

county for the privilege of engaging in business in the county. Any ordinance imposing an excise tax pursuant to this section shall impose the tax in independent increments of one-eighth percent which shall be separately denominated as "first one-eighth", "second one-eighth" and "third one-eighth", respectively, not to exceed an aggregate amount of three-eighths percent.

B. This tax is to be referred to as the "county gross receipts tax".

C. Any class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico enacting the second or third one-eighth increment of county gross receipts tax shall provide each year that the tax is in effect not less than one million dollars ($1,000,000) in funds for each additional increment of one-eighth percent enacted, and that amount shall be dedicated to the support of indigent patients who are residents of that county. Funds for indigent care shall be made available each month of each year the tax is in effect in an amount not less than eighty-three thousand three hundred thirty-three dollars thirty-three cents ($83,333.33). The interest from the investment of county funds for indigent care may be used for other assistance to indigent persons not to exceed twenty thousand dollars ($20,000) for all other assistance in any year.

D. Any county, except a class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, imposing the second one-eighth increment of county gross receipts tax shall be required to dedicate the entire amount of revenue produced by the imposition of the second one-eighth increment for the support of indigent patients who are residents of that county. Fifty percent of the revenue produced by the imposition of the third one-eighth increment shall be dedicated to the support of indigent patients who are residents of that county. The requirements of this subsection shall apply regardless of the combination or sequence of one-eighth increments enacted.

E. Counties that provide for indigent care in an amount equal to or greater than the amount anticipated to be required to be dedicated by Subsection D of this section from revenue arising from the imposition of a rate greater than the first one-eighth increment may use the county gross receipts tax revenue produced by imposition of the increments in excess of the first one-eighth increment for general purposes; however, at any time the revenue to be provided for indigent care is anticipated to be less than the amount required to be dedicated pursuant to Subsection D of this section, then revenue from the receipts of the increments in excess of the first one-eighth increment of the county gross receipts tax shall be dedicated to indigent care to the extent necessary to provide indigent care revenue equal to the amount required to be dedicated by Subsection D of this section."

Section 10

Section 10. Section 7-20-5 NMSA 1978 (being Laws 1983, Chapter 213, Section 32, as amended) is recompiled as Section 7-20E-10 NMSA 1978 and is amended to read:

"7-20E-10. COUNTY GROSS RECEIPTS TAX--REFERENDUM REQUIREMENTS.--

A. An ordinance enacting the first one-eighth increment of county gross receipts tax pursuant to Section 7-20E-9 NMSA 1978 shall go into effect on July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act, but an election may be called in the county on the question of approving or disapproving that ordinance as follows:

(1) an election shall be called when:

(a) in a county having a referendum provision in its charter, a petition requesting such an
election is filed pursuant to the requirements of that provision in the charter and signed by the number of registered voters in the county equal to the number of registered voters required in its charter to seek a referendum; and

(b) in all other counties, a petition requesting such an election is filed with the county clerk within thirty days of enactment of the ordinance by the governing body and the petition has been signed by a number of registered voters in the county equal to at least five percent of the number of the voters in the county who were registered to vote in the most recent general election;

(2) the signatures on the petition requesting an election shall be verified by the county clerk. If the petition is verified by the county clerk as containing the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of approving or disapproving the ordinance. The election shall be held within sixty days after the date the petition is verified by the county clerk, or it may be held in conjunction with a general election if that election occurs within sixty days after the date of the verification. The election shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections; and

(3) if a majority of the registered voters voting on the question approves the ordinance imposing the first one-eighth increment of county gross receipts tax, the ordinance shall go into effect on July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If, at such an election, a majority of the registered voters voting on the question disapproves the ordinance, the ordinance imposing the tax shall be deemed repealed and the question of imposing the first one-eighth increment of the county gross receipts tax shall not be considered again by the governing body for a period of one year from the date of the election.

B. Imposition by any county of the second one-eighth increment of county gross receipts tax shall not be subject to a referendum of any kind unless prescribed by the county charter or the governing body of the county.

C. An ordinance imposing the third one-eighth increment of the county gross receipts tax by any county shall not go into effect until after an election is held and a simple majority of the registered voters of the county voting on the question vote in favor of imposing the third one-eighth increment. The governing body shall provide for an election on the question of imposing a county gross receipts tax within sixty days after the date the ordinance is adopted. Such question may be submitted to the voters and voted upon as a separate question at any general election or at any special election called for that purpose by the governing body. The election upon the question shall be called, held, conducted and canvassed in substantially the same manner as may be provided by law for general elections. If the question of imposing the third one-eighth increment of the county gross receipts tax fails, the governing body shall not again propose a third one-eighth increment of the county gross receipts tax for a period of one year after the election."

Section 11

Section 11. Section 7-20-8 NMSA 1978 (being Laws 1983, Chapter 213, Section 35, as amended) is recompiled as Section 7-20E-11 NMSA 1978 and is amended to read:

"7-20E-11. COUNTY GROSS RECEIPTS TAX--USE OF PROCEEDS FROM FIRST ONE-EIGHTH INCREMENT.--

A. Each county shall establish a reserve fund to be known as the "county reserve fund". From the net receipts from the county gross receipts tax attributable to the first one-eighth increment imposed pursuant to Subsection A of Section 7-20E-9 NMSA 1978, one-fourth of the net receipts each month shall be deposited in the county reserve fund. The balance of the monthly net receipts shall be placed in either the general fund or road fund, or both, of the county. Except as provided in Subsections B through D of this section, the portions of the net receipts deposited in the county reserve fund shall remain on deposit in that fund until the sixteenth day of the month following the end of the state fiscal year in which the deposits were made, at which time the amount deposited from net receipts for the previous fiscal year shall be placed in either the general fund or road fund, or both, of the county.

B. If the actual amount of the distribution to a county in any state fiscal year of federal in lieu of taxes payments under the provisions of Sections 6901 through 6906 of Title 31 of the United States Code, as amended or renumbered, is less than the actual distribution to that county in the seventy-first state fiscal year or is no longer available to that county, the county may transfer from its reserve fund to its general fund or road fund, or both, an amount equal to the difference between the actual federal in lieu of taxes payments received in the seventy-first fiscal year and the payments

received in the year in which the reduction occurred. The local government division of the department of finance and administration shall certify the amount to be transferred from the reserve fund.

C. If the actual amount of the distribution to a county in any state fiscal year of national forest reserves receipts under the provisions of Section 500 of Title 16 of the United States Code, as amended or renumbered, is less than the actual amount distributed to that county in the seventy-first state fiscal year, the county may transfer from its reserve fund to its general fund or road fund, or both, an amount equal to the difference between the actual national forest reserves receipts distributed to the county in the seventy-first fiscal year and the receipts distributed in the year in which the reduction occurred. The local government division of the department of finance and administration shall certify the amount to be transferred from the reserve fund.

D. If the actual amount of any quarterly distribution to a county in any state fiscal year of federal revenue sharing entitlement payments made under the provisions of Sections 6701 through 6724 of Title 31 of the United States Code, as amended or renumbered, is less than the actual quarterly amount distributed to that county in the first federal quarter of the federal 1982-83 fiscal year, the county may transfer from its reserve fund to its general fund or road fund, or both, an amount equal to the difference between the actual federal revenue sharing quarterly entitlement payment distributed to the county in the first federal quarter of the federal 1982-83 fiscal year and the entitlement payment distributed to the county in the quarter in which the reduction occurred. The local government division of the department of finance and administration shall certify the amount to be transferred from the reserve fund."

Section 12

Section 12. Section 7-20-3.1 NMSA 1978 (being Laws 1989, Chapter 239, Section 1) is recompiled as Section 7-20E-12 NMSA 1978 and is amended to read:

"7-20E-12. COUNTY EMERGENCY GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE IN LIEU OF PROPERTY TAX.--

A. The majority of the members of the governing body of any county may enact an ordinance or ordinances imposing an excise tax not to exceed a rate of three-eighths of one percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business in the county. Any ordinance imposing an excise tax pursuant to this section shall impose the tax in any number of increments of one-eighth percent not to exceed an aggregate amount of three-eighths of one percent. Any ordinance adopted under this section shall be in effect only for the twelve-month period beginning with the effective date of the ordinance and shall expire on the date one year after its effective date.

B. The tax imposed by this section may be referred to as the "county emergency gross receipts tax".

C. The tax authorized by this section may be imposed only in a property tax year for which the property taxes not admitted to be due in the aggregate claims for refund filed under the provisions of Section 7-38-40 NMSA l978 for property taxes imposed in the county under the provisions of Paragraph (l) of Subsection B of Section 7-37-7 NMSA l978 for that property tax year are more than ten percent of property taxes imposed in the county under the cited provisions for that property tax year.

D. As used in this section, "county" means a class B county of the state with:

(1) a population of not less than thirty thousand and not more than thirty thousand seven hundred according to the most recent federal decennial census and a net taxable value for rate-setting purposes for the l988 property tax year or any subsequent year of more than ninety-two million dollars ($92,000,000) but less than one hundred twenty-five million dollars ($l25,000,000);

(2) a population of not less than fifty-six thousand and not more than fifty-six thousand seven hundred according to the most recent federal decennial census and a net taxable value for rate-setting purposes for the l988 property tax year or any subsequent year of more than five hundred million dollars ($500,000,000) but less than five hundred fifty million dollars ($550,000,000); and

(3) a population of not less than eighty-one thousand and not more than eighty-one thousand seven hundred according to the most recent federal decennial census and a net taxable value for rate-setting purposes for the l988 property tax year or any subsequent year of more than one billion five hundred million dollars ($l,500,000,000) but less than two billion dollars ($2,000,000,000).

E. The governing body prior to the month in which the proceeds of this tax will first be distributed may request the department to make an advance distribution. Upon concurrence of the department of finance and administration, the department shall make the advance distribution. An advance distribution is an amount equal to the product of the net receipts with respect to the gross receipts tax reported from business locations in the county for the month multiplied by a fraction the numerator of which is the rate imposed by the county under this section and the denominator of which is the rate imposed for the month by Section 7-9-4 NMSA l978. The aggregate amount of advance distributions made to the county shall be recovered by the department by reducing the monthly amount transferable to the county as a result of the imposition of a tax under this section by one-twelfth of the aggregate amount of advance distributions made."

Section 13

Section 13. Section 7-20-21 NMSA 1978 (being Laws 1987, Chapter 45, Section 3, as amended) is recompiled as Section 7-20E-13 NMSA 1978 and is amended to read:

"7-20E-13. SPECIAL COUNTY HOSPITAL GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE-- ORDINANCE REQUIREMENTS.--

A. The majority of the members of the governing body may enact an ordinance imposing an excise tax on any person engaging in business in the county for the privilege of engaging in business. The rate of the tax shall be one-eighth of one percent of the gross receipts of the person engaging in business. The tax shall be imposed for a period of not more than five years from the effective date of the ordinance imposing the tax. Having once enacted an ordinance under this section, the governing body may enact subsequent ordinances for succeeding periods of not more than five years provided that each such ordinance meets the requirements of the County Local Option Gross Receipts Taxes Act with respect to the tax imposed by this section.

B. The tax imposed by this section may be referred to as the "special county hospital gross receipts tax".

C. For the purposes of this section, "county" means:

(1) a county:

(a) having a population of more than ten thousand but less than ten thousand six hundred, according to the last federal decennial census or any subsequent decennial census, and having a net taxable value for rate-setting purposes for the 1986 property tax year or any subsequent year of more than eighty-two million dollars ($82,000,000) but less than eighty-two million three hundred thousand dollars ($82,300,000);

(b) that has imposed a rate of one dollar fifty cents ($1.50) to each one thousand dollars ($1,000) of net taxable value of property as defined in the Property Tax Code for property taxation purposes in the county and to each one thousand dollars ($1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act or has made an appropriation of funds or has imposed another tax that produces an amount not less than the revenue that would be produced by applying a rate of one dollar fifty cents ($1.50) to each one thousand dollars ($1,000) of net taxable value of property as defined in the Property Tax Code for property taxation purposes in the school district and to each one thousand dollars ($1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act. The proceeds of any tax imposed or appropriation made shall be dedicated for current operations and maintenance of a hospital owned and operated by the county or operated and maintained by another party pursuant to a lease with the county; and

(c) having qualified at any time under this definition shall continue to be qualified as a county and authorized to implement the provisions of this section; and

(2) a class B county having a population of more than seventeen thousand five hundred but less than nineteen thousand according to the most recent federal decennial census and having a net taxable value for property tax rate-setting purposes of under two hundred million dollars ($200,000,000);

D. The governing body of a county shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for current operations and maintenance of a hospital owned and operated by the county or operated and maintained by another party pursuant to a lease with the county, and the use of these proceeds shall be for the care and maintenance of sick and indigent persons and shall be an expenditure for a public purpose. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated and the revenue shall be used by the county for that purpose.

E. Any ordinance enacted under the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act.

F. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county voting in the election vote in favor of imposing the special county hospital gross receipts tax. The governing body shall provide for an election on the question of imposing the tax within sixty days after the date the ordinance is adopted. The question may be submitted to the qualified electors and voted upon as a separate question in a general election or in any special election called for that purpose by the governing body. A special election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a special county hospital gross receipts tax fails, the governing body shall not again propose a special county hospital gross receipts tax for a period of one year after the election. A certified copy of any ordinance imposing a special county hospital gross receipts tax shall be mailed to the department within five days after the ordinance is adopted in any election called for that purpose.

G. A single election may be held on the question of imposing a special county hospital gross receipts tax as authorized in this section on the question of imposing a special county hospital gasoline tax as authorized in the Special County Hospital Gasoline Tax Act and on the question of imposing a mill levy pursuant to the Hospital Funding Act."

Section 14

Section 14. Section 7-20-26 NMSA 1978 (being Laws 1987, Chapter 45, Section 8) is recompiled as Section 7-20E-14 NMSA 1978 and is amended to read:

"7-20E-14. SPECIAL COUNTY HOSPITAL GROSS RECEIPTS TAX--USE OF PROCEEDS.--The funds provided through the special county hospital gross receipts tax shall be administered by the governing body of the county and disbursed by the county treasurer to a hospital within the county, subject to the approval by the governing body of a budget or plan for use of the funds submitted by that hospital's governing board."

Section 15

Section 15. Section 7-20A-3 NMSA 1978 (being Laws 1979, Chapter 398, Section 3, as amended) is recompiled as Section 7-20E-15 NMSA 1978 and is amended to read:

"7-20E-15. COUNTY FIRE PROTECTION EXCISE TAX--AUTHORITY TO IMPOSE--ORDINANCE REQUIREMENTS.--

A. The majority of the members of the governing body may enact an ordinance imposing an excise tax on any person engaging in business in the county area for the privilege of engaging in business. The rate of the tax shall be one-fourth of one percent or one-eighth of one percent of the gross receipts of the person engaging in business. The tax provided in this section shall be imposed for a period not more than ten years from the effective date of the ordinance imposing the tax. Having once enacted an ordinance under this section, the governing body may enact subsequent ordinances for succeeding periods of not more than five years provided each such ordinance meets the requirements of the County Local Option Gross Receipts Taxes Act with respect to the tax imposed by this section.

B. This tax is to be referred to as the "county fire protection excise tax".

C. The governing body of a county shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for the purpose of financing the operational expenses, ambulance services or capital outlay costs of independent fire districts or ambulance services provided by the county. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated and shall be used by the county for that purpose.

D. Any ordinance enacted under the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act.

E. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county area, voting in the election, vote in favor of imposing the county fire protection excise tax. The governing body shall provide for an election on the question of imposing a county fire protection excise tax

within sixty days after the date the ordinance is adopted. Such question may be submitted to the qualified electors and voted upon as a separate question at any special election called for that purpose by the governing body. The election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a county fire protection excise tax fails, the governing body shall not again propose a county fire protection excise tax for a period of one year after the election."

Section 16

Section 16. Section 7-20A-8 NMSA 1978 (being Laws 1979, Chapter 398, Section 8, as amended) is recompiled as Section 7-20E-16 NMSA 1978 and is amended to read:

"7-20E-16. COUNTY FIRE PROTECTION EXCISE TAX--USE OF PROCEEDS--BUDGET LIMITATION.--

A. The money provided through passage of the county fire protection excise tax shall be disbursed and allotted through the governing body to the ounty fire districts within the county; provided that no part of any distribution shall be used to pay any salary, compensation or remuneration to any employee of the state, the county or the independent fire district.

B. The governing body of any county adopting a county fire protection excise tax shall not reduce the level of funding of any independent fire district more than ten percent from the approved budget of such fire district for the prior year. The department of finance and administration shall not approve the budget of any county which violates the provisions of this subsection."

Section 17

Section 17. Section 7-20B-3 NMSA 1978 (being Laws 1990, Chapter 99, Section 58) is recompiled as Section 7-20E-17 NMSA 1978 and is amended to read:

"7-20E-17. COUNTY ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE RATE--USE OF FUNDS.--

A. The majority of the members of the governing body of any county may enact an ordinance imposing an excise tax at a rate of one-eighth of one percent of the gross receipts of any person engaging in business in the county area for the privilege of engaging in business.

B. This tax is to be referred to as the "county environmental services gross receipts tax".

C. Imposition by any county of the county environmental services gross receipts tax shall not be subject to a referendum of any kind unless prescribed by the county charter.

D. Any county, at the time of enacting an ordinance imposing a county environmental services gross receipts tax, shall dedicate the entire amount of revenue produced by the tax for the acquisition, construction, operation and maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities.

E. Any ordinance enacted under the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act."

Section 18

Section 18. Section 7-20D-3 NMSA 1978 (being Laws 1991, Chapter 212, Section 7) is recompiled as Section 7-20E-18 NMSA 1978 and is amended to read:

"7-20E-18. COUNTY HEALTH CARE GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE RATE.--

A. The majority of the members of the governing body of any county may enact an ordinance imposing an excise tax at a rate of one-sixteenth of one percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business in the county. Any ordinance imposing an excise tax pursuant to this section shall not be subject to a referendum. The governing body of a county shall, at the time of enacting an ordinance imposing the tax, dedicate the revenue to the county-supported medicaid fund.

B. This tax is to be referred to as the "county health care gross receipts tax".

C. Any ordinance enacted under the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act."

Section 19

Section 19. REPEAL.--

A. Sections 7-20-1, 7-20-2, 7-20-4, 7-20-6, 7-20-7 and 7-20-9 NMSA 1978 (being Laws 1983, Chapter 213, Sections 28, 29, 31, 33, 34 and 36, as amended) are repealed.

B. Sections 7-20-19, 7-20-20 and 7-20-22 through 7-20-25 NMSA 1978 (being Laws 1987, Chapter 45, Sections 1, 2 and 4 through 7, as amended) are repealed.

C. Sections 7-20A-1, 7-20A-2, 7-20A-4 through 7-20A-7 and 7-20A-9 NMSA 1978 (being Laws 1979, Chapter 398, Sections 1, 2, 4 through 7 and 9, as amended) are repealed.

D. Sections 7-20B-1, 7-20B-2 and 7-20B-4 through 7-20B-7 NMSA 1978 (being Laws 1990, Chapter 99, Sections 56, 57 and 59 through 62) are repealed.

E. Sections 7-20D-1, 7-20D-2 and 7-20D-4 through 7-20D-7 NMSA 1978 (being Laws 1991, Chapter 212, Sections 5, 6 and 8 through 11) are repealed.

Section 20

Section 20. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. SB 688

CHAPTER 355

RELATING TO HOSPITALS; AUTHORIZING THE REDUCTION IN WHOLE OR PART OF CHARGES OWING TO CERTAIN COUNTY HOSPITALS; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1

Section 1. Section 4-48B-5 NMSA 1978 (being Laws 1947, Chapter 148, Section 1, as amended) is amended to read:

"4-48B-5. POWER OF COUNTIES.--All counties shall have the following powers:

A. to purchase, own, maintain and operate hospitals;

B. to purchase the land necessary to construct hospitals;

C. to control and regulate county hospitals;

D. to construct county hospitals;

E. to issue general obligation bonds and revenue bonds in the manner provided in the Hospital Funding Act for the construction, purchase, renovation, remodeling, equipping or re-equipping of a county hospital or a jointly owned county-

municipal hospital and purchasing the land necessary therefor or for any combination of the foregoing purposes;

F. to charge for hospital services rendered and to reduce any charge made for care of a patient in whole or part when the charges are determined to be disputed in good faith or uncollectible;

G. to lease a hospital to any person, corporation or association for the operation and maintenance of the hospital upon terms and conditions as the county commissioners may determine;

H. to contract with the state, another county or counties, the federal government or its agencies, another political subdivision or a public or private corporation, organization or association for the care of the sick of the county;

I. to receive all funds appropriated from whatever source or paid by or on behalf of any patient of the hospital;

J. notwithstanding any other provision of law, to enter into leases, management or operating contracts, health care facilities contracts and other agreements authorized by the Hospital Funding Act for periods in excess of one year; provided that the contract, lease or agreement may be terminated by the county without cause upon one hundred eighty days' notice after the first three years of the contract;

K. to authorize the hospital governing board of a county hospital to exercise all powers that the county is granted by the Hospital Funding Act except the powers to issue bonds, call a mill levy election and levy the annual assessments for the mill levy authorized by the Hospital Funding Act;

L. to enter into a health care facilities contract with one or more hospitals which agree to provide facilities to the sick of the county;

M. to call a mill levy election as authorized by the Hospital Funding Act and to collect and distribute the proceeds of the mill levy pursuant to that act;

N. to distribute the proceeds of the mill levy authorized by the Hospital Funding Act to one or more county hospitals and one or more contracting hospitals or any combination thereof which provide facilities for the sick of the county, whether located within or without the county wherein the mill levy is collected;

O. to accept grants for constructing, equipping, operating and maintaining a county hospital;

P. to enter into an agreement with a municipality for constructing, equipping, operating and maintaining a jointly owned county-municipal hospital;

Q. to enter into an agreement with another county or counties, another county or counties and another political subdivision or any other person, corporation or association which provides that the parties to the agreement shall join together for the purpose of making some or all purchases necessary for the operation of hospitals owned or operated by the parties; and to designate one of the parties as the central purchasing office, as defined in the Public Purchases
Act, for the others, to make purchases for the parties to the agreement as they shall deem necessary and to comply with the provisions of the Public Purchases Act;

R. to expend public money to recruit health care personnel to serve the sick of the county; and

S. to perform any other act or adopt any regulation necessary or expedient to carry out the provisions of the Hospital Funding Act." SB 823

CHAPTER 356

RELATING TO REVENUES; REPEALING THE FOOD AND MEDICAL INCOME TAX REBATE; MAKING APPROPRIATIONS FOR CERTAIN HEALTH AND HUMAN SERVICES PURPOSES.

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

Section 1

Section 1. REPEAL.--Section 7-2-14.1 NMSA 1978 (being Laws 1987, Chapter 264, Section 8, as amended) is repealed.

Section 2

Section 2. APPROPRIATIONS--HEALTH AND HUMAN SERVICES PURPOSES.--Nineteen million eight hundred twenty-six thousand one hundred dollars ($19,826,100) is appropriated from the general fund to the following agencies for expenditure in the eighty-second fiscal year in the following amounts for the following purposes:

A. nine million four hundred twenty-six thousand one hundred dollars ($9,426,100) to the human services department for expenditure as follows:

(1) three million six hundred forty-six thousand four hundred dollars ($3,646,400) which may be matched with twelve million six hundred nine thousand eight hundred dollars ($12,609,800) in federal funds to implement an increase in the standard of need to thirty-six percent of the 1993 federal poverty guidelines for the aid to families with dependent children and general assistance programs;

(2) four million nine hundred eighty-seven thousand four hundred dollars ($4,987,400) which may be matched with fifteen million seven hundred thirty-three thousand five hundred dollars ($15,733,500) in federal funds and two million three hundred thirty thousand two hundred dollars ($2,330,200) in other state funds for high caseloads in the aid to families with dependent children program;

(3) five hundred sixty-seven thousand three hundred dollars ($567,300) which may be matched with five hundred sixty-seven thousand three hundred dollars ($567,300) in federal funds to employ up to fifty-one permanent eligibility worker and clerical full-time equivalents;

(4) one hundred seventy-five thousand dollars ($175,000) which may be matched with one hundred seventy-five thousand dollars ($175,000) in federal funds for project forward transportation costs; and

(5) fifty thousand dollars ($50,000) to the income support division for legal aid services;

B. seven million one hundred thousand dollars ($7,100,000) to the department of health for expenditure as follows:

(1) five hundred thousand dollars ($500,000) which may be matched with one million four hundred twenty-nine thousand eight hundred dollars ($1,429,800) in federal funds for family health services funded through the financial assistance distribution program under the Rural Primary Health Care Act;

(2) one million five hundred thousand dollars ($1,500,000) which may be matched with four million two hundred eighty-nine thousand three hundred dollars ($4,289,300) in federal funds for AIDS medication, case management and home care;

(3) one hundred thousand dollars ($100,000) which may be matched with two hundred eighty-six thousand dollars ($286,000) in federal funds for AIDS crisis management services;

(4) five hundred thousand dollars ($500,000) which may be matched with one million four hundred twenty-nine thousand eight hundred dollars ($1,429,800) in federal funds for maternal and child health services;

(5) three million dollars ($3,000,000) which may be matched with eight million five hundred seventy-eight thousand five hundred dollars ($8,578,500) in federal funds to serve those on the priority one waiting list for developmental disabilities services;

(6) seven hundred fifty thousand dollars ($750,000) which may be matched with two million one hundred forty-four thousand six hundred dollars

($2,144,600) in federal funds to provide early intervention and treatment services for children and their families who are at risk for or are experiencing emotional disturbances; and

(7) seven hundred fifty thousand dollars ($750,000) which may be matched with two million one hundred forty-four thousand six hundred dollars ($2,144,600) in federal funds to provide early intervention, including case management for infants and toddlers zero through two years of age who are at risk for developmental delays; and

C. three million three hundred thousand dollars ($3,300,000) to the children, youth and families department for expenditure as follows:

(1) seven hundred fifty thousand dollars ($750,000) which may be matched with two million one hundred forty-four thousand six hundred dollars ($2,144,600) in federal funds to provide adolescent day treatment services to allow adolescents to live in their own homes and attend a very structured treatment program during the day;

(2) two hundred seventy-five thousand dollars ($275,000) which may be matched with seven hundred eighty-six thousand four hundred dollars ($786,400) in federal funds to provide group home services;

(3) seventy-five thousand dollars ($75,000) which may be matched with two hundred fourteen thousand five hundred dollars ($214,500) in federal funds for severely emotionally disturbed children in Anthony in Dona Ana county;

(4) two hundred thousand dollars ($200,000) which may be matched with five hundred seventy-one thousand nine hundred dollars ($571,900) in federal funds to employ eight mental health assessment full-time equivalents; and

(5) two million dollars ($2,000,000) which may be matched with five million seven hundred nineteen thousand dollars ($5,719,000) in federal funds to provide family preservation services.

Any unexpended or unencumbered balances remaining from the appropriations in this section at the end of the eighty-second fiscal year shall revert to the general fund.

Section 3

Section 3. APPLICABILITY.--The provisions of Section 1 of this act apply to taxable years beginning on or after January 1, 1993.

Section 4

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993. SB 395

CHAPTER 357

RELATING TO TAXATION; INCREASING THE RATE OF THE GASOLINE TAX AND THE SPECIAL FUEL EXCISE TAX; PROVIDING FOR A DISTRIBUTION TO THE TRANSPORTATION DISTRIBUTION OF THE PUBLIC SCHOOL FUND; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 7-1-6.7 NMSA 1978 (being Laws 1983, Chapter 211, Section 12, as amended) is amended to read:

"7-1-6.7. DISTRIBUTIONS--STATE AVIATION FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to two and fifteen one-hundredths percent of the gross receipts or value attributable to the sale or use of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to two-tenths of one percent of gasoline taxes, exclusive of penalties and interest, collected pursuant to the Gasoline Tax Act."

Section 2

Section 2. Section 7-1-6.8 NMSA 1978 (being Laws 1983, Chapter 211, Section 13, as amended) is amended to read:

"7-1-6.8. DISTRIBUTION--MOTORBOAT FUEL TAX FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the motorboat fuel tax fund in an amount equal to one-tenth of one percent of the net receipts attributable to the gasoline tax."

Section 3

Section 3. Section 7-1-6.9 NMSA 1978 (being Laws 1991, Chapter 9, Section 11) is amended to read:

"7-1-6.9. DISTRIBUTION OF GASOLINE TAXES TO MUNICIPALITIES AND COUNTIES.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made in an amount equal to eight and two-hundredths percent of the net receipts attributable to the taxes, exclusive of penalties and interest, imposed by the Gasoline Tax Act.

B. The amount determined in Subsection A of this section shall be distributed as follows:

(1) ninety percent of the amount shall be paid to the treasurers of municipalities and H class counties in the proportion that the taxable motor fuel sales in each of the municipalities and H class counties bears to the aggregate taxable motor fuel sales in all of these municipalities and H class counties; and

(2) ten percent of the amount shall be paid to the treasurers of the counties, including H class counties, in the proportion that the taxable motor fuel sales outside of incorporated municipalities in each of the counties bears to the aggregate taxable motor fuel sales outside of incorporated municipalities in all of the counties.

C. This distribution shall be paid into the municipal treasury or county general fund for general purposes or for any special purposes designated by the governing body of the municipality or county. Any municipality or H class county that has created or that creates a "street improvement fund" to which gasoline tax revenues or distributions are irrevocably pledged under Sections 3-34-1 through 3-34-4 NMSA 1978 or that has pledged all or a portion of gasoline tax revenues or distributions to the payment of bonds shall receive its proportion of the distribution of revenues under this section impressed with and subject to these pledges."

Section 4

Section 4. Section 7-1-6.10 NMSA 1978 (being Laws 1983, Chapter 211, Section 15, as amended) is amended to read:

"7-1-6.10. DISTRIBUTIONS--STATE ROAD FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, surcharges, penalties and interest imposed pursuant to the Gasoline Tax Act and to the taxes, surtaxes, fees, penalties and interest imposed pursuant to the Special Fuels Tax Act and the Special Fuels Supplier Tax Act less:

(1) the amount distributed to the state aviation fund pursuant to Subsection B of Section 7-1-6.7 NMSA 1978;

(2) the amount distributed to the motorboat fuel tax fund pursuant to Section 7-1-6.8 NMSA 1978;

(3) the amount distributed to municipalities and counties pursuant to Subsection A of Section 7-1-6.9 NMSA 1978;

(4) the amount distributed to the county government road fund pursuant to Section 7-1-6.19 NMSA 1978;

(5) the amount distributed to the corrective action fund pursuant to Section 7-1-6.25 NMSA 1978;

(6) the amount distributed to the municipalities pursuant to Section 7-1-6.27 NMSA 1978;

(7) the amount distributed to the municipal arterial program pursuant to Section 7-1-6.28 NMSA 1978; and

(8) the amount distributed to the transportation distribution of the public school fund pursuant to Section 7-1-6.37 NMSA 1978.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, fees, interest and penalties from the Weight Distance Tax Act."

Section 5

Section 5. Section 7-1-6.19 NMSA 1978 (being Laws 1991, Chapter 9, Section 15) is amended to read:

"7-1-6.19. DISTRIBUTION--COUNTY GOVERNMENT ROAD FUND CREATED.--

A. There is created in the state treasury the "county government road fund".

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county government road fund in an amount equal to four and forty-six hundredths percent of the net receipts attributable to the gasoline tax."

Section 6

Section 6. Section 7-1-6.27 NMSA 1978 (being Laws 1991, Chapter 9, Section 20, as amended) is amended to read:

"7-1-6.27. DISTRIBUTION--MUNICIPAL ROADS.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to municipalities for the purposes and amounts specified in this section in an aggregate

amount equal to four and forty-six hundredths percent of the net receipts attributable to the gasoline tax.

B. The distribution authorized in this section shall be used for the following purposes:

(1) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges, or any combination of the foregoing; or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges, or any combination of the foregoing; provided that any of the foregoing improvements may include, but are not limited to, the acquisition of rights-of-way; and

(2) for expenses of purchasing, maintaining and operating transit operations and facilities, for the operation of a transit authority established by the municipal transit law and for the operation of a vehicle emission inspection program. A municipality may engage in the business of the transportation of passengers and property within the political subdivision by whatever means the municipality may decide and may acquire cars, trucks, motor buses and other equipment necessary for operating the business. A municipality may acquire land, erect buildings and equip the buildings with all the necessary machinery and facilities for the operation, maintenance, modification, repair and storage of the cars, trucks, motor buses and other equipment needed. A municipality may do all things necessary for the acquisition and the conduct of the business of public transportation.

C. For the purposes of this section:

(1) "computed distribution amount" means the distribution amount calculated for a municipality for a month pursuant to Paragraph (2) of Subsection D of this section prior to any adjustments to the amount due to the provisions of Subsections E and F of this section;

(2) "floor amount" means four hundred seventeen dollars ($417);

(3) "floor municipality" means a municipality whose computed distribution amount is less than the floor amount; and

(4) "full distribution municipality" means a municipality whose population at the last federal decennial census was at least two hundred thousand.

D. Subject to the prvisions of Subsections E and F of this section, each municipality shall be distributed a portion of the aggregate six and thirteen-hundredths percent of the net receipts attributable to the gasoline tax in an amount equal to the greater of:

(1) the floor amount; or

(2) eighty-five percent of the aggregate amount distributable under this section times a fraction, the numerator of which is the municipality's reported taxable gallons of gasoline for the immediately preceding state fiscal year and the denominator of which is the reported total taxable gallons for all municipalities for the same period.

E. Fifteen percent of the aggregate amount distributable under this section shall be referred to as the "redistribution amount". For the twelve-month period beginning in August 1989 through July 1990, an amount sufficient to provide funding for the floor municipalities shall be deducted from the distribution to full distribution municipalities. Beginning in August 1990, and each month thereafter, from the redistribution amount there shall be taken an amount sufficient to increase the computed distribution amount of every floor municipality to the floor amount. In the event that the redistribution amount is insufficient for this purpose, the computed distribution amount for each floor municipality shall be increased by an amount equal to the redistribution amount times a fraction, the numerator of which is the difference between the floor amount and the municipality's computed distribution amount and the denominator of which is the difference between the product of the floor amount multiplied by the number of floor municipalities and the total of the computed distribution amounts for all floor municipalities.

F. If a balance remains after the redistribution amount has been reduced pursuant to Subsection E of this section, there shall be added to the computed distribution amount of each municipality that is neither a full distribution municipality nor a floor municipality an amount that equals the balance of the redistribution amount times a fraction, the numerator of which is the computed distribution amount of the municipality and the denominator of which is the sum of the computed distribution amounts of all municipalities that are neither full distribution municipalities nor floor municipalities."

Section 7

Section 7. Section 7-1-6.28 NMSA 1978 (being Laws 1991, Chapter 9, Section 22) is amended to read:

"7-1-6.28. DISTRIBUTION--MUNICIPAL ARTERIAL PROGRAM.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the municipal arterial program of the local governments road fund created in Section 67-3-28.2 NMSA 1978 in an amount equal to one and eleven hundredths percent of the net receipts attributable to the gasoline tax."

Section 8

Section 8. A new section of the Tax Administration Act, Section 7-1-6.37 NMSA 1978, is enacted to read:

"7-1-6.37. DISTRIBUTION OF GASOLINE AND SPECIAL FUEL EXCISE TAXES TO THE PUBLIC SCHOOL FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the transportation distribution of the public school fund in an amount equal to twenty-two and seventy-two hundredths percent of the net receipts attributable to the taxes, exclusive of penalties and interest, imposed by the Gasoline Tax Act and eleven and eleven hundredths percent of the net receipts attributable to the taxes, exclusive of penalties and interest, from the special fuel excise tax imposed by the Special Fuels Supplier Tax Act."

Section 9

Section 9. Section 7-13-3 NMSA 1978 (being Laws 1971, Chapter 207, Section 3, as amended) is amended to read:

"7-13-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS "GASOLINE TAX".--

A. For the privilege of receiving gasoline in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of gasoline received in New Mexico.

B. The tax imposed by Subsection A of this section shall be twenty-two cents ($.22) per gallon received in New Mexico.

C. The tax imposed by this section may be called the "gasoline tax"."

Section 10

Section 10. Section 7-16A-3 NMSA 1978 (being Laws 1992, Chapter 51, Section 3) is amended to read:

"7-16A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS SPECIAL FUEL EXCISE TAX.--

A. For the privilege of receiving or using special fuel in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of special fuel received in New Mexico.

B. The tax imposed by Subsection A of this section shall be eighteen cents ($.18) per gallon of special fuel received or used in New Mexico.

C. The tax imposed by this section may be called the "special fuel excise tax"."

Section 11

Section 11. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 9 and 10 of this act is July 1, 1993.

B. The effective date of the provisions of Sections 1 through 8 of this act is August 1, 1993.SB 366

CHAPTER 358

RELATING TO REVENUES; PROVIDING FOR TRANSFER AND DISTRIBUTION OF CIGARETTE TAX PROCEEDS; INCREASING THE RATE OF THE CIGARETTE TAX; AUTHORIZING THE ISSUANCE OF REVENUE BONDS; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS.

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

Section 1

Section 1. Section 7-1-6.11 NMSA 1978 (being Laws 1983, Chapter 211, Section 16, as amended) is amended to read:

"7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county and municipality recreational fund in an amount equal to four and three-quarters percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county and municipal cigarette tax fund in an amount equal to nine and one-half percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the cancer center at the university of New Mexico school of medicine in an amount equal to four and three-quarters percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the New Mexico finance authority in an amount equal to seven and one-eighth percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax."

"Section 2. Section 7-12-3 NMSA 1978 (being Laws 1971, Chapter 77, Section 3, as amended) is amended to read:

"7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

A. For the privilege of selling, giving or consuming cigarettes in New Mexico, there is levied an excise tax at the rate of one and five hundredths cents ($.0105) for each cigarette sold, given or consumed in this state.

B. The tax imposed by the Cigarette Tax Act shall be referred to as the "cigarette tax"."

Section 3

Section 3. Section 24-20-1 NMSA 1978 (being Laws 1986, Chapter 13, Section 5) is repealed and a new Section 24-20-1 NMSA 1978 is enacted to read:

"24-20-1. MEDICAL TRUST FUND FOR CANCER AND OTHER MEDICAL RESEARCH-- APPROPRIATION.--

A. There is created at the university of New Mexico school of medicine a medical trust fund to be administered by the school of medicine. The fund shall consist of balances transferred to the fund from the dedicated health research fund and any other distributions, transfers and deposits that may be made to the fund. Earnings from investment of the medical trust fund are appropriated to the university of New Mexico school of medicine for cancer and other medical research.

B. The university of New Mexico school of medicine shall report annually to the commission on higher education, the department of health and the legislative finance committee regarding the use of the earnings on the medical trust fund."

Section 4

Section 4. NEW MEXICO FINANCE AUTHORITY REVENUE BONDS-- PURPOSE-- APPROPRIATION.--

A. The New Mexico finance authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act in an amount not exceeding six million dollars ($6,000,000) for the purpose of designing, constructing, equipping and furnishing an addition to the cancer center at the university of New Mexico.

B. The cigarette tax proceeds distributed to the New Mexico finance authority pursuant to Section 7-1-6.11 NMSA 1978 are appropriated to the authority to be pledged irrevocably for the payment of the principal, interest and any premiums on the bonds and for payment of the expenses incurred by the authority related to the issuance and sale of the bonds.

C. The cigarette tax proceeds appropriated to the authority shall be deposited in a separate fund or account of the authority. Money in the separate fund or

account in excess of the amount necessary for payment of principal and interest on the bonds and necessary reserves or sinking funds may be transferred to any other account of the authority and used for purposes of the New Mexico Finance Authority Act.

D. Any law authorizing the imposition or distribution of the cigarette tax or that affects the cigarette tax shall not be amended, repealed or otherwise directly or indirectly modified so as to impair any outstanding revenue bonds that may be secured by a pledge of those cigarette tax revenues, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.

Section 5

Section 5. TEMPORARY PROVISION--TRANSFER.--On July 1, 1993, all unexpended or unencumbered balances in the dedicated health research fund shall be transferred to the university of New Mexico school of medicine for deposit in a medical trust fund to be administered by the university of New Mexico school of medicine. Any earnings accrued but not yet paid from investment of the balance of the dedicated health research fund being transferred on July 1, 1993 are appropriated to the university of New Mexico school of medicine for cancer and other medical research.

Section 6

Section 6. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 2 through 5 of this act is July 1, 1993.

B. The effective date of the provisions of Section 1 of this act is August 1, 1993. SB 219

CHAPTER 359

RELATING TO TAXATION; IMPOSING A LEASED VEHICLE SURCHARGE; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. A new section of the Leased Vehicle Gross Receipts Tax Act is enacted to read:

"IMPOSITION AND RATE--LEASED VEHICLE SURCHARGE.--There is imposed a surcharge on the leasing of a vehicle to another person by a person engaging in business in New Mexico if the lease is subject to the leased vehicle gross

receipts tax. The amount of this surcharge is two dollars ($2.00) for each day each vehicle is leased by the person. The surcharge may be referred to as the "leased vehicle surcharge"."

Section 2

Section 2. Setion 7-14A-4 NMSA 1978 (being Laws 1991, Chapter 197, Section 8) is amended to read:

"7-14A-4. PRESUMPTION OF TAXABILITY.--To prevent evasion of the leased vehicle gross receipts tax and the leased vehicle surcharge and to aid in their administration, it is presumed that all receipts of a person engaging in business are subject to the leased vehicle gross receipts tax and that all vehicles leased by that person are subject to the leased vehicle surcharge."

Section 3

Section 3. Section 7-14A-6 NMSA 1978 (being Laws 1991, Chapter 197, Section 10) is amended to read:

"7-14A-6. DATE PAYMENT DUE.--The tax and the surcharge imposed by the Leased Vehicle Gross Receipts Tax Act are to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs."

Section 4

Section 4. Section 7-14A-11 NMSA 1978 (being Laws 1991, Chapter 197, Section 15) is amended to read:

"7-14A-11. ADMINISTRATION.--

A. The department shall interpret the provisions of the Leased Vehicle Gross Receipts Tax Act.

B. The department shall administer and enforce the collection of the leased vehicle gross receipts tax and the leased vehicle surcharge, and the Tax Administration Act applies to the administration and enforcement of the tax and the surcharge."

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1993.SB 377

CHAPTER 360

RELATING TO TAXATION; INCREASING THE RATE OF THE OIL AND GAS EMERGENCY SCHOOL TAX ON NATURAL GAS.

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

Section 1

Section 1. Section 7-31-2 NMSA 1978 (being Laws 1959, Chapter 54, Section 2, as amended) is amended to read:

"7-31-2. DEFINITIONS.--As used in the Oil and Gas Emergency School Tax Act:

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

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

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

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

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

F. "operator" means any person:

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

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

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

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association, limited liability company or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production

unit, or who has a right to a monetary payment which is determined by the value of such products; and

J. "tax" means the oil and gas emergency school tax."

Section 2

Section 2. Section 7-31-4 NMSA 1978 (being Laws 1959, Chapter 54, Section 4, as amended) is amended to read:

"7-31-4. PRIVILEGE TAX LEVIED--COLLECTED BY DEPARTMENT--RATE--INTEREST OWNER'S LIABILITY TO STATE--INDIAN LIABILITY.--

A. There is levied and shall be collected by the department a privilege tax on the business of every person severing products in this state. The measure of the tax shall be:

(1) on oil and on oil and other liquid hydrocarbons removed from natural gas at or near the wellhead, three and fifteen one-hundredths percent of the taxable value determined under Section 7-31-5 NMSA 1978;

(2) on carbon dioxide, three and fifteen one-hundredths percent of the taxable value determined under Section 7-31-5 NMSA 1978; and

(3) on natural gas, four percent of the taxable value determined under Section 7-31-5 NMSA 1978.

B. Every interest owner, for the purpose of levying this tax, is deemed to be in the business of severing products and is liable for this tax to the extent of his interest in the value of such products or to the extent of his interest as may be measured by the value of such products.

C. Any Indian tribe, Indian pueblo or Indian is liable for this tax to the extent authorized or permitted by law."

Section 3

Section 3. APPLICABILITY.--The provisions of this act apply to products severed on or after July 1, 1993. SB 421

CHAPTER 361

RELATING TO MOTOR VEHICLES; AMENDING CERTAIN SECTIONS OF THE NMSA 1978 TO PROVIDE FOR THE COLLECTION AND DISPOSITION OF

ADMINISTRATIVE SERVICE FEES TO CERTAIN CLASS A COUNTIES OR MUNICIPALITIES WITHIN CLASS A COUNTIES.

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

Section 1

Section 1. Section 66-2-16 NMSA 1978 (being Laws 1978, Chapter 35, Section 20, as amended) is amended to read:

"66-2-16. ADMINISTRATIVE SERVICE FEES--COLLECTION--REMITTANCE--PAYMENT--OPTIONAL SERVICE FEES--APPROPRIATION.--

A. The secretary is authorized to establish by rule or regulation a schedule of administrative service fees to be collected by the agents or department to defray the costs of operation of the agents' or department's offices and of rendering service to the public. Fees shall be fifty cents ($.50) for each item or transaction or service performed by the agent or department for the director and shall be collected in addition to all other fees and taxes imposed.

B. All sums collected by an agent or the department as administrative service fees shall be remitted as provided in Section 66-2-15 NMSA 1978.

C. Administrative service fees remitted by department employees shall be deposited by the state treasurer into the motor vehicle suspense fund and distributed in accordance with Section 66-6-23 NMSA 1978.

D. Notwithstanding the provisions of Subsections A through C of this section, no class A county with a population exceeding three hundred thousand or municipality with a population exceeding three hundred thousand within a class A county designated as an agent pursuant to Section 66-2-14.1 NMSA 1978 shall be paid an administrative service fee.

E. The secretary is authorized to establish by regulation fees to cover the expense of providing additional services for the convenience of the motoring public. Any service established for which a fee is adopted under this subsection shall be optional, with the fee not being charged to any person not taking advantage of the service. Amounts collected pursuant to this subsection are appropriated to the department for the purpose of defraying the expense of providing the service."

Section 2

Section 2. Section 66-6-23 NMSA 1978 (being Laws 1978, Chapter 35, Section 358, as amended) is amended to read:

"66-6-23. DISPOSITION OF FEES.--

A. After the necessary disbursements for refunds and other purposes have been made, the money remaining, except for remittances received within the previous two months that are unidentified as to source or disposition, shall be distributed as follows:

(1) to each municipality, county or fee agent operating a motor vehicle field office, an amount equal to six dollars ($6.00) per driver's license and three dollars ($3.00) per identification card, registration or title transaction performed;

(2) to each municipality or county, other than a class A county with a population in excess of three hundred thousand or a municipality with a population in excess of three hundred thousand within a class A county, operating a motor vehicle field office, an amount equal to fifty cents ($.50) for each administrative service fee remitted by that county or municipality to the department under the provisions of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to one-half of each fee received from motorcycle endorsements; and

(b) the remainder of each driver's license fee collected by the department employees from an applicant to whom a license is granted after deducting from the driver's license fee the amount of the distribution under Paragraph (1) of this subsection with respect to that collected driver's license fee;

(4) to the general fund, the amount of the fees provided for in Subsection A of Section 66-5-408 NMSA 1978;

(5) to the division:

(a) an amount equal to one-half of each fee received from motorcycle endorsements;

(b) an amount equal to two dollars ($2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978; and

(c) an amount equal to the fees provided for in Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978;

(6) to the state equalization guarantee distribution made annually pursuant to the general appropriation act, an amount equal to one hundred percent of the driver safety fee collected pursuant to Section 66-5-44 NMSA 1978;

(7) to the rubberized asphalt fund, forty-five percent of all tire disposal fees collected pursuant to the provisions of Sections 66-1-1 through 66-6-5, 66-6-8 and 66-6-9 NMSA 1978; and

(8) to the tire disposal fund, the amount remaining after distributions pursuant to Paragraph (7) of this subsection have been made to the rubberized asphalt fund, annual tire disposal fees collected pursuant to the provisions of Sections 66-6-1 through 66-6-5, 66-6-8 and 66-6-9 NMSA 1978.

B. The balance, exclusive of unidentified remittances, after having been reduced by the distributions required by Subsection A of this section, shall be further reduced by a distribution of forty-three percent of the balance to the state road fund, and the remainder of the balance shall be transferred or distributed by the state treasurer on or before the last day of the month next after its receipt, as follows:

(1) forty-one and three-tenths percent shall be distributed to the state road fund;

(2) seventeen and six-tenths percent shall be transferred to each county in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties;

(3) seventeen and six-tenths percent shall be transferred to the counties, each county receiving an amount equal to the proportion, determined by the secretary of highway and transportation in accordance with Subsection E of this section, that the mileage of public roads maintained by the county is to the total mileage of public roads maintained by all counties of the state. Amounts distributed to each county in accordance with this paragraph shall be credited to the respective county road fund and be used for the improvement and maintenance of the public roads in the county and to pay for the acquisition of rights of way and material pits. For this purpose, the board of county commissioners of each of the respective counties shall certify by April 1 of each year to the secretary of highway and transportation the total mileage as of April 1 of that year; provided that in their report the boards of county commissioners shall identify each of the public roads maintained by them, by name, route and location. By agreement and in cooperation with the state highway and transportation department, the boards of county commissioners of the various counties may use or designate any of the funds provided in this paragraph for any federal aid program;

(4) nine and four-tenths percent shall be allocated among the counties in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the sum of net taxable value, as that term is defined in

the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, determined for the incorporated municipality is to the sum of net taxable value plus assessed value determined for all incorporated municipalities within the county. Amounts transferred to incorporated municipalities under the provisions of this paragraph shall be used for the construction, maintenance and repair of streets within the municipality and for payment of paving assessments against property owned by federal, county or municipal governments. In any county in which there are no incorporated municipalities, the amount allocated under this paragraph shall be transferred to the county road fund and used in accordance with the provisions of Paragraph (3) of this subsection; and

(5) fourteen and one-tenth percent shall be allocated among the counties in the proportion, determined by the department in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the county and incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the computed taxes due for the county and each incorporated municipality within the county bear to the total computed taxes due for the county and incorporated municipalities within the county; for the purposes of this paragraph, the term "computed taxes due" for any jurisdiction means the sum of the net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, for that jurisdiction multiplied by an average of the rates for residential and nonresidential property imposed for that jurisdiction pursuant to Subsection B of Section 7-37-7 NMSA 1978.

C. To carry out the provisions of this section, during the month of June of each year:

(1) the department shall determine and certify to the department of finance and administration the
proportions which the department is required to determine by Subsection B of this section using information for the preceding calendar year on the number of vehicles registered in each county based on the address of the owner or place where the vehicle is principally located, the registration fees for the vehicles registered in each county, the total number of vehicles registered in the state and the total registration fees for all vehicles registered in the state; and

(2) the department of finance and administration shall determine the proportions which the department of finance and administration is required to determine by Subsection B of this section based upon the net taxable values, as that term is defined in the Property Tax Code, and assessed values, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production

Equipment Ad Valorem Tax Act, for the preceding tax year and the tax rates imposed pursuant to Subsection B of Section 7-37-7 NMSA 1978 in the preceding September.

D. By June 30 of each year, the department of finance and administration shall determine the appropriate percentage of money to be transferred to each county and municipality for each purpose in accordance with Subsection A of this section based upon the proportions determined by or certified to the department of finance and administration. The percentages determined shall be used to compute the amounts to be transferred to the counties and municipalities during the succeeding fiscal year.

E. The board of county commissioners of each of the respective counties shall, by May 1, 1988 and by April 1 of every year thereafter, certify reports to the secretary of highway and transportation of the total mileage of public roads maintained by each county as of May 1, 1988 and by April 1 of every year thereafter; provided that in their reports the boards of county commissioners shall identify each of the public roads maintained by them by name, route and location. By July 1 of every year, the secretary of highway and transportation shall verify the reports of the counties and revise, if necessary, the total mileage of public roads maintained by each county and the mileage verified by the secretary of highway and transportation shall be the official mileage of public roads maintained by each county. After August 1, 1988, distribution of amounts to any county for road purposes shall be made in accordance with this section.

F. If a county has not made the required mileage certification pursuant to Section 67-3-28.3 NMSA 1978 by May 1, 1988 and by April 1 of every year thereafter, the secretary of highway and transportation shall estimate the mileage maintained by those counties for the purpose of making distribution to all counties, and the amount calculated to be distributed each month to those counties not certifying mileage shall be reduced by one-third each month for that fiscal year and that amount not distributed to those counties shall be distributed equally to all counties which have certified mileages.

G. The director shall review, at the end of each fiscal year, the aggregate total of motor vehicle transactions performed by each municipality, county or fee agent operating a motor vehicle field office, and for each office exceeding ten thousand aggregate transactions per year, that municipality, county or fee agent shall be paid an additional one dollar ($1.00) per identification card, driver's license, registration or title transaction performed during the next fiscal year." SB 627

CHAPTER 362

RELATING TO RETIREE HEALTH CARE; AMENDING THE RETIREE HEALTH CARE ACT TO CHANGE AND CLARIFY CERTAIN ELIGIBILITY AND PARTICIPATION REQUIREMENTS AND PREMIUM PAYMENT PROVISIONS.

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

Section 1

Section 1. Section 10-7C-4 NMSA 1978 (being Laws 1990, Chapter 6, Section 4) is amended to read:

"10-7C-4. DEFINITIONS.--As used in the Retiree Health Care Act:

A. "active employee" means an employee of a public institution or any other public employer participating in either the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act or the Magistrate Retirement Act;

B. "authority" means the retiree health care authority created pursuant to the Retiree Health Care Act;

C. "basic plan of benefits" means only those coverages generally associated with a medical plan of benefits;

D. "board" means the governing board of the retiree health care authority;

E. "current retiree" means an eligible retiree who is receiving a disability or normal retirement benefit under the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act, the Retirement Reciprocity Act, the Judicial Retirement Reciprocity Act or the retirement program of an independent public employer on or before July 1, 1990;

F. "eligible dependent" means a person obtaining retiree health care coverage based upon that person's relationship to an eligible retiree as follows:

(1) a spouse;

(2) an unmarried child under the age of nineteen who is:

(a) a natural child;

(b) a legally adopted child;

(c) a stepchild living in the same household who is primarily dependent on the eligible retiree for maintenance and support;

(d) a child for whom the eligible retiree is the legal guardian and who is primarily dependent on the eligible retiree for maintenance and support, as long as evidence of the guardianship is evidenced in a court order or decree; or

(e) a foster child living in the same household;

(3) a child described in Subparagraphs (a) through (e) of Paragraph (2) of this subsection who is between the ages of nineteen and twenty-five and is a full-time student at an accredited educational institution, provided that "full-time student" shall be a student enrolled in and taking twelve or more semester hours or its equivalent contact hours in primary, secondary, undergraduate or vocational school or a student enrolled in and taking nine or more semester hours or its equivalent contact hours in graduate school;

(4) a dependent child over nineteen who is wholly dependent on the eligible retiree for maintenance and support and who is incapable of self-sustaining employment by reason of mental retardation or physical handicap, provided that proof of incapacity and dependency shall be provided within thirty-one days after the child reaches the limiting age and at such times thereafter as may be required by the board;

(5) a surviving spouse defined as follows:

(a) "surviving spouse" means the spouse to whom a retiree was married at the time of death; or

(b) "surviving spouse" means the spouse to whom a deceased vested active employee was married at the time of death; or

(6) a surviving dependent child who is the dependent child of a deceased eligible retiree whose other parent is also deceased;

G. "eligible employer" means either:

(1) a "retirement system employer", which means an institution of higher education, a school district or other entity participating in the public school insurance authority, a state agency, state court, magistrate court, municipality or county, each of which is affiliated under or covered by the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act or the Magistrate Retirement Act; or

(2) an "independent public employer", which means a municipality or county which is not a retirement system employer;

H. "eligible retiree" means:

(1) a "nonsalaried eligible participating entity governing authority member" who is a person who is not a retiree and who:

(a) has served without salary as a member of the governing authority of an employer eligible to participate in the benefits of the Retiree Health Care Act and is certified to be such by the executive director of the public school insurance authority;

(b) has maintained group health insurance coverage through that member's governing authority if such group health insurance coverage was available and offered to the member during the member's service as a member of the governing authority; and

(c) was participating in the group health insurance program under the Retiree Health Care Act prior to July 1, 1993; or

(d) if a person eligible under Subparagraph (a) of this paragraph applies before August 1, 1993 to the authority t participate in the program, then he will be eligible to participate notwithstanding the provisions of Subparagraphs (b) and (c) of this paragraph;

(2) a "salaried eligible participating entity governing authority member" who is a person who is not a retiree and who:

(a) has served with salary as a member of the governing authority of an employer eligible to participate in the benefits of the Retiree Health Care Act;

(b) has maintained group health insurance through that member's governing authority, if such group health insurance was available and offered to the member during the member's service as a member of the governing authority; and

(c) was participating in the group health insurance program under the Retiree Health Care Act prior to July 1, 1993; or

(d) if a person eligible under Subparagraph (a) of this paragraph applies before August 1, 1993 to the authority to participate in the program, then he will be eligible to participate notwithstanding the provisions of Subparagraphs (b) and (c) of this paragraph;

(3) an "eligible participating retiree" who is a person who:

(a) falls within the definition of a retiree, has made contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the Retiree Health Care Act on the person's behalf, unless that person retires on or before July 1, 1995, in which event the time period required for employee and employer contributions shall become the period of time between July 1, 1990 and the date of retirement, and who is certified to be a retiree by the educational retirement director, the executive secretary of the public employees retirement board or the governing authority of an independent public employer;

(b) falls within the definition of a retiree, retired prior to July 1, 1990 and is certified to be a retiree by the educational retirement director, the executive secretary of the public employees retirement association or the governing authority or of an independent public employer; but this paragraph does not include a retiree who was an employee of an eligible employer who exercised the option not to be a participating employer pursuant to the Retiree Health Care Act and did not after January 1, 1993 elect to become a participating employer; unless the retiree 1) retired on or before June 30, 1990; and 2) at the time of retirement did not have a retirement health plan or retirement health insurance coverage available from his employer; or

(c) is a retiree who 1) was at the time of retirement an employee of an eligible employer who exercised the option not be a participating employer pursuant to the Retiree Health Care Act, but which eligible employer subsequently elected after January 1, 1993 to become a participating employer; 2) has made contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the Retiree Health Care Act on the person's behalf, unless that person retires less than five years after the date participation begins, in which event the time period required for employee and employer contributions shall become the period of time between the date participation begins and the date of retirement; and 3) is certified to be a retiree by the educational retirement director, the executive secretary of the public employees retirement board or the governing authority of an independent public employer;

I. "fund" means the retiree health care fund;

J. "group health insurance" means coverage that includes but is not limited to life insurance, accidental death and dismemberment, hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, eye care, obstetrical benefits, prescribed drugs, medicines and prosthetic devices, medicare supplement, medicare carveout, medicare coordination and other benefits, supplies and services through the vehicles of indemnity coverages, health maintenance organizations, preferred provider organizations and other health care delivery systems as provided by the Retiree Health Care Act and other coverages considered by the board to be advisable;

K. "ineligible dependents" include but are not limited to:

(1) those dependents created by common law relationships;

(2) dependents while in active military service;

(3) parents, aunts, uncles, brothers, sisters, grandchildren and other family members left in the care of an eligible retiree without evidence of legal guardianship; and

(4) anyone not specifically referred to as an eligible dependent pursuant to the rules and regulations adopted by the board;

L. "participating employee" means an employee of a participating employer, which employee has not been excluded from participation in the Retiree Health Care Act pursuant to Subsection F of Section 10-7C-9 NMSA 1978 or Section 10-7C-10 NMSA 1978;

M. "participating employer" means an eligible employer who has satisfied the conditions for participating in the benefits of the Retiree Health Care Act, including the requirements of Subsection M of Section 10-7C-7 NMSA 1978 and Subsection D or E of Section 10-7C-9 NMSA 1978, as applicable; and

N. "retiree" means a person who:

(1) is receiving:

(a) a disability or normal retirement benefit or survivor's benefit under the Educational Retirement Act;

(b) a disability or normal retirement benefit or survivor's benefit pursuant to the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act, the Retirement Reciprocity Act or the Judicial Retirement Reciprocity Act; or

(c) a disability or normal retirement benefit or survivor's benefit pursuant to the retirement program of an independent public employer to which that employer has made periodic contributions; or

(2) is not receiving a survivor's benefit but is the eligible dependent of a person who received a disability or normal retirement benefit pursuant to the Educational Retirement Act or the Public Employees Retirement Act."

Section 2

Section 2. Section 10-7C-6 NMSA 1978 (being Laws 1990, Chapter 6, Section 6) is amended to read:

"10-7C-6. BOARD CREATED--MEMBERSHIP--AUTHORITY.--

A. There is created the "board of the retiree health care authority". The board shall be composed of not more than twelve members.

B. The board shall include:

(1) one member who is not employed by or on behalf of or contracting with an employer participating in or eligible to participate in the Retiree Health Care Act and who shall be appointed by the governor to serve at the pleasure of the governor;

(2) the educational retirement director or the educational retirement director's designee;

(3) one member to be selected by the public school superintendent's association of New Mexico;

(4) one member who shall be a teacher who is certified and teaching in elementary or secondary education to be selected by a committee composed of one person designated by the New Mexico association of classroom teachers, one person designated by the national education association of New Mexico and one person designated by the New Mexico federation of teachers;

(5) one member who shall be an eligible retiree of a public school and who shall be selected by the New Mexico association of retired educators;

(6) the executive secretary of the public employees retirement association or the executive secretary's designee;

(7) one member who shall be an eligible retiree receiving a benefit from the public employees retirement association and shall be selected by the retired public employees of New Mexico;

(8) one member who shall be an elected official or employee of a municipality participating in the Retiree Health Care Act to be selected by the New Mexico municipal league;

(9) the state treasurer or the state treasurer's designee; and

(10) one member who shall be a classified state employee selected by the active state employees.

C. The board, in accordance with the provisions of Paragraph (3) of Subsection D of Section 10-7C-9 NMSA 1978, shall include, if they qualify:

(1) one member who shall be an eligible retiree of an institution of higher education participating in the Retiree Health Care Act and shall be selected by the New Mexico association of retired educators; and

(2) one member who shall be an elected official or employee of a county participating in the Retiree Health Care Act to be selected by the New Mexico association of counties.

D. Every member of the board shall serve at the pleasure of the party that selected that member.

E. The members of the board shall begin serving their positions on the board on the effective date of the Retiree Health Care Act or upon their selection, whichever occurs last, unless that member's corresponding position on the board has been eliminated pursuant to Subsection D of Section 10-7C-9 NMSA 1978.

F. The board shall elect from its membership a president, vice president and secretary.

G. The board may appoint such officers and advisory committees as it deems necessary. The board may enter into contracts or arrangements with consultants, professional persons or firms as may be necessary to carry out the provisions of the Retiree Health Care Act.

H. The members of the board and its advisory committees shall receive per diem and mileage as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance."

Section 3

Section 3. Section 10-7C-9 NMSA 1978 (being Laws 1990, Chapter 6, Section 9) is amended to read:

"10-7C-9. PARTICIPATION.--

A. All eligible employers shall participate in the Retiree Health Care Act except as provided in Subsection D or Subsection E of this section. Participating employers are required to continue existing group health insurance coverages until such time as similar coverages are offered by the board under the Retiree Health Care Act.

B. Participation in the basic health insurance coverages provided by the authority shall be conditioned upon receipt by the board of a certificate of eligibility from the educational retirement director, the executive secretary of the public employees retirement association, the executive director of the public school insurance authority or the governing body of an independent public employer. Once eligibility is established, for each eligible retiree who retires on or after the effective date of the Retiree Health Care Act, the board shall contribute from money in the fund the authority's portion of the premium for the basic plan of benefits commencing no earlier than January 1, 1991, plus the balance of the premium which shall be collected from the retiree.

C. Each eligible retiree shall accept or reject enrollment in the basic plan of benefits on an enrollment form provided by the board. An eligible retiree who rejects enrollment or fails to return a properly executed enrollment form within the open

enrollment period as established by the board forfeits all entitlement and eligibility for benefits under the Retiree Health Care Act until the next open enrollment period as established by the board.

D. On or before January 1, 1991, municipalities, counties and institutions of higher education that are retirement system employers may at their option determine by ordinance, or for institutions of higher education, by resolution, to be excluded from coverage under the Retiree Health Care Act; that determination shall be subject to the following conditios:

(1) any contributions paid into the fund by a municipality, county or institution of higher education that exercises timely an irrevocable option not to participate in the Retiree Health Care Act under this subsection shall be returned without interest to that municipality, county or institution of higher education for return of the employee contributions to the employees and for crediting of the employer contributions to the appropriate fund of the municipality, county or institution of higher education. If the determination to be excluded from coverage is exercised by a municipality, county or institution of higher education prior to July 1, 1990, then that municipality, county or institution of higher education shall not be required to make the contributions that would otherwise be required by Section 10-7C-15 NMSA 1978;

(2) any municipality, county or institution of higher education, in addition to complying with all other required notice and public hearing or meeting requirements, shall, no less than thirty days prior to the public hearing or public meeting on a proposed ordinance or proposed resolution, notify the authority of the public hearing or public meeting by certified mail; and

(3) in the event that:

(a) the number of active employees employed by municipalities contributing to the fund reaches a number equaling sixty percent or more of all active employees employed by all municipalities that are retirement system employers, the municipal position on the board of the authority shall be restored within sixty days of the date that percentage is reached; provided, however, that if a municipality with a population greater than one hundred thousand that is located in a class "A" county exercises this option, then the sixty-percent requirement shall be applied to the remaining municipalities only;

(b) the number of active employees employed by counties contributing to the fund reaches a number equaling sixty percent or more of all active employees employed by all counties that are retirement system employers, the county position on the board of the authority shall be restored within sixty days of the date that percentage is reached; provided, however, that if a class "A" county exercises this option, then the eighty-percent requirement shall be applied to the remaining counties only; or

(c) the number of active employees employed by institutions of higher learning contributing to the fund reaches a number equaling seventy percent or more of all active employees employed by an institution of higher education contributing to the educational retirement fund, the institution of higher education position on the board
shall be restored within sixty days of the date that percentage is reached.

E. An independent public employer may become a participating employer if that employer satisfies the requirements imposed pursuant to Subsection M of Section 10-7C-7 NMSA 1978 and if that employer also files with the authority on or prior to January 1, 1991 or prior to July 1, 1993 or July 1 of any year a written irrevocable election by the governing body of that employer to participate in the Retiree Health Care Act. Any such independent public employer that chooses to become a participating employer after January 1, 1993 shall begin making employer and employee contributions to the fund on the July 1 immediately following the adoption of the ordinance or resolution. On the following January 1, eligible retirees of those participating employers and their eligible dependents shall be eligible to receive group health insurance coverage pursuant to the provisions of the Retiree Health Care Act.

F. Any other provisions of the Retiree Health Care Act notwithstanding, retirees or active employees of institutions of higher education participating in the Retiree Health Care Act for whom those institutions of higher education have existing plans, programs, policies or contracts for health care benefits shall not be required to participate in the Retiree Health Care Act, nor shall employer or employee contributions be made to the authority on their behalf.

G. A municipality or county that enacted an ordinance or an institution of higher education that enacted a resolution prior to January 1, 1991 pursuant to Subsection D of this section to be excluded from coverage under the Retiree Health Care Act may enact an ordinance or resolution, as applicable, after a public hearing and published notice of the hearing, prior to July 1, 1993 or July 1 of any year to choose to become a participating employer under the Retiree Health Care Act. Any such municipality, county or institution of higher education that chooses to become a participating employer after January 1, 1993 shall begin making employer and employee contributions to the fund on the July 1 immediately following the adoption of the ordinance or resolution. On the following January 1, eligible retirees of those participating employers and their eligible dependents shall be eligible to receive group health insurance coverage pursuant to the provisions of the Retiree Health Care Act."

Section 4

Section 4. Section 10-7C-13 NMSA 1978 (being Laws 1990, Chapter 6, Section 13) is amended to read:
"10-7C-13. PAYMENT OF PREMIUMS ON HEALTH CARE PLANS.--

A. Each eligible retiree shall pay a monthly premium for the basic plan in an amount set by the board not to exceed the sum of fifty dollars ($50.00) plus the amount, if any, of the compounded annual increases authorized by the board, which increases shall not exceed three percent in any fiscal year. In addition to the monthly premium for the basic plan, each current retiree and nonsalaried eligible participating entity governing authority member who becomes an eligible retiree shall also pay monthly an additional participation fee set by the board. That fee shall be five dollars ($5.00) plus the amount, if any, of the compounded annual increases authorized by the board, which increases shall not exceed three percent in any fiscal year. The additional monthly participation fee paid by the current retirees and nonsalaried eligible participating entity governing authority members who become eligible retirees shall be a consideration and a condition for being permitted to participate in the Retiree Health Care Act. Eligible dependents shall pay monthly premiums in amounts that with other money appropriated to the fund shall cover the cost of the basic plan for the eligible dependents.

B. Eligible retirees and eligible dependents shall pay monthly premiums to cover the cost of the optional plans that they elect to receive, and the board shall adopt rules for the collection of additional premiums from eligible retirees and eligible dependents participating in the optional plans. An eligible retiree or eligible dependent may authorize the authority in writing to deduct the amount of these premiums from the monthly annuity payments, if applicable.

C. The participating employers, active employees and retirees are responsible for the financial viability of the program. The overall financial viability is not an additional financial obligation of the state." SB 539

CHAPTER 363

RELATING TO VOTER INFORMATION; PROVIDING FOR TELEPHONE NUMBERS ON VOTER LISTS; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1

Section 1. Section 1-5-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 104, as amended) is amended to read:

"1-5-2. DEFINITIONS.--As used in the Election Code:

A. "county" means any county in this state;

B. "county register" means an official file of original affidavits of registration of the county or any precinct thereof, arranged in alphabetical order by voter surname and, if for more than one precinct, without regard to precincts;

C. "voter list" means any machine-prepared list of voters;

D. "signature roster" means a copy of a voter list with space provided opposite each voter's name for the voter's signature or witnessed mark;

E. "active data processing media" means punched cards, punched tape, magnetic cards, magnetic discs, magnetic tape or functionally similar devices containing data capable of being read and processed by suitable machinery for the eventual machine preparation of voter lists;

F. "intermediate records" means records on active data processing media;

G. "voter file" means all voter registration information required by law and by the secretary of state which has been extracted from the affidavit of registration of each voter in the county, stored on active data processing media and certified by the county clerk as the source of all information required by the Automated Voter Records System Act;

H. "program records" means the necessary detailed program and instructions for carrying out and controlling machine processing of information derived from the voter file. Program records shall exist in written English or coded form and they may exist on active data processing media;

I. "mailing labels" means machine-prepared mailing labels of selected voters arranged in the order in which requested and providing only the name and address of the voter;

J. "special voter lists" means machine-prepared lists of selected voters arranged in the order in which requested and providing no more than the name, gender, address, telephone number if its dissemination is not prohibited by the voter, political party affiliation and precinct of the voter;

K. "statistical data" means information derived from the voter file and includes no more than the precinct, gender, political party affiliation and year of birth;

L. "voter data" means selected information derived from the voter file and includes no more than the voter's name, gender, address, telephone number if its dissemination is not prohibited by the voter, political party affiliation and precinct;

M. "data processor" means a data processing facility and associated employees and agents thereof contracted to provide data processing services required by the Automated Voter Records System Act;

N. "file maintenance list" means any machine-prepared listing that reflects additions, deletions or changes to the voter file;

O. "precinct voter list" means a voter list arranged in alphabetical order of voter surname within and for each precinct;

P. "county voter list" means a voter list arranged in alphabetical order of voter surname within and for each county;

Q. "unofficial election canvassing file" means the compilation by the county clerk of the results of any election prior to official certification of the election results; and

R. "unofficial election canvassing system" means the automated data processing computer program used to create the unofficial election canvassing file."

Section 2

Section 2. Section 1-5-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 109, as amended) is amended to read:

"1-5-7. VOTER LISTS--SIGNATURE ROSTERS--CONTENTS.--

A. The voter lists and signature rosters for any precinct shall contain for each voter, as shown in the county register:

(1) his name;

(2) gender;

(3) place of residence;

(4) social security number;

(5) year of birth;

(6) party affiliation, if any; and

(7) precinct of residence.

B. In addition, the names on each voter list and signature roster shall be numbered consecutively beginning with the number "1".

C. On each page of each voter list and on each signature roster there shall be printed the page number and the date and name of the election for which they are to be used.

D. For those counties who, prior to June 18, 1993, utilized voter files that do not contain telephone numbers of registered voters, the provisions of Subsections J

and L of Section 1-5-2 NMSA 1978 and Paragraph (4) of Subsection A of Section 1-5-7 NSA 1978 regarding dissemination of voter telephone numbers shall apply only to individuals registering to vote after January 1, 1994." SB 387

CHAPTER 364

RELATING TO TAXATION; PROVIDING GROSS RECEIPTS AND COMPENSATING TAX DEDUCTIONS FOR SALE AND USE OF CERTAIN JET FUEL; DELAYED REPEAL; CHANGING A DISTRIBUTION TO THE STATE AVIATION FUND.

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

Section 1

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX--JET FUEL.--Forty percent of the receipts from the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from gross receipts."

Section 2

Section 2. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--COMPENSATING TAX--JET FUEL.--Forty percent of the value of the fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from the value of such fuel in computing the compensating tax due."

Section 3

Section 3. Section 7-1-6.7 NMSA 1978 (being Laws 1983, Chapter 211, Section 12, as amended) is amended to read:

"7-1-6.7. DISTRIBUTIONS--STATE AVIATION FUND.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to three and fifty-nine hundredths percent of the gross receipts tax attributable to the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to three and fifty-nine hundredths percent of

the compensating tax attributable to the use of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to twenty-seven one hundredths of one percent of gasoline taxes, exclusive of penalties and interest, collected pursuant to the Gasoline Tax Act.

Section 4

Section 4. DELAYED REPEAL.--The provisions of this act are repealed effective July 1, 1995.

Section 5

Section 5. EFFECTIVE DATE.--The effective date of the provisions of Section 3 of this act is August 1, 1993.HB 824

CHAPTER 365

MAKING GENERAL APPROPRIATIONS AND AUTHORIZING EXPENDITURES BY STATE AGENCIES AND DISTRIBUTIONS FOR PUBLIC EDUCATION REQUIRED BY LAW.

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

Section 1

Section 1. SHORT TITLE.--This act may be cited as the "General Appropriation Act of 1993".

Section 2

Section 2. DEFINITIONS.--As used in the General Appropriation Act of 1993:

A. "general fund" means that fund created by Section 6-4-2 NMSA 1978 and includes the severance tax income fund and federal Mineral Lands Leasing Act receipts;

B. "internal service funds" means:

(1) revenue available to state agencies for the financing of goods or services provided by one state agency to another state agency on a cost-reimbursement basis; and

(2) unencumbered balances in state agency internal service fund accounts appropriated by the General Appropriation Act of 1993;

C. "interagency transfers" means revenue transferred from one state agency to another through contracts or joint powers agreements;

D. "federal funds" means payments by the United States government to state government or state agencies for specific purposes or in lieu of taxes, including grants, reimbursements and payments made in accordance with contracts or cooperative agreements, and shared revenue except those payments made in accordance with the federal Mineral Lands Leasing Act;

E. "other state funds" means:

(1) unencumbered balances in state agency accounts, other than in internal service funds accounts, appropriated by the General Appropriation Act of 1993; and

(2) all revenue available to state agencies from sources other than the general fund, internal service funds, interagency transfers and federal funds;

F. all amounts under the "internal service funds/interagency transfers" column indicate an intergovernmental transfer and do not represent a portion of total state government appropriations;

G. "state agency" means an office, department, institution, board, bureau, commission, court, district attorney, council or committee of state government;

H. "expenditures" means all money, other than refunds authorized by law, paid out or encumbered for payment by a state agency other than for investment in securities or as agent or trustee for other governmental entities or private persons;

I. "revenue" means all money restricted and unrestricted received by a state agency from sources external to that agency, net of refunds and other correcting transactions, other than from issue of debt, liquidation of investments or as agent or trustee for other governmental entities or private persons;

J. "restricted revenue" means all revenue, the use of which is restricted by statute, legal or contractual agreement or revenue from gifts, donations or bequests;

K. "unrestricted revenue" means all revenue that is not restricted revenue;

L. "full-time equivalent" or "FTE" means one or more authorized positions which together receive compensation for not more than two thousand eighty-eight hours worked in the eighty-second fiscal year. The calculation of hours worked includes

compensated absences but does not include overtime, compensatory time or sick leave paid pursuant to Section 10-7-10 NMSA 1978;

M. "term position" means a position established for a one-time project or program, where the term contains a specific ending date, and positions associated with a nonrecurring or unstable revenue source;

N. "item" means the value of goods or services or grants to be purchased or grants planned by a state agency during a specific period of time;

O. "category" means an aggregation of related items that represents the object of an appropriation;

P. "approved budget adjustment request" means a budget adjustment request that is approved as provided by law;

Q. "budget increase" means an approved budget adjustment request to increase budget appropriations from other state funds, internal service funds or interagency transfers;

R. "category transfer" means an approved budget adjustment request to transfer budget appropriations between the personal services, employee benefits, travel, maintenance and repairs, supplies and materials, contractual services, operating costs, other costs, capital outlay and out-of-state travel budget categories contained within the approved operating budget of an agency or a division of the agency; and

S. "division transfer" means an approved budget adjustment request to transfer budget appropriations from one organizational unit of an agency to other organizational units of that agency; provided, however, the cumulative effect of transfers shall not exceed seven and one-half percent of the amount appropriated to that organizational unit.

Section 3

Section 3. GENERAL PROVISIONS.--

A. Amounts set out under column headings are expressed in thousands of dollars.

B. Amounts set out under column headings "General Fund", "Internal Service Funds/Interagency Transfers" and "Other State Funds" are appropriated from the source indicated by the column heading. Amounts set out under the column heading "Federal Funds" are provided for information only and are not appropriations. All amounts designated as "Totals" are also provided for information and are not appropriations.

C. For the eighty-second fiscal year, appropriations are made as set out in Section 4 of the General Appropriation Act of 1993 from the general fund, internal service funds/interagency transfers or other state funds as indicated to state agencies named or for the purposes expressed, or so much as may be necessary, within available revenues and unencumbered balances.

D. Unencumbered balances in state agency accounts remaining at the end of the eighty-first and eighty-second fiscal years from appropriations made from the general fund shall revert to the general fund unless otherwise indicated in the General Appropriation Act of 1993 or otherwise provided by law. Unencumbered balances of revenues from sources other than the general fund remaining in state agency accounts at the end of the eighty-second fiscal year shall remain to the credit of the state agency, but shall not be expended unless appropriated by the legislature.

E. Expenditure of eighty-second fiscal year appropriations shall not exceed the amounts authorized in the General Appropriation Act of 1993. Expenditures shall be made only in accordance with budgets approved by the state budget division in accordance with the provisions of Section 6-3-7 NMSA 1978.

F. The state budget division shall monitor revenue received by state agencies from sources other than the general fund and shall order reductions in the operating budget of any state agency whose revenue from such sources is not meeting budgeted projections.

G. Except as otherwise specifically stated in the General Appropriation Act of 1993, appropriations are made in this act for the expenses of state agencies and for other purposes as required by existing law. If any other act of the forty-first legislature, first session, approved by the governor, changes existing law with regard to the name or responsibilities of a state agency or the name or purpose of a fund or distribution, the appropriation made in the General Appropriation Act of 1993 shall be transferred from the state agency, fund or distribution to which an appropriation has been made as required by existing law to the appropriate state agency, fund or distribution provided by the new law.

H. During the eighty-second fiscal year, the department of finance and administration shall prepare and present quarterly revenue estimates to the legislative finance committee. If at any time these revenue estimates indicate that the state will be in a deficit position, the department shall present a contingency plan that outlines the methods by which the administration intends to address the deficit.

I. Authorization for category transfers, division transfers and budget increases for the eighty-second fiscal year are specifically set forth in Section 4 of the General Appropriation Act of 1993.

J. The state budget division may approve budget increases for the eighty-second fiscal year for state agencies whose revenues from federal funds, from state

board of finance loans, from revenues appropriated by acts of the legislatue or from gifts, donations, bequests, insurance settlements, refunds or payments into revolving funds which exceed specifically appropriated amounts. Such gifts, donations, bequests, insurance settlements, refunds and payments into revolving funds are appropriated. In approving a budget increase from federal funds, the director of the state budget division shall advise the legislative finance committee as to the source of the federal funds and the source and amount of any matching funds required.

K. For the eighty-second fiscal year, the number of permanent and term full-time equivalent positions specified for each agency shall be exceeded only in accordance with the provisions of the General Appropriation Act of 1993 unless additional personnel are authorized by other acts of the legislature. In case of an emergency or availability of federal funds, other state funds, internal service funds or interagency transfers that do not affect the general fund and in conjunction with the state personnel office or the agency's governing personnel office, the state budget division may approve additional term positions beyond the number specified in the General Appropriation Act of 1993 or other acts of the legislature. In approving such increases, the state budget division shall file with the legislative finance committee a written statement of the conditions under which the additional positions are approved, along with the duration of the emergency or availability of funds. The operating budget for each agency shall reflect the number of positions authorized by the legislature. It is not the intent of this provision to prohibit intraagency position transfers.

L. Eighty-second fiscal year compensation increases are included in appropriations contained in Section 4 of the General Appropriation Act of 1993 as follows:

(a) classified employees in agencies governed by the State Personnel Act shall receive a salary increase equivalent to three percent of the midpoint value of their salary range effective on the first full pay period after the anniversary date of their appointment to current class if their job performance has been at least satisfactory; this increase is intended to move employees within their assigned salary range in recognition of their increased skills and competency on the job; and no incumbent's salary may exceed the maximum of the salary range and incumbents whose salary falls at or above the range maximum on their anniversary date shall not be eligible for this increase; employees whose salaries are equal to or above their respective salary range maximum shall receive a one-time lump-sum payment equivalent to three percent of their salary range midpoint, subject to satisfactory job performance and effective the first full pay period following the employee's anniversary date. Under this provision lump-sum payments in combination with any increase to an employee's base salary, shall not exceed a total of three percent of the employee's salary range midpoint during the eighty-second fiscal year;

(b) all district attorney employees other than temporary employees, term employees and employees whose salaries are set by statute shall receive a salary increase equivalent to three and one-half percent of the midpoint value of their salary

range effective on the anniversary date of their appointment to current class if their job performance has been evaluated as fully effective;

(c) all judicial employees other than temporary employees and employees whose salaries are set by statute shall be eligible for increases on their hire date in accordance with the judicial compensation plan provided that the average increase for all judicial employees shall not exceed three and one-half percent;

(d) state police officers shall progress on a career ladder as established by the state police career pay plan; and

(e) the appropriations in Subsections J and K of Section 4 of the General Appropriation Act of 1993 for higher education and public school support are sufficient to provide an average three and one-half percent cost-of-living salary increase for public school and higher education employees.

M. Except for gasoline credit cards used solely for operation of official vehicles, none of the appropriations contained in the General Appropriation Act of 1993 may be expended for payment of credit card invoices.

N. To prevent unnecessary spending, expenditures from the General Appropriation Act of 1993 for gasoline for state-owned vehicles at public gasoline service stations shall be made only for self-service gasoline; provided that an agency head may provide exceptions from the requirement to accommodate disabled persons or for other reasons the public interest may require.

O. The same appropriations with the same extensions and limitations as are indicated in the General Appropriation Act of 1993 for the eighty-second fiscal year shall continue every fiscal year subsequent to the eighty-second fiscal year unless otherwise provided by law. Laws 1992, Chapter 94, Section 4 is repealed effective July 1, 1993.

Section 4

Section 4. EIGHTY-SECOND FISCAL YEAR APPROPRIATIONS.--

A. LEGISLATIVE

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total
LEGISLATIVE COUNCIL SERVICE:					

(1) Legislative maintenance department:

(a) Personal services	943.0			943.0
(b) Employee benefits	352.0		352.0	
(c) Travel	3.0	3.0		
(d) Maintenance and repairs	150.0			150.0
(e) Supplies and materials	12.0		12.0	
(f) Contractual services	60.0			60.0
(g) Operating costs	601.0	601.0		
(h) Capital outlay	20.0	20.0		
(i) Out-of-state travel	2.0		2.0	

Authorized FTE: 35.00 Permanent; 4.00 Term

(2) The energy council dues	35.0			35.0
(3) Pre-session meetings	50.0		50.0	
(4) Salaries and interim expenses	897.1			897.1

In order to comply fully and efficiently with Joint Rule 9.1, the appropriation for pre-session meetings contains sufficient funds to pay per diem and mileage expenses of members of the house appropriations and finance committee and of the senate finance committee for the purpose of considering budget requests prior to the opening of the forty-first legislature, second session.

The general fund appropriation of eight hundred ninety-seven thousand one hundred dollars ($897,100) for salaries and interim expenses shall be distributed to the appropriate legislative agencies to fund salary increases commensurate with the amount granted to other state government employees, to provide internal equity in the salary structure for permanent legislative employees, to fund two bill drafter positions in the legislative council service *and to fund the state government efficiency task force, the water rights task force* and the health care task force.

Category transfers are specifically authorized for the legislative maintenance department.

Subtotal	3,125.1			
TOTAL LEGISLATIVE	3,125.1			3,125.1
B. JUDICIAL				
SUPREME COURT LAW LIBRARY:				
(a) Personal services	203.0		203.0	
(b) Employee benefits	63.0		63.0	
(c) Travel	1.0		1.0	
(d) Maintenance and repairs	11.0			11.0
(e) Supplies and materials	3.0			3.0
(f) Contractual services	58.0		58.0	
(g) Operating costs	179.0		179.0	
(h) Capital outlay	84.0		84.0	
(i) Out-of-state travel	1.0			1.0
Authorized FTE: 7.00 Permanent				
Subtotal			603.0	
NEW MEXICO COMPILATION COMMISSION:				
(a) Personal services		96.5	96.5	
(b) Employee benefits		35.1	35.1	
(c) Travel	6.0		6.0	
(d) Maintenance and repairs		18.1		18.1
(e) Supplies and materials		11.1	11.1	
(f) Contractual services		822.5	822.5	
(g) Operating costs	57.4		57.4	

(h) Capital outlay 50.0 50.0

Authorized FTE: 4.00 Permanent

Subtotal 1,096.7

JUDICIAL STANDARDS COMMISSION:

(a) Personal services 50.0 50.0

(b) Employee benefits 12.0 12.0

(c) Travel 5.0 5.0

(d) Maintenance and repairs 1.0 1.0

(e) Contractual services 4.0 4.0

(f) Operating costs 11.0 11.0

Authorized FTE: 1.25 Permanent

Subtotal 83.0

JUDGES PRO TEMPORE:

(a) Travel 12.0 12.0

(b) Contractual services 27.0 27.0

The judges pro tempore fund is a nonreverting fund and shall not be expended for any other purpose.

Subtotal 39.0

COURT OF APPEALS:

(a) Personal services 1,971.0 1,971.0

(b) Employee benefits 523.0 523.0

(c) Travel 6.0 6.0

(d) Maintenance and repairs 21.0 21.0

(e) Supplies and materials 24.0 24.0

(f) Contractual services 25.0 25.0

(g) Operating costs 172.0 172.0

(h) Capital outlay 38.0 38.0

(i) Out-of-state travel 2.0 2.0

Authorized FTE: 51.00 Permanent

Subtotal 2,782.0

SUPREME COURT:

(a) Personal services 977.0 977.0

(b) Employee benefits 264.0 264.0

(c) Travel 6.0 6.0

(d) Maintenance and repairs 13.0 13.0

(e) Supplies and materials 23.0 23.0

(f) Contractual services 51.0 51.0

(g) Operating costs 59.0 59.0

(h) Capital outlay 27.0 27.0

(i) Out-of-state travel 3.0 3.0

Authorized FTE: 26.00 Permanent

Subtotal 1,423.0

ADMINISTRATIVE OFFICE OF THE COURTS:

(1) Administration:

(a) Personal services 1,321.8 20.0 1,341.8

(b) Employee benefits 271.0 271.0

(c) Travel 23.0 23.0

(d) Maintenance and repairs	12.0				12.0
(e) Supplies and materials	21.0			21.0	
(f) Contractual services	13.0			13.0	
(g) Operating costs	81.0		81.0		
(h) Capital outlay	22.0		22.0		
(i) Out-of-state travel	4.0			4.0	

Authorized FTE: 24.00 Permanent

The general fund appropriation to the administrative office of the courts in the personal services and employee benefits categories of two hundred fifty thousand dollars ($250,000) for a judicial salary increase in the eighty-second fiscal year is contingent upon legislation of the forty-first legislature, first session, becoming law

(2) Judicial education fund:

(a) Travel	78.0		78.0		
(b) Supplies and materials	2.0			2.0	
(c) Contractual services	103.0	25.0		128.0	
(d) Operating costs	12.0		12.0		
(e) Out-of-state travel	30.0			30.0	

The general fund appropriation of one hundred fifty thousand dollars ($150,000) to the administrative office of the courts for judicial education for supreme court justices, court of appeals judges, district court judges and clerks, magistrate judges and clerks and Bernalillo county metropolitan court judges and clerks shall not be expended for any other purpose.

The general fund appropriation of seventy-five thousand dollars ($75,000) and the other state funds appropriation of twenty-five thousand dollars ($25,000) for judicial education in the contractual services category shall be expended for a Navajo court interpreters training program.

The general fund appropriation in the out-of-state travel category shall be used only for supreme court justices, court of appeals judges, district court judges, magistrate judges and Bernalillo county metropolitan court judges.

The general fund appropriation for judicial education is sufficient to cover all costs for judges and justices to attend the annual judicial conclave or the magistrate college, including travel and registration fees.

(3) Magistrate courts:

(a) Personal services	4,873.0				4,873.0
(b) Employee benefits	1,431.0				1,431.0
(c) Travel	52.0			52.0	
(d) Maintenance and repairs		18.0			18.0
(e) Supplies and materials	230.0				230.0
(f) Contractual services	44.0				44.0
(g) Opeating costs	1,190.0				1,190.0
(h) Capital outlay	84.0	15.0		99.0	

Authorized FTE: 174.25 Permanent

The general fund appropriation to the magistrate courts includes two hundred three thousand three hundred dollars ($203,300) to hire an additional full-time clerk for each of the magistrate courts in Belen, Deming and Gallup, to hire two additional full-time clerks for each of the magistrate courts in Santa Fe and Los Lunas and to hire an additional half-time clerk for each of the magistrate courts in Silver City, Truth or Consequences, Clovis, Portales and Cuba.

The general fund appropriation to the magistrate courts includes thirty thousand dollars ($30,000) for an additional full-time clerk and associated expenses in the Hobbs magistrate court.

The general fund appropriation to the magistrate courts in the operating costs category includes nine hundred fifty-five thousand four hundred dollars ($955,400) for magistrate court rental expenses.

Fifteen thousand dollars ($15,000) of the unexpended appropriation to the magistrate courts for Santa Fe magistrate court rent in Laws 1992, Chapter 94, Section 4 is reappropriated from other state funds for Santa Fe magistrate court capital outlay expenses in the eighty-second fiscal year.

The general fund appropriation to the magistrate courts shall not be transferred into any other activity of the administrative office of the courts.

(4) Data processing systems:

(a) Personal services	195.0			195.0	
(b) Employee benefits	58.0			58.0	
(c) Travel	12.0		12.0		
(d) Maintenance and repairs	86.0				86.0
(e) Supplies and materials	6.0				6.0
(f) Contractual services	2.0				2.0
(g) Capital outlay	8.0			8.0	
Authorized FTE: 6.00 Permanent					
Subtotal			10,342.8		

SUPREME COURT BUILDING COMMISSION:

(a) Personal services	185.0			185.0	
(b) Employee benefits	77.0			77.0	
(c) Travel	1.0		1.0		
(d) Maintenance and repairs	40.0				40.0
(e) Supplies and materials	1.0				1.0
(f) Contractual services	3.0				3.0
(g) Operating costs	89.0		89.0		
Authorized FTE: 12.00 Permanent					
Subtotal			396.0		

JURY AND WITNESS FEE FUND:

(a) Operating costs	338.0		338.0		
(b) Other costs	2,251.0			2,251.0	

The appropriation to the jury and witness fee fund shall be expended only to pay costs of jurors, prospective jurors, witnesses and court interpreters and to pay costs of expert witnesses for grand juries and magistrate courts. Juror costs shall include suitable refreshments.

Unexpended or unencumbered balances in the jury and witness fee fund remaining at the end of the eighty-second fiscal year from appropriations made from the general fund shall not revert.

Subtotal 2,589.0

COURT APPOINTED ATTORNEY FEES FUND:

1,132.0

1,132.0

The general fund appropriation to the court appointed attorney fees fund shall be expended only to pay attorneys representing clients under the Mental Health and Developmental Disabilities Code including initial commitment hearings, to pay guardian ad litem fees and other costs associated with cases filed pursuant to the Uniform Parentage Act and for indigent representation in civil contempt cases for child support enforcement, to pay court appointed attorneys representing clients under the Adult Protective Services Act and to pay those attorney fees not associated with specific codes and acts named in this item.

Subtotal 1,132.0

COURT AUTOMATION FUND:

(a) Maintenance and repairs	97.8			97.8
(b) Supplies and materials	3.0		3.0	
(c) Contractual services	9.4		9.4	
(d) Capital outlay	1,197.9			1,197.9

Unless otherwise provided by law, the other state funds appropriation to the court automation fund in the capital outlay category shall be expended in the eighty-second fiscal year to begin automation of the sixth judicial district and toward completion of automation in the second judicial district including the Bernalillo county metropolitan court.

Subtotal 1,308.1

DISTRICT COURTS:

(1) First judicial district:

(a) Personal services			1,153.0		23.3	89.4		1,265.7
(b) Employee benefits			351.0	7.8	24.8		383.6	
(c) Travel	11.0	.2				11.2		
(d) Maintenance and repairs			19.0	.1	.2		19.3	
(e) Supplies and materials			33.0	1.9	1.3		36.2	
(f) Contractual services			38.0	44.9	1.2		84.1	
(g) Operating costs	69.0	4.9	7.0			80.9		
(h) Capital outlay	2.0					2.0		

Authorized FTE: 42.50 Permanent; 3.00 Term

(2) Second judicial district:

(a) Personal services				5,213.0	187.4	162.4			5,562.8
(b) Employee benefits				1,685.0	63.2	52.0			1,800.2
(c) Travel	10.0	1.1	2.2				13.3		
(d) Maintenance and repairs			88.0	32.0	3.0			123.0	
(e) Supplies and materials		151.0	11.7	6.2			168.9		
(f) Contractual services		41.0	36.0	4.0			131.0		
(g) Operating costs	218.0	49.5	12.7				280.2		
(h) Other costs		1.0			10.0			11.0	
(i) Capital outlay		86.0	34.2	12.5			132.7		
(j) Out-of-state travel		4.0	1.5				5.5		

Authorized FTE: 194.50 Permanent; 9.00 Term

The general fund appropriation of two hundred twenty-five thousand dollars ($225,000) to the second judicial district court to hire four additional full-time permanent positions shall be expended for an additional district court judgeship and is contingent upon legislation of the forty-first legislature, first session, becoming law.

(3) Third judicial district:

(a) Personal services	905.7		74.6				980.3		
(b) Employee benefits	259.9		22.9				282.8		
(c) Travel	11.0		1.5			12.5			
(d) Maintenance and repairs		5.0	.5	1.0				6.5	
(e) Supplies and materials	22.0	1.2	4.5				27.7		
(f) Contractual services	53.0	23.2	8.0				84.2		
(g) Operating costs	55.0	.6	6.1			61.7			
(h) Capital outlay	37.0	.5	1.4				38.9		

Authorized FTE: 30.00 Permanent; 2.00 Term

(4) Fourth judicial district:

(a) Personal services	412.0						412.0		
(b) Employee benefits	138.0						138.0		
(c) Travel	5.0					5.0			
(d) Maintenance and repairs		9.0							9.0
(e) Supplies and materials	15.0						15.0		
(f) Contractual services	3.0							3.0	
(g) Operating costs	28.0					28.0			
(h) Capital outlay	22.0					22.0			

Authorized FTE: 15.00 Permanent

(5) Fifth judicial district:

(a) Personal services	1,436.0				1,436.0
(b) Employee benefits	472.0			472.0	
(c) Travel	28.0		28.0		
(d) Maintenance and repairs	26.0				26.0
(e) Supplies and materials	78.0			78.0	
(f) Contractual services	208.0	50.0			258.0
(g) Operating costs	152.0	2.0		154.0	
(h) Capital outlay	73.0		73.0		

Authorized FTE: 51.00 Permanent

Twenty thousand dollars ($20,000) of the general fund appropriation to the fifth judicial district court in the contractual services category for a judge pro tempore in State v. Lewis, et al. shall not be expended for any other purpose.

Two hundred thousand dollars ($200,000) of the general fund appropriation to the fifth judicial district court in the supplies and materials and contractual services categories for the court appointed special advocates program shall not be expended for any other purpose.

(6) Sixth judicial district:

(a) Personal services	428.0			428.0	
(b) Employee benefits	138.0			138.0	
(c) Travel	12.0		12.0		
(d) Maintenance and repairs	4.0				4.0
(e) Supplies and materials	17.0			17.0	
(f) Contractual services	7.0				7.0
(g) Operating costs	71.0		71.0		
(h) Capital outlay	77.0		77.0		

Authorized FTE: 16.00 Permanent

(7) Seventh judicial district:

(a) Personal services	416.0			416.0		
(b) Employee benefits	139.0			139.0		
(c) Travel	10.0		10.0			
(d) Maintenance and repairs	4.0					4.0
(e) Supplies and materials	14.0			14.0		
(f) Contractual services	4.0				4.0	
(g) Operating costs	47.0		47.0			
(h) Capital outlay	36.0		36.0			

Authorized FTE: 15.50 Permanent

(8) Eighth judicial district:

(a) Personal services	434.0			434.0		
(b) Employee benefits	130.0			130.0		
(c) Travel	8.0		8.0			
(d) Maintenance and repairs	6.0					6.0
(e) Supplies and materials	12.0			12.0		
(f) Contractual services	10.0	12.6			22.6	
(g) Operating costs	42.0			42.0		
(h) Capital outlay	30.0		30.0			

Authorized FTE: 15.00 Permanent

(9) Ninth judicial district:

(a) Personal services	610.0	75.2		685.2	
(b) Employee benefits	196.0	23.1		219.1	

(c) Travel 8.0 10.6 18.6

(d) Maintenance and repairs 12.0 .5 12.5

(e) Supplies and materials 10.0 3.1 13.1

(f) Contractual services 33.0 3.5 36.5

(g) Operating costs 43.0 4.0 47.0

(h) Capital outlay 41.0 41.0

Authorized FTE: 21.00 Permanent; 2.00 Term

The general fund appropriation to the ninth judicial district court in the contractual services category includes fifteen thousand dollars ($15,000) for the CASA program and fifteen thousand dollars ($15,000) for an automobile.

(10) Tenth judicial district:

(a) Personal services 238.0 238.0

(b) Employee benefits 73.0 73.0

(c) Travel 6.0 6.0

(d) Maintenance and repairs 6.0 6.0

(e) Supplies and materials 8.0 8.0

(f) Contractual services 2.0 2.0

(g) Operating costs 25.0 25.0

(h) Capital outlay 21.0 21.0

Authorized FTE: 8.14 Permanent

(11) Eleventh judicial district:

(a) Personal services 732.0 8.5 740.5

(b) Employee benefits 223.0 6.0 229.0

(c) Travel 14.0 .6 14.6

(d) Maintenance and repairs 13.0 .5 13.5

(e) Supplies and materials 15.0 6.2 31.2

(f) Contractual services 62.0 22.5 84.5

(g) Operating costs 75.0 5.0 80.0

(h) Capital outlay 53.0 53.0

Authorized FTE: 25.00 Permanent; .50 Term

Twenty-five thousand dollars ($25,000) of the unexpended general fund appropriation to the eleventh judicial district court for Navajo-speaking interpreters in Laws 1992, Chapter 94, Section 4 is reappropriated to the judicial education fund for a Navajo court interpreters training program in the eighty-second fiscal year.

(12) Twelfth judicial district:

(a) Personal services 546.0 546.0

(b) Employee benefits 155.0 155.0

(c) Travel 7.0 7.0

(d) Maintenance and repairs 6.0 6.0

(e) Supplies and materials 19.0 19.0

(f) Contractual services 98.0 20.0 118.0

(g) Operating costs 61.0 61.0

(h) Capital outlay 10.0 10.0

Authorized FTE: 18.00 Permanent

The general fund appropriation of eighty thousand dollars ($80,000) to the twelfth judicial district court shall be expended for an additional district court judgeship and is contingent upon legislation of the forty-first legislature, first session, becoming law.

(13) Thirteenth judicial district:

(a) Personal services 954.0 954.0

(b) Employee benefits 284.0 284.0

(c) Travel 14.0 14.0

(d) Maintenance and repairs 18.0 18.0

(e) Supplies and materials 40.0 40.0

(f) Contractual services 11.0 25.0 36.0

(g) Operating costs 60.0 60.0

(h) Capital outlay 35.0 35.0

Authorized FTE: 34.00 Permanent

Subtotal 21,933.1

BERNALILLO COUNTY METROPOLITAN COURT:

(a) Personal services 4,149.0 197.0 4,346.0

(b) Employee benefits 1,326.0 63.0 1,389.0

(c) Travel 5.3 5.3

(d) Maintenance and repairs 216.7 216.7

(e) Supplies and materials 218.6 218.6

(f) Contractual services 409.6 47.0 456.6

(g) Operating costs 660.2 660.2

(h) Capital outlay 204.6 204.6

Authorized FTE: 166.00 Permanent; 8.00 Term

Subtotal 7,497.0

DISTRICT ATTORNEYS:

(1) First judicial district:

(a) Personal services 1,086.0 17.6 1,103.6

(b) Employee benefits 338.0 6.7 344.7

(c) Travel 16.0 16.0

(d) Maintenance and repairs 13.0 13.0

(e) Supplies and materials 23.0 23.0

(f) Contractual services 9.0 9.0

(g) Operating costs 116.0 116.0

(h) Capital outlay 7.0 7.0

(i) Out-of-state travel 2.0 2.0

Authorized FTE: 34.00 Permanent; 1.00 Term

(2) Second judicial district:

(a) Personal services 4,391.1 10.0 66.9 44.6 4,512.6

(b) Employee benefits 1,300.4 9.0 13.9 14.0 1,337.3

(c) Travel 44.1 4.2 48.3

(d) Maintenance and repairs 85.0 85.0

(e) Supplies and materials 34.0 35.0 69.0

(f) Contractual services 60.0 60.0

(g) Operating costs 519.8 .4 520.2

(h) Capital outlay 24.5 24.5

(i) Out-of-state travel 1.0 1.0

Authorized FTE: 145.50 Permanent; 7.50 Term

The general fund appropriation to the second judicial district attorney includes seventy-nine thousand seven hundred dollars ($79,700) to hire two full-time attorney positions for a gang unit.

(3) Third judicial district:

(a) Personal services	656.0	20.0	24.0		98.4	798.4		
(b) Employee benefits	196.0	5.0	6.6			29.3	236.9	
(c) Travel	5.0	.5		2.5	8.0			
(d) Maintenance and repairs		3.0		.5			2.5	6.0
(e) Supplies and materials	7.0		1.0			3.0		11.0
(f) Contractual services	3.0					3.0		
(g) Operating costs	28.0		4.2		4.5		36.7	
(h) Capital outlay	4.0		1.2		7.0		12.2	
(i) Out-of-state travel					2.8	2.8		

Authorized FTE: 21.00 Permanent; 5.00 Term

(4) Fourth judicial district:

(a) Personal services	502.0					502.0		
(b) Employee benefits	175.0					175.0		
(c) Travel	10.0			10.0				
(d) Maintenance and repairs		3.0					3.0	
(e) Supplies and materials	7.0					7.0		
(f) Contractual services	26.0					26.0		
(g) Operating costs	32.0				32.0			
(h) Capital outlay	15.0				15.0			

Authorized FTE: 17.00 Permanent

(5) Fifth judicial district:

(a) Personal services	1,038.0						1,038.0	
(b) Employee benefits	322.0					322.0		

(c) Travel 31.0 31.0

(d) Maintenance and repairs 4.0 4.0

(e) Supplies and materials 19.0 19.0

(f) Contractual services 73.0 73.0

(g) Operating costs 87.0 87.0

(h) Capital outlay 21.0 21.0

(i) Out-of-state travel 2.0 2.0

Authorized FTE: 35.00 Permanent

The general fund appropriation to the fifth judicial district attorney in the contractual services category includes seventy thousand dollars ($70,000) to contract for counseling services in Chaves county for victims of childhood sexual abuse.

(6) Sixth judicial district:

(a) Personal services 440.0 7.4 59.9 507.3

(b) Employee benefits 160.0 1.7 17.6 179.3

(c) Travel 17.0 .7 4.0 21.7

(d) Maintenance and repairs 5.0 5.0

(e) Supplies and materials 8.0 .2 2.0 10.2

(f) Contractual services 4.0 .3 .3 4.6

(g) Operating costs 31.0 .3 3.2 34.5

(h) Capital outlay 17.0 1.0 18.0

(i) Out-of-state travel 1.0 2.0 3.0

Authorized FTE: 14.00 Permanent; 2.50 Term

(7) Seventh judicial district:

(a) Personal services 594.0 15.0 609.0

(b) Employee benefits	188.0		5.0		193.0
(c) Travel	24.0			24.0	
(d) Maintenance and repairs		3.0			3.0
(e) Supplies and materials	11.0			11.0	
(f) Contractual services	5.0			5.0	
(g) Operating costs	29.0			29.0	
(h) Capital outlay	18.0			18.0	

Authorized FTE: 19.00 Permanent; 1.00 Term

The general fund appropriation to the seventh judicial district attorney in the personal services and employee benefits categories includes thirty thousand dollars ($30,000) for the reclassification of three employees.

(8) Eighth judicial district:

(a) Personal services	709.0		13.4		722.4
(b) Employee benefits	229.0		4.6		233.6
(c) Travel	18.0			18.0	
(d) Maintenance and repairs		5.0			5.0
(e) Supplies and materials	14.0			14.0	
(f) Contractual services	3.0			3.0	
(g) Operating costs	52.0			52.0	
(h) Capital outlay	3.0			3.0	
(i) Out-of-state travel	1.0			1.0	

Authorized FTE: 21.00 Permanent; 1.00 Term

(9) Ninth judicial district:

(a) Personal services	509.0	14.0	9.6		532.6

(b) Employee benefits 171.0 171.0

(c) Travel 6.0 1.0 7.0

(d) Maintenance and repairs 1.0 .8 1.8

(e) Supplies and materials 9.0 9.0

(f) Contractual services 5.0 .6 5.6

(g) Operating costs 36.0 1.0 37.0

(h) Capital outlay 9.0 9.0

Authorized FTE: 17.00 Permanent; 1.00 Term

(10) Tenth judicial district:

(a) Personal services 173.0 173.0

(b) Employee benefits 53.0 53.0

(c) Travel 4.0 4.0

(d) Maintenance and repairs 1.0 1.0

(e) Supplies and materials 4.0 4.0

(f) Contractual services 2.0 2.0

(g) Operating costs 10.0 10.0

(h) Capital outlay 16.0 16.0

Authorized FTE: 5.00 Permanent

(11) Eleventh judicial district--

Farmington office:

(a) Personal services 643.0 13.0 656.0

(b) Employee benefits 208.0 208.0

(c) Travel 12.0 12.0

(d) Maintenance and repairs 7.0 7.0

(e) Supplies and materials 12.0 12.0

(f) Contractual services 3.0 3.0

(g) Operating costs 45.0 45.0

(h) Capital outlay 8.0 8.0

(i) Out-of-state travel 1.0 1.0

Authorized FTE: 21.00 Permanent; .50 Term

(12) Eleventh judicial district--

Gallup office:

(a) Personal services 345.0 11.2 356.2

(b) Employee benefits 104.0 2.5 106.5

(c) Travel 5.0 .5 5.5

(d) Maintenance and repairs 1.0 1.0

(e) Supplies and materials 8.0 .2 8.2

(f) Contractual services 38.0 38.0

(g) Operating costs 21.0 21.0

(h) Capital outlay 4.0 4.0

Authorized FTE: 11.00 Permanent; .50 Term

(13) Twelfth judicial district:

(a) Personal services 592.0 11.2 121.8 725.0

(b) Employee benefits 188.0 6.0 35.8 229.8

(c) Travel 12.0 .6 .3 12.9

(d) Maintenance and repairs 10.0 1.0 11.0

(e) Supplies and materials 9.0 6.3 15.3

(f) Contractual services 4.0 1.0 5.0

(g) Operating costs 42.0 .6 42.6

(h) Capital outlay 9.0 9.0

Authorized FTE: 20.00 Permanent; 4.70 Term

(14) Thirteenth judicial district:

(a) Personal services 676.0 8.9 684.9

(b) Employee benefits 221.0 3.0 224.0

(c) Travel 10.0 10.0

(d) Maintenance and repairs 3.0 3.0

(e) Supplies and materials 11.0 11.0

(f) Contractual services 3.0 3.0

(g) Operating costs 49.0 49.0

(h) Capital outlay 3.0 3.0

Authorized FTE: 22.00 Permanent; .50 Term

Subtotal 19,068.7

ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS:

(a) Personal services 375.0 101.8 476.8

(b) Employee benefits 83.0 30.2 113.2

(c) Travel 24.8 24.8

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 1.8 1.8

(f) Contractual services	10.0	1.0			11.0	
(g) Operating costs		44.6			44.6	
(h) Capital outlay	185.0			185.0		
(i) Out-of-state travel			18.3			18.3

Authorized FTE: 3.00 Permanent

The general fund appropriation to the administrative office of the distict attorneys in the contractual services and capital outlay categories shall be distributed to the district attorneys in the eighty-second fiscal year to purchase computer equipment as defined in the district attorney automation plan.

Seventy-six thousand dollars ($76,000) of the general fund appropriation to the administrative office of the district attorneys in the contractual services and capital outlay categories shall be expended to purchase hardware and software for establishment of a personal computer network for the second judicial district attorney.

Except as otherwise provided, category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for each agency in Subsection B of this section. Such other state funds and internal service funds/interagency transfers are appropriated.

Subtotal 877.5

TOTAL JUDICIAL	65,976.3	3,783.9	945.9	464.8	71,170.9

C. GENERAL CONTROL

ATTORNEY GENERAL:

(1) Regular operations:

(a) Personal services		4,349.0	221.8	60.0	4,630.8
(b) Employee benefits		1,243.0	60.6	15.0	1,318.6
(c) Travel	88.0	8.0		96.0	

(d) Maintenance and repairs	42.0			42.0
(e) Supplies and materials	53.0			53.0
(f) Contractual services	23.0	110.0		133.0
(g) Operating costs	584.0	20.0		604.0
(h) Capital outlay	42.0			42.0
(i) Out-of-state travel	39.0			39.0

Authorized FTE: 125.00 Permanent

Included in the other state funds appropriation is twenty-two thousand four hundred dollars ($22,400) to the attorney general for regular operations from the antitrust litigation fund. The internal service funds/interagency transfers appropriation to the attorney general for regular operations includes one hundred thirteen thousand dollars ($113,000) from the risk management division of the general services department and one hundred thousand dollars ($100,000) from the state highway and transportation department.

Five percent of all money recovered from antitrust cases through the attorney general on behalf of the state, political subdivisions or private citizens shall be deposited in the antitrust litigation fund. Money in the antitrust litigation fund shall not revert and shall be expended only for nonrecurring expenditures in addition to the attorney general's operating budget.

Budget increases up to an aggregate ninety-five thousand dollars ($95,000) from other state funds are specifically authorized for attorney general regular operations in the eighty-first fiscal year to pay the department of finance and administration for contract attorney fees in The Apache Tribe of the Mescalero Reservation v. the State of New Mexico; and Bruce King, Governor of the State of New Mexico.

Budget increases up to an aggregate seventy-four thousand dollars ($74,000) from other state funds are specifically authorized for attorney general regular operations in the eighty-first fiscal year to pay costs associated with the court ordered reinstatement of an investigator.

(2) Major litigation:

(a) Personal services	355.0			355.0
(b) Employee benefits	79.0			79.0
(c) Travel	3.0		3.0	

(d) Contractual services		405.0			405.0	
(e) Operating costs	113.0			113.0		
(f) Out-of-state travel		6.0			6.0	

Authorized FTE: 11.00 Term

Budget transfers from major litigation to regular operations are not authorized for the attorney general except in emergency situations upon approval by the department of finance and administration and review by the legislative finance committee.

The attorney general is authorized to hire additional term employees for major litigation.

(3) Medicaid fraud division:

(a) Personal services		112.0		336.9	448.9	
(b) Employee benefits		34.0			104.8	138.8
(c) Travel	3.0		9.3	12.3		
(d) Maintenance and repairs		1.0			4.9	5.9
(e) Supplies and materials	1.0			4.9	5.9	
(f) Contractual services		4.0			11.8	15.8
(g) Operating costs	14.0		44.7	58.7		
(h) Capital outlay			.8	.8		
(i) Out-of-state travel		2.0			8.8	10.8

[Authorized FTE: 8.00 Permanent; 7.00 Term

Effective July 1, 1993, all appropriations and cash balances in the medicaid fraud division of the state auditor are reappropriated to the attorney general for expenditure in the eighty-second fiscal year. The department of finance and administration shall oversee the orderly transition of *the* medicaid fraud *division of the state auditor* to the attorney general effective July 1, 1993.

The attorney general shall report annually to the legislative finance committee on the receipt of all federal funds allocated to the office of the attorney general and on the expenditure of such funds by program category.

Budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the attorney general in the eighty-second fiscal year. Such other state funds and internal service funds/interagency transfers are appropriated.

Category transfers are specifically authorized for the attorney general.

Subtotal 8,617.3

STATE AUDITOR:

(a) Personal services			721.0	43.0	220.5		984.5	
(b) Employee benefits		179.0	32.1	61.4			272.5	
(c) Travel	24.0	4.6	8.6			37.2		
(d) Maintenance and repairs			6.0	1.3	2.3		9.6	
(e) Supplies and materials		12.0	2.3	4.2			18.5	
(f) Contractual services		82.0	15.3	29.1		126.4		
(g) Operating costs		133.0	21.5	23.9		178.4		
(h) Out-of-state travel			11.0					11.0

Authorized FTE: 25.00 Permanent; 2.00 Term

All appropriations, cash balances, *staff of eight permanent and seven term FTE,* equipment, computers, furniture, supplies, records and other property for the medicaid fraud division of the state auditor are transferred to the attorney general effective July 1, 1993. The department of finance and administration shall oversee the orderly transition of *the* medicaid fraud *division of the state auditor* to the attorney general effective July 1, 1993.

Category transfers are specifically authorized for the state auditor.

Budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the state auditor. Such other state funds and internal service funds/inteagency transfers are appropriated.

Subtotal 1,638.1

TAXATION AND REVENUE DEPARTMENT:

(1) Office of the secretary:

(a) Personal services			1,045.0	238.1			1,283.1
(b) Employee benefits		328.0	69.0				397.0
(c) Travel	21.0	36.0				57.0	
(d) Maintenance and repairs			1.0				1.0
(e) Supplies and materials		3.0	2.0				5.0
(f) Contractual services		205.0	12.0				217.0
(g) Operating costs	98.0	4.3				102.3	
(h) Capital outlay	9.0				9.0		
(i) Out-of-state travel		6.0	1.5				7.5

Authorized FTE: 37.00 Permanent

The internal service funds/interagency transfers appropriation of three hundred sixty-two thousand nine hundred dollars ($362,900) to the office of the secretary of the taxation and revenue department shall be made from the state road fund for the DWI legal unit.

Unexpended or unencumbered balances in the office of the secretary of the taxation and revenue department remaining at the end of the eighty-second fiscal year from appropriations made from the state road fund shall revert to the state road fund.

(2) Administrative services division:

(a) Personal services			4,105.0	73.1	339.0		4,517.1
(b) Employee benefits			1,201.0	21.9	101.7		1,324.6
(c) Travel	19.0				19.0		
(d) Maintenance and repairs			243.0				243.0
(e) Supplies and materials			1,127.0				1,127.0
(f) Contractual services			48.0				48.0

(g) Operating costs 4,494.0 4,494.0

(h) Capital outlay 283.0 283.0

(i) Out-of-state travel 6.0 6.0

Authorized FTE: 147.00 Permanent; 2.00 Temporary

The internal service funds/interagency transfers appropriation of four hundred forty thousand seven hundred dollars ($440,700) to the administrative services division of the taxation and revenue department shall be made from the state road fund for data processing services and FTE to support state road fund collections.

Unexpended or unencumbered balances in the administrative services division of the taxation and revenue department remaining at the end of the eighty-second fiscal year from appropriations made from the state road fund shall revert to the state road fund.

(3) Audit and compliance division:

(a) Personal services 6,926.0 22.7 6,948.7

(b) Employee benefits 2,153.0 6.2 2,159.2

(c) Travel 204.0 204.0

(d) Maintenance and repairs 18.0 18.0

(e) Supplies and materials 95.0 95.0

(f) Contractual services 171.0 171.0

(g) Operating costs 890.0 890.0

(h) Other costs 1.0 1.0

(i) Capital outlay 92.0 92.0

(j) Out-of-state travel 400.0 400.0

Authorized FTE: 258.00 Permanent; 9.00 Temporary

(4) Revenue processing division:

(a) Personal services 3,780.0 227.7 41.8 4,049.5

(b) Employee benefits 1,202.0 66.1 12.5 1,280.6

(c) Travel 8.0 8.0

(d) Maintenance and repairs 172.0 172.0

(e) Supplies and materials 176.0 8.9 184.9

(f) Contractual services 25.0 25.0

(g) Operating costs 2,193.0 85.2 2,278.2

(h) Capital outlay 28.0 28.0

(i) Out-of-state travel 1.0 2.4 3.4

Authorized FTE: 179.00 Permanent; 33.00 Temporary

(5) Property tax division:

(a) Personal services 848.0 393.1 1,241.1

(b) Employee benefits 362.0 109.0 471.0

(c) Travel 106.0 61.8 167.8

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 10.0 10.0

(f) Contractual services 67.0 67.0

(g) Operating costs 47.0 19.2 66.2

(h) Capital outlay 24.0 24.0

(i) Out-of-state travel 4.0 4.0

Authorized FTE: 47.00 Permanent

(6) Motor vehicle division:

(a) Personal services 2,707.0 2,662.2 5,369.2

(b) Employee benefits	990.0		973.3		1,963.3			
(c) Travel	30.0		30.0		60.0			
(d) Maintenance and repairs	40.0		39.9		79.9			
(e) Spplies and materials	370.0		364.2		734.2			
(f) Contractual services	7.0		7.3		14.3			
(g) Operating costs	461.0		453.4		914.4			
(h) Capital outlay	59.0		58.7		117.7			
(i) Out-of-state travel	2.0		2.0		4.0			

Authorized FTE: 248.00 Permanent; 10.00 Temporary

The internal service funds/interagency transfers appropriation of four million five hundred ninety-one thousand dollars ($4,591,000) to the motor vehicle division of the taxation and revenue department shall be made from the state road fund.

Unexpended or unencumbered balances in the motor vehicle division of the taxation and revenue department remaining at the end of the eighty-second fiscal year from appropriations made from the state road fund shall revert to the state road fund.

(7) Motor transportation division:

(a) Personal services			4,659.9			347.3	5,007.2	
(b) Employee benefits 1,684.4			1,591.3			93.1		
(c) Travel	288.9		81.4	370.3				
(d) Maintenance and repairs			77.2				77.2	
(e) Supplies and materials			206.9		53.5	260.4		
(f) Contractual services			66.1		6.0	72.1		
(g) Operating costs		351.2		18.9	370.1			
(h) Capital outlay		180.6		26.4	207.0			
(i) Out-of-state travel			9.1			14.9	24.0	

Authorized FTE: 189.00 Permanent; 13.00 Term

The internal service funds/interagency transfers appropriation of seven million four hundred thirty-one thousand two hundred dollars ($7,431,200) to the motor transportation division of the taxation and revenue department shall be made from the state road fund.

Unexpended or unencumbered balances in the motor transportation division of the taxation and revenue department remaining at the end of the eighty-second fiscal year from appropriations made from the state road fund shall revert to the state road fund.

The general fund and state road fund appropriations to the taxation and revenue department are contingent upon the transfer of all revenue collected and remaining on or after June 30, 1993, from imposition of the additional license plate reissuance fee pursuant to Section 66-3-14 NMSA 1978 to the computer system enhancement fund.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the taxation and revenue department. Such other state funds and internal service funds/interagency transfers are appropriated.

Subtotal 52,531.9

INVESTMENT COUNCIL:

(a) Personal services			255.0	511.1				766.1
(b) Employee benefits		82.0	165.7				247.7	
(c) Travel	4.0	8.5				12.5		
(d) Maintenance and repairs			5.0	11.3				16.3
(e) Supplies and materials		5.0	10.0				15.0	
(f) Contractual services			182.0	441.8	20.0			643.8
(g) Operating costs		47.0	95.1				142.1	
(h) Capital outlay		1.0	2.0				3.0	
(i) Out-of-state travel			3.0	7.3				10.3

Authorized FTE: 22.00 Permanent

The appropriation to the state investment council is contingent upon the council establishing an investment policy to provide for an anticipated increase in interest income to the general fund of six million dollars ($6,000,000), during the eighty-second fiscal year, over the eighty-second fiscal year general fund revenue estimate for interest income published by the secretary of finance and administration on February 18, 1993, provided that the state investment officer shall utilize the services of a brokerage firm with a New Mexico situs.

The appropriation to the investment council in the contractual services category includes thirty-two thousand nine hundred thirty-four dollars ($32,934) from the general fund and sixty-five thousand eight hundred sixty-six dollars ($65,866) from other state funds to purchase investment services previously paid for with soft dollars.

Category transfers are specifically authorized for the investment council.

Budget increases from internal service funds/interagency transfers are specifically authorized for the investment council. Such internal service funds/interagency transfers are appropriated.

Subtotal 1,856.8

DEPARTMENT OF FINANCE AND ADMINISTRATION:

(1) Office of the secretary:

(a) Personal services 466.0 466.0

(b) Employee benefits 142.0 142.0

(c) Travel 6.0 6.0

(d) Maintenance and repairs 3.0 3.0

(e) Supplies and materials 6.0 6.0

(f) Contractual services 75.0 75.0

(g) Operating costs 66.0 66.0

(h) Capital outlay 2.0 2.0

(i) Out-of-state travel 6.0 6.0

Authorized FTE: 10.00 Permanent

(2) Administrative services division:

(a) Personal services	433.0			433.0
(b) Employee benefits	130.0		130.0	
(c) Maintenance and repairs	41.0			41.0
(d) Supplies and materials	16.0		16.0	
(e) Contractual services	52.0		52.0	
(f) Operating costs	81.0		81.0	
(g) Capital outlay	30.0		30.0	
(h) Out-of-state travel	2.0		2.0	

Authorized FTE: 14.00 Permanent

(3) Board of finance:

(a) Personal services	191.0			191.0
(b) Employee benefits	58.0		58.0	
(c) Travel	6.0		6.0	
(d) Maintenance and repairs	5.0			5.0
(e) Supplies and materials	4.0		4.0	
(f) Contractual services	1,243.0			1,243.0
(g) Operating costs	13.0		13.0	
(h) Capital outlay	3.0		3.0	
(i) Out-of-state travel	2.0			2.0
(j) Emergency fund	250.0		250.0	
(k) Emergency water fund	75.0		75.0	

Authorized FTE: 6.00 Permanent

Upon certification by the state board of finance that a critical emergency exists that cannot be addressed by disaster declaration or other emergency or contingency funds and review by the legislative finance committee, the secretary of finance and administration is authorized to transfer from the general fund operating reserve to the board of finance emergency fund the amount necessary to meet the emergency. Such transfers shall not exceed an aggregate amount of one million dollars ($1,000,000) in the eighty-second fiscal year. Funds transferred to the board of finance emergency fund shall be disbursed in accordance with Section 6-1-2 NMSA 1978.

(4) State budget division:

(a) Personal services	815.0			815.0
(b) Employee benefits	229.0		229.0	
(c) Travel	9.0		9.0	
(d) Maintenance and repairs	4.0			4.0
(e) Supplies and materials	11.0		11.0	
(f) Contractual services	42.0		42.0	
(g) Operating costs	70.0		70.0	
(h) Capital outlay	16.0		16.0	
(i) Out-of-state travel	5.0			5.0
(j) Classified employee salary increase		2,000.0		2,000.0

Authorized FTE: 21.00 Permanent

The general fund appropriation to the state budget division of the department of finance and administration includes two million dollars ($2,000,000) to provide accelerated in-range movement for those employees in the classified service with considerable tenure, satisfactory performance and low comparable salaries. For those state agencies whose funds are substantially derived from state funds other than the general fund, the department of finance and administration shall transfer from the appropriate fund to the appropriate agency the amount required to provide accelerated in-range movement for those employees in the classified service with considerable tenure, satisfactory performance and low comparable salaries, effective the first full pay period following the employee's anniversary date in accordance with the classified salary plan recommendations of the personnel board.

(5) Local government division:

(a) Personal services			868.0		54.3			176.7 1,099.0
(b) Employee benefits		265.0	16.8			53.7	335.5	
(c) Travel	47.0	3.0			9.7	59.7		
(d) Maintenance and repairs			8.0	.5			1.8	10.3
(e) Supplies and materials		19.0	1.2			3.9	24.1	
(f) Contractual services			288.0	2.7			8.8	299.5
(g) Operating costs		96.0	6.1			19.5	121.6	
(h) Other costs		532.0					532.0	
(i) Capital outlay		6.0	.4			1.2	7.6	
(j) Out-of-state travel			10.0	.7			2.2	12.9
(k) Acequia and community ditch fund				300.0				300.0
(l) Acequia commission		25.0					25.0	

Authorized FTE: 25.00 Permanent; 9.50 Term

The general fund appropriation to the local government division of the department of finance and administration in the contractual services category includes ten thousand dollars ($10,000) to contract with the city of Albuquerque or Bernalillo county to provide youth leadership projects in the south valley; twenty-five thousand dollars ($25,000) to create a literacy program for inmates of the Bernalillo county detention center after their release; fifty thousand dollars ($50,000) for street and sidewalk improvements in Carrizozo; one hundred fifty thousand dollars ($150,000) for an inventory of all irrigated and nonirrigated lands existing within the middle Rio Grande conservancy district; and ten thousand dollars ($10,000) to contract with a ditch association to provide support in the Los Mimbres water adjudication process. None of this appropriation may be expended against another political subdivision of the state which is also party of a water adjudication suit covering the river or stream systems of New Mexico.

The general fund appropriation to the local government division in the other costs category includes two hundred thousand dollars ($200,000) to assist Mora county in paying for certain emergency operating expenses.

The general fund appropriation to the local government division includes twenty-five thousand dollars ($25,000) to carry out the provisions of house bill 850 of the forty-first legislature, first session.

(6) Financial control division:

(a) Personal services 1,640.0 1,640.0

(b) Employee benefits 468.0 468.0

(c) Travel 6.0 6.0

(d) Maintenance and repairs 24.0 24.0

(e) Supplies and materials 66.0 66.0

(f) Contractual services 140.0 140.0

(g) Operating costs 1,215.0 1,215.0

(h) Capital outlay 59.0 59.0

(i) Out-of-state travel 8.0 8.0

Authorized FTE: 57.00 Permanent

The general fund appropriation to the financial control division of the department of finance and administration in the personal services and employee benefits categories includes fifty-nine thousand three hundred dollars ($59,300) to hire three FTE positions for a microfilm unit.

Category transfers and division transfers are specifically authorized for the department of finance and administration.

Budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the department of finance and administration. Such other state funds and internal service funds/interagency transfers are appropriated.

(7) Dues and membership fees:

(a) Natioal association of state budget officers 6.0 6.0

(b) Council of state planning agencies	4.0				4.0
(c) Council of state governments	57.0			57.0	
(d) Western interstate commission on higher education	75.0				75.0
(e) Education commission of the states	38.0				38.0
(f) Rocky mountain corporation for public broadcasting	13.0			13.0	
(g) National conference of state legislatures	69.0			69.0	
(h) Western governors' association	36.0		36.0		
(i) Cumbres and Toltec scenic railroad commission	10.0			10.0	
(j) Commission on intergovernmental relations	5.0			5.0	
(k) Governmental accounting standards board	14.0			14.0	
(l) National center for state courts	57.0		57.0		
Subtotal				13,445.2	

PUBLIC SCHOOL INSURANCE AUTHORITY:

(1) Operations division:				
(a) Personal services		275.2	275.2	
(b) Employee benefits		83.0	83.0	
(c) Travel	40.8	40.8		
(d) Maintenance and repairs		27.2	27.2	

(e) Supplies and materials		17.0		17.0
(f) Contractual services		164.0		164.0
(g) Operating costs	59.8		59.8	
(h) Other costs	.2		.2	
(i) Capital outlay	9.5		9.5	
(j) Out-of-state travel		4.0		4.0

Authorized FTE: 7.00 Permanent

Category transfers are specifically authorized for the operations division of the public school insurance authority.

(2) Benefits division:

(a) Contractual services	81,578.9		81,578.9
(b) Other costs	25.0	25.0	

Budget increases from internal service funds/interagency transfers are specifically authorized for the benefits division of the public school insurance authority. Such internal service funds/interagency transfers are appropriated.

(3) Risk division	21,343.5		21,343.5

Budget increases from internal service funds/interagency transfers are specifically authorized for the risk division of the public school insurance authority. Such internal service funds/interagency transfers are appropriated.

Subtotal	103,628.1

RETIREE HEALTH CARE AUTHORITY:

(1) Administration:

(a) Personal services		412.2		412.2
(b) Employee benefits		111.0		111.0
(c) Travel	30.0		30.0	
(d) Maintenance and repairs		8.3		8.3

(e) Supplies and materials 20.0 20.0

(f) Contractual services 145.5 145.5

(g) Operating costs 196.6 196.6

(h) Capital outlay 10.0 10.0

(i) Out-of-state travel 7.0 7.0

Authorized FTE: 11.00 Permanent

Category transfers are specifically authorized for the administration component of the retiree health care authority.

(2) Benefits division 40,689.0 40,689.0

Budget increases from internal service funds/interagency transfers are specifically authorized for the benefits division of the retiree health care authority. Such internal service funds/interagency transfers are appropriated.

Subtotal 41,629.6

GENERAL SERVICES DEPARTMENT:

(1) Office of the secretary:

(a) Personal services 274.0 274.0

(b) Employee benefits 75.0 75.0

(c) Travel 2.0 2.0

(d) Operating costs 8.0 8.0

Authorized FTE: 7.00 Permanent

(2) Administrative services division:

(a) Personal services 179.0 944.8 1,123.8

(b) Employee benefits 52.0 273.5 325.5

(c) Travel 4.2 4.2

(d) Maintenance and repairs 3.3 3.3

(e) Supplis and materials	5.0		26.0			31.0		
(f) Contractual services	11.0		58.8			69.8		
(g) Operating costs	64.0		336.6			400.6		

Authorized FTE: 36.00 Permanent

(3) Purchasing division:

(a) Personal services		515.0	250.0	842.8			1,607.8	
(b) Employee benefits	161.0	84.6	260.2			505.8		
(c) Travel	1.0	32.8	6.5			40.3		
(d) Maintenance and repairs		4.0		25.7	70.0			99.7
(e) Supplies and materials	1.0		13.5	870.0			884.5	
(f) Contractual services			70.0	94.9			164.9	
(g) Operating costs	126.0	86.1	20.7			232.8		
(h) Capital outlay		24.6	200.0			224.6		
(i) Out-of-state travel			15.0				15.0	

Authorized FTE: 67.00 Permanent

The total appropriation to the state purchasing division of the general services department is contingent upon the division providing local governments access to copies of all state purchasing contracts, at no cost, through distribution of these contracts to public libraries throughout the state.

(4) Information systems division--
processing bureau:

(a) Personal services				3,858.8			3,858.8	
(b) Employee benefits				1,128.7			1,128.7	
(c) Travel		11.6			11.6			
(d) Maintenance and repairs					808.9		808.9	

(e) Supplies and materials		267.1	267.1	
(f) Contractual services		2,422.4		2,422.4
(g) Operating costs	574.9		574.9	
(h) Capital outlay	125.4		125.4	
(i) Out-of-state travel		26.8	26.8	
Authorized FTE: 114.00 Permanent				
(5) Data processing equipment replacement fund		4,477.2		4,477.2
(6) Telecommunications bureau:				
(a) Personal services		1,275.8		1,275.8
(b) Employee benefits		362.5	362.5	
(c) Travel	35.3		35.3	
(d) Maintenance and repairs		1,055.3		1,055.3
(e) Supplies and materials		63.9	63.9	
(f) Contractual services		556.5	556.5	
(g) Operating costs	8,019.6		8,019.6	
(h) Capital outlay	47.0		47.0	
(i) Out-of-state travel		10.0	10.0	
Authorized FTE: 40.00 Permanent				
(7) Communications equipment replacement fund			2,030.0	2,030.0
(8) Radio communications bureau:				
(a) Personal services		1,437.5		1,437.5

(b) Employee benefits			457.1		457.1
(c) Travel	81.2		81.2		
(d) Maintenance and repairs			256.1		256.1
(e) Supplies and materials			45.0		45.0
(f) Contractual services			293.9		293.9
(g) Operating costs		280.9		280.9	
(h) Capital outlay		128.0		128.0	
Authorized FTE: 51.00 Permanent					
(9) Radio equipment replacement fund			717.0		717.0
(10) Risk management division--regular:					
(a) Personal services			1,213.9		1,213.9
(b) Employee benefits			385.3		385.3
(c) Travel	28.0		28.0		
(d) Maintenance and repairs			9.2		9.2
(e) Supplies and materials			31.9		31.9
(f) Contractual services			191.9		191.9
(g) Operating costs		353.3		353.3	
(h) Capital outlay		31.1		31.1	
(i) Out-of-state travel			4.8		4.8
Authorized FTE: 37.00 Permanent					
(11) Risk management division--funds:					
(a) Public liability fund			16,572.5		16,572.5
(b) Surety bond		195.9		195.9	

(c) Public property reserve 2,515.6 2,515.6

(d) Local public bodies unemployment compensation 1,037.1 1,037.1

(e) Workers' compensation retention 15,864.9 15,864.9

(f) State unemployment compensation 3,125.2 3,125.2

(12) Property control division:

(a) Personal services 863.0 863.0

(b) Employee benefits 246.0 246.0

(c) Travel 13.0 13.0

(d) Maintenance and repairs 33.0 33.0

(e) Supplies and materials 3.0 3.0

(f) Operating costs 56.0 56.0

(g) Capital outlay 4.0 4.0

Authorized FTE: 28.00 Permanent

(13) Building services division:

(a) Personal services 2,207.0 2,207.0

(b) Employee benefits 929.0 929.0

(c) Travel 9.0 9.0

(d) Maintenance and repairs 228.0 228.0

(e) Supplies and materials 15.0 15.0

(f) Operating costs 1,733.0 1,733.0

(g) Capital outlay 75.0 75.0

Authorized FTE: 128.00 Permanent

(14) State transportation pool:

(a) Personal services 162.3 162.3

(b) Employee benefits 59.0 59.0

(c) Travel 206.1 206.1

(d) Maintenance and repairs 3.0 3.0

(e) Supplies and materials 2.7 2.7

(f) Contractual services 104.1 104.1

(g) Operating costs 12.5 12.5

(h) Capital outlay 196.5 196.5

Authorized FTE: 8.00 Permanent

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the general services department. Such other state funds and internal service funds/interagency transfers are appropriated.

Subtotal 85,667.8

EDUCATIONAL RETIREMENT BOARD:

(a) Personal services 873.1 873.1

(b) Employee benefits 275.8 275.8

(c) Travel 12.9 12.9

(d) Maintenance and repairs 40.5 40.5

(e) Supplies and materials 25.3 25.3

(f) Contractual services 364.6 364.6

(g) Operating costs 124.4 124.4

(h) Capital outlay 7.7 7.7

(i) Out-of-state travel 13.2 13.2

Authorized FTE: 33.00 Permanent

The other state funds appropriation to the educational retirement board in the contractual services category includes fifty-nine thousand five hundred dollars ($59,500) to purchase investment services previously paid for with soft dollars.

Category transfers are specifically authorized for the educational retirement board.

Budget increases from other state funds are specifically authorized for the educational retirement board. Such other state funds are appropriated.

Subtotal 1,737.5

PUBLIC DEFENDER DEPARTMENT:

(a) Personal services 5,319.5 65.0 5,384.5

(b) Employee benefits 1,581.2 20.0 1,601.2

(c) Travel 110.0 110.0

(d) Maintenance and repairs 56.0 56.0

(e) Supplies and materials 64.0 64.0

(f) Contractual services 3,171.0 52.0 3,223.0

(g) Operating costs 1,144.0 1,144.0

(h) Capital outlay 229.0 229.0

(i) Out-of-state travel 4.0 4.0

Authorized FTE: 184.00 Permanent; 4.00 Term

The general fund appropriation to the public defender department includes fifty thousand dollars ($50,000) to hire one additional full-time attorney and one full-time clerk in the Clovis public defender office.

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the public defender department. Such other state funds and internal service funds/interagency transfers are appropriated.

Unexpended or unencumbered balances in the public defender department remaining at the end of the eighty-first and eighty-second fiscal years from appropriations made from the general fund shall not revert and shall be expended only to pay contract attorney fees.

Subtotal						11,815.7	

GOVERNOR:

(a) Personal services		1,188.0					
1,188.0							
(b) Employee benefits	341.0					341.0	
(c) Travel	48.0				48.0		
(d) Maintenance and repairs		18.0					18.0
(e) Supplies and materials	58.0					58.0	
(f) Contractual services	81.0					81.0	
(g) Operating costs	547.0					547.0	
(h) Other costs	80.0					80.0	
(i) Capital outlay	71.0					71.0	
(j) Out-of-state travel		58.0					58.0
(k) Constitutional revision task force	250.0				250.0		

Authorized FTE: 37.00 Permanent

The general fund appropriation to the governor in the operating costs category includes one hundred thousand dollars ($100,000) for operating expenses of the task force for adult services and is contingent upon enactment of legislation of the forty-first legislature, first session, creating the task force *and two hundred thousand dollars ($200,000) for a governor's office of international development to prepare a state plan for international development, to coordinate executive branch implementation of the*

plan, to minimize duplication of services, to prepare proposals for legislative approval and to review existing policies on international development.

The general fund appropriation to the governor includes two hundred fifty thousand dollars ($250,000) for expenditure in the eighty-first and eighty-second fiscal years to staff a fifteen-member constitutional revision task force created to examine the constitution of New Mexico and constitutions of other states, to recommend changes and to draft legislation deemed desirable and necessary in accordance with the provisions of Article 19 of the constitution of New Mexico.

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the governor. Such other state funds and internal service funds/interagency transfers are appropriated.

Subtotal 2,740.0

LIEUTENANT GOVERNOR:

(a) Personal services	223.1			223.1
(b) Employee benefits	66.2		66.2	
(c) Travel	20.0		20.0	
(d) Maintenance and repairs	1.0			1.0
(e) Supplies and materials	5.1		5.1	
(f) Contractual services	16.0		16.0	
(g) Operating costs	20.0		20.0	
(h) Capital outlay	7.2		7.2	
(i) Out-of-state travel	15.0			15.0

Authorized FTE: 6.00 Permanent

Category transfers are specifically authorized for the lieutenant governor.

Subtotal 373.6

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION:

(1) Administrative division:

(a) Personal services		1,318.4			1,318.4
(b) Employee benefits		415.4			415.4
(c) Travel	26.4			26.4	
(d) Maintenance and repairs		41.4			41.4
(e) Supplies and materials		24.5			24.5
(f) Contractual services		1,952.7			1,952.7
(g) Operating costs		443.4			443.4
(h) Capital outlay		300.0			300.0
(i) Out-of-state travel		12.8			12.8

Authorized FTE: 45.00 Permanent; 2.00 Term

The other state funds appropriation to the public employees retirement association administration division in the personal services and employee benefits categories includes fifty-two thousand two hundred dollars ($52,200) to hire two term FTE for microfilming agency records.

The other state funds appropriation to the public employees retirement association administration division in the contractual services category includes twenty-five thousand dollars ($25,000) to purchase investment services previously paid for with soft dollars.

The other state funds appropriation to the public employees retirement association administration division in the capital outlay category includes three hundred thousand dollars ($300,000) to purchase a microfilm system.

(2) Maintenance division:

(a) Personal services		357.0			357.0
(b) Employee benefits		168.0			168.0
(c) Travel	3.1			3.1	
(d) Maintenance and repairs		114.2			114.2

(e) Supplies and materials		3.3		3.3
(f) Contractual services		4.2		4.2
(g) Operating costs	471.3		471.3	

Authorized FTE: 23.00 Permanent

(3) Deferred compensation:				
(a) Personal services		26.0		26.0
(b) Employee benefits		6.4		6.4
(c) Travel	2.2		2.2	
(d) Maintenance and repairs		.2		.2
(e) Supplies and materials		.3		.3
(f) Contractual services		2.1		2.1
(g) Operating costs	5.5		5.5	
(h) Out-of-state travel		2.3		2.3

Authorized FTE: 1.00 Permanent

(4) Legislative retirement and matching contribution	51.0	51.0

Budget increases from other state funds in an amount not to exceed one million dollars ($1,000,000) for the investment manager contract and building maintenance are specifically authorized for the public employees retirement association.

Category and division transfers are specifically authorized for the public employees retirement association.

Subtotal	5,752.1

STATE COMMISSION OF PUBLIC RECORDS:

(a) Personal services	741.0	741.0
(b) Employee benefits	260.0	260.0

(c) Travel	10.0			10.0	
(d) Maintenance and repairs		29.0	4.9		33.9
(e) Suplies and materials	9.0			9.0	
(f) Contractual services	6.0			6.0	
(g) Operating costs	148.0		10.0	158.0	
(h) Capital outlay		33.4		33.4	
(i) Out-of-state travel		2.0			2.0

Authorized FTE: 30.50 Permanent

Category transfers are specifically authorized for the state commission of public records.

Subtotal				1,253.3	

SECRETARY OF STATE:

(a) Personal services		788.0			788.0
(b) Employee benefits		251.0			251.0
(c) Travel	13.0			13.0	
(d) Maintenance and repairs		19.0			19.0
(e) Supplies and materials	37.0			37.0	
(f) Contractual services	48.0			48.0	
(g) Operating costs	498.0			498.0	
(h) Other costs	279.0			279.0	
(i) Capital outlay	20.0			20.0	
(j) Out-of-state travel		8.0			8.0

Authorized FTE: 31.00 Permanent; 1.00 Term; 1.33 Temporary

The general fund appropriation to the secretary of state includes *fifteen thousand dollars ($15,000) in the contractual services category to call and conduct a nonbinding election on the question of whether to establish a new local school district in the Rio Rancho service area and* two hundred thousand dollars ($200,000) in the other costs category to implement the postcard registration program.

Category transfers are specifically authorized for the secretary of state.

Subtotal 1,961.0

PERSONNEL BOARD:

(a) Personal services	1,957.0	209.1		2,166.1
(b) Employee benefits	614.0	63.5		677.5
(c) Travel	22.0	6.0	28.0	
(d) Maintenance and repairs	78.0	4.4		82.4
(e) Supplies and materials	37.0	9.4		46.4
(f) Contractual services	112.0	62.2		174.2
(g) Operating costs	896.0	111.3		1,007.3
(h) Capital outlay	5.0	3.0		8.0
(i) Out-of-state travel	2.0			2.0

Authorized FTE: 77.60 Permanent

The department of finance and administration is authorized to transfer to the personnel board from each executive branch agency an amount based on an assessment per authorized FTE to fund the three hundred eighty-four thousand dollars ($384,000) appropriated from internal service funds/interagency transfers for employee training programs and the eighty-four thousand nine hundred dollars ($84,900) appropriated from internal service funds/interagency transfers for the employee assistance program.

Category transfers are specifically authorized for the personnel board.

Subtotal 4,191.9

PUBLIC EMPLOYEE LABOR RELATIONS BOARD:

(a) Personal services	99.0	99.0

(b) Employee benefits 25.0 25.0

(c) Travel 20.0 20.0

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 6.0 6.0

(f) Contractual services 52.0 52.0

(g) Operating costs 39.0 39.0

(h) Capital outlay 2.0 2.0

(i) Out-of-state travel 3.0 3.0

Authorized FTE: 3.00 Permanent

Category transfers are specifically authorized for the public employee labor relations board.

Subtotal 248.0

NEW MEXICO FINANCE AUTHORITY: 391.5 391.5

Three hundred ninety-one thousand five hundred dollars ($391,500) of the unexpended appropriation to the New Mexico finance authority for agency operations in Laws 1992, Chapter 61, Section 35 is reappropriated to the New Mexico finance authority in the eighty-second fiscal year.

Subtotal 391.5

STATE TREASURER:

(a) Personal services 1,074.0
1,074.0

(b) Employee benefits 336.0 336.0

(c) Travel 9.0 9.0

(d) Maintenance and repairs 35.0 35.0

(e) Supplies and materials 30.0 30.0

(f) Contractual services 51.0 51.0

(g) Operating costs	496.0		496.0
(h) Capital outlay	5.0		5.0
(i) Out-of-state travel	6.0		6.0

Authorized FTE: 35.00 Permanent

The general fund appropriation to the state treasurer in the operating costs category includes eighteen thousand six hundred dollars ($18,600) to purchase investment services previously paid for with soft dollars.

Category transfers are specifically authorized for the state treasurer.

Subtotal			2,042.0

TOTAL GENERAL CONTROL

		92,256.3	11,322.7	236,411.5	
1,530.9	341,521.4				

D. COMMERCE AND INDUSTRY

BOARD OF EXAMINERS FOR ARCHITECTS:

(a) Personal services		83.9		83.9	
(b) Employee benefits		33.3		33.3	
(c) Travel	14.9		14.9		
(d) Maintenance and repairs		3.2		3.2	
(e) Supplies and materials		4.8		4.8	
(f) Contractual services		26.3		26.3	
(g) Operating costs	33.4		33.4		
(h) Capital outlay	2.0		2.0		
(i) Out-of-state travel		6.6			6.6

Authorized FTE: 3.50 Permanent

Category transfers and budget increases from other state funds are specifically authorized for the board of examiners for architects. Such other state funds are appropriated.

Subtotal 208.4

BORDER AUTHORITY:

(a) Personal services		82.0			82.0
(b) Employee benefits	24.0			24.0	
(c) Travel	17.0			17.0	
(d) Supplies and materials	2.0			2.0	
(e) Contractual services	2.0			2.0	
(f) Operating costs	24.0			24.0	
(g) Capital outlay	5.0			5.0	
(h) Out-of-state travel		2.0			2.0

Authorized FTE: 2.00 Permanent

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the border authority. Such other state funds and internal service funds/interagency transfers are appropriated.

Subtotal 158.0

TOURISM DEPARTMENT:

(1) Travel and marketing division:

(a) Personal services		480.0	496.0		976.0
(b) Employee benefits	135.0	173.2		308.2	
(c) Travel	8.0	11.4		39.4	
(d) Maintenance and repairs		11.0	13.1		24.1
(e) Supplies and materials	57.0	14.9		71.9	

(f) Contractual services		207.0	40.0		247.0
(g) Operating costs	2,504.0		72.6		2,576.6
(h) Other costs	983.3			983.3	
(i) Capital outlay	16.0	39.9		55.9	
(j) Out-of-state travel		25.0	1.0		26.0

Authorized FTE: 38.00 Permanent; 9.00 Temporary

The general fund appropriation to the travel and marketing division of the tourism department includes one million seven hundred thousand dollars ($1,700,000) for generic advertising.

The general fund appropriation to the travel and marketing division includes fifty-two thousand dollars ($52,000) to hire two FTE and provide for operational expenses of the Aztec welcome center.

The general fund appropriation to the travel and marketing division in the other costs category includes *fifty thousand dollars ($50,000) to promote and market the San Jon amphitheater;* two thousand dollars ($2,000) to purchase and place historic route banners in Tucumcari in Quay county, contingent upon an equal matching amount from local sources; eight thousand three hundred dollars ($8,300) to publish an information map and guide on route 66 through Albuquerque in Bernalillo county, contingent upon an equal matching amount from local sources; fifteen thousand dollars ($15,000) to promote and market the route 66 classic bicycle race, hot air balloon rally, art show, classic automobile show and southwest market in Gallup in McKinley county, contingent upon an equal matching amount from local sources; twenty thousand dollars ($20,000) to create a geographical information system working committee to prepare a systems requirements analysis for the route 66 revitalization project; three hundred thousand dollars ($300,000) to establish an annual festival of the New Mexico folklife in Las Cruces in Dona Ana county to celebrate the ethnic and cultural diversity of the many peoples of the state through a major educational, cultural and tourism event; *twenty thousand dollars ($20,000) for a regional and state marketing and advertising program for a multicultural exhibit in a museum in Ruidoso Downs in Lincoln county;* and ten thousand dollars ($10,000) to advertise, promote, market and publicize the Smokey Bear fiftieth birthday celebration in Capitan in Lincoln county.

The other state funds appropriation of eight hundred sixty-two thousand one hundred dollars ($862,100) to the travel and marketing division shall be made from the state road fund, of which seven hundred eighty-seven thousand one hundred dollars ($787,100) shall be expended for operation of the welcome centers and seventy-five thousand dollars ($75,000) shall be expended to hire four FTE and provide for operational expenses of the Don Juan de Onate monument in Rio Arriba county. This appropriation

is contingent upon enactment of senate bill 410 of the forty-first legislature, first session, and a seventy-five-thousand-dollar match from Rio Arriba county.

Unexpended or unencumbered balances in the travel and marketing division remaining at the end of the eighty-second fiscal year from appropriations made from the state road fund shall revert to the state road fund.

(2) New Mexico magazine division:

(a) Personal services		585.8		585.8
(b) Employee benefits		172.3		172.3
(c) Travel	6.6		6.6	
(d) Maintenance and repairs		4.5		4.5
(e) Supplies and materials		23.2		23.2
(f) Contractual services		765.0		765.0
(g) Operating costs	2,516.5			2,516.5
(h) Other costs	170.0		170.0	
(i) Capital outlay	13.6		13.6	
(j) Out-of-state travel		7.8		7.8

Authorized FTE: 20.00 Permanent

Budget increases from other state funds are authorized for the New Mexico Magazine division of the tourism department in the eighty-first and eighty-second fiscal years if the division demonstrates to the department of finance and administration and the legislative finance committee the availability of sufficient revenue to offset expenditures.

Category and division transfers are specifically authorized for the tourism department.

Budget increases from other state funds are authorized for the tourism department. Such other state funds are appropriated.

Subtotal 9,573.7

ECONOMIC DEVELOPMENT DEPARTMENT:

(1) Office of the secretary:

(a) Personal services	232.0			232.0
(b) Employee benefits	66.0		66.0	
(c) Travel	31.0		31.0	
(d) Supplies and materials	6.0		6.0	
(e) Contractual services	50.0		50.0	
(f) Operating costs	33.0		33.0	
(g) Capital outlay	2.0		2.0	
(h) Out-of-state travel	22.0			22.0

Authorized FTE: 4.00 Permanent; 2.00 Term

(2) Administrative services division:

(a) Personal services	682.0			682.0
(b) Employee benefits	231.0		231.0	
(c) Travel	6.0		6.0	
(d) Maintenance and repairs	35.0			35.0
(e) Supplies and materials	22.0		22.0	
(f) Contractual services	56.0		56.0	
(g) Operating costs	45.0		45.0	
(h) Capital outlay	33.0		33.0	
(i) Out-of-state travel	3.0			3.0

Authorized FTE: 25.00 Permanent

(3) Economic development division:

(a) Personal services	519.0			519.0
(b) Employee benefits	163.0		163.0	

(c) Travel	76.0		76.0	
(d) Maintenance and repairs		6.0		6.0
(e) Supplies and materials	27.0		27.0	
(f) Contractual services		785.0		785.0
(g) Operating costs	504.0		504.0	
(h) Other costs	248.0		248.0	
(i) Capital outlay	49.0		49.0	
(j) Out-of-state travel		41.0		41.0

Authorized FTE: 15.00 Permanent

The general fund appropriation to the economic development division of the economic development department includes one hundred ten thousand dollars ($110,000) for an economic development representative and associated costs to market and promote agricultural products.

The general fund appropriation to the economic development division in the contractual services category includes *forty-five thousand dollars ($45,000) for northern New Mexico economic development,* twenty-five thousand dollars ($25,000) to promote and advertise fresh New Mexico grown apples and apple festivals and one hundred fifty thousand dollars ($150,000) for the mainstreet program.

The general fund appropriation to the economic development division in the operating costs category includes three hundred fifty-eight thousand five hundred dollars ($358,500) for generic advertising.

The general fund appropriation to the economic development division in the other costs category includes fifty thousand dollars ($50,000) to implement the provisions of the Enterprise Zone Act.

(4) Film division:

(a) Personal services		147.0		147.0
(b) Employee benefits	48.0		48.0	
(c) Travel	8.0		8.0	
(d) Maintenance and repairs		3.0		3.0

(e) Supplies and materials 6.0 6.0

(f) Operating costs 151.0 151.0

(g) Capital outlay 5.0 5.0

(h) Out-of-state travel 15.0 15.0

Authorized FTE: 5.00 Permanent

(5) Technology enterprise division:

(a) Personal services 407.0 407.0

(b) Employee benefits 148.0 148.0

(c) Travel 18.0 18.0

(d) Maintenance and repairs 5.0 5.0

(e) Supplies and materials 7.0 7.0

(f) Contractual services 667.0 667.0

(g) Operating costs 30.0 30.0

(h) Capital outlay 3.0 3.0

(i) Out-of-state travel 9.0 9.0

Authorized FTE: 9.00 Permanent

The general fund appropriation to the technology enterprise division of the economic development department includes two hundred fifty thousand dollars ($250,000) for three FTE and associated costs to coordinate recruitment and development of space related industries to New Mexico.

The general fund appropriation to the technology enterprise division in the contractual services category includes forty thousand dollars ($40,000) to provide high school students participating in project uplift with information and training related to high technology careers and job opportunities for New Mexico university students. No more than three percent of the appropriation shall be expended by the department for administrative and evaluation costs.

(6) Trade division:

(a) Personal services		235.0			235.0
(b) Employee benefits	75.0			75.0	
(c) Travel	13.0			13.0	
(d) Maintenance and repairs		1.0			1.0
(e) Supplies and materials	6.0			6.0	
(f) Contractual services		263.0			263.0
(g) Operating costs	156.0			156.0	
(h) Capital outlay	11.0			11.0	
(i) Out-of-state travel		31.0			31.0

Authorized FTE: 6.00 Permanent

The general fund appropriation to the trade division of the economic development department includes fifty-six thousand dollars ($56,000) to hire a North American trade specialist.

The general fund appropriation to the trade division in the contractual services category includes seventy-five thousand dollars ($75,000) to promote New Mexico agricultural products, of which twenty-five thousand dollars ($25,000) shall be expended to promote and advertise fresh New Mexico grown apples and apple festivals.

(7) State housing division:

(a) Personal services		300.0	72.6		372.6
(b) Employee benefits	99.0	25.4		124.4	
(c) Travel	9.0	12.0		21.0	
(d) Maintenance and repairs		1.0	1.0		2.0
(e) Supplies and materials	8.0	1.0		9.0	
(f) Contractual services	7.0		14.0		21.0
(g) Operating costs	23.0	2.6		25.6	
(h) Other costs	823.0			5,950.1	6,773.1

(i) Capital outlay			10.4				10.4	
(j) Out-of-state travel			2.0	11.0				13.0

Authorized FTE: 10.00 Permanent; 3.00 Term

The general fund appropriation to the state housing division of the economic development department includes two hundred fifty thousand dollars ($250,000) for administrative costs and program funding associated with the HOME program.

The state housing division shall spend at least five hundred thousand dollars ($500,000) of the federal HOME program grant for veteran housing.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the economic development department. Such other state funds and internal service funds/interagency transfers are appropriated.

Subtotal							13,813.1	

REGULATION AND LICENSING DEPARTMENT:

(1) Administrative services division:

(a) Personal services			763.0	180.5				943.5
(b) Employee benefits			243.0	63.7				306.7
(c) Travel	3.0	2.6				5.6		
(d) Maintenance and repairs			26.0	10.1				36.1
(e) Supplies and materials		14.0	2.0				16.0	
(f) Contractual services		22.0	.8					22.8
(g) Operating costs		167.0	43.4				210.4	
(h) Capital outlay		2.8				2.8		
(i) Out-of-state travel			3.0	1.9				4.9

Authorized FTE: 30.00 Permanent; 1.00 Term

Category transfers and budget increases from internal service funds/interagency transfers are specifically authorized for the boards and commissions administration unit

in the administrative services division of the regulation and licensing department. Such internal service funds/interagency transfers are appropriated. Transfers by this unit for the indirect cost allocation and payroll for the twenty-nine boards and commissions are authorized.

(2) Construction industries division:

(a) Personal services 2,161.0
2,161.0

(b) Employee benefits 793.0 793.0

(c) Travel 202.0 202.0

(d) Maintenance and repairs 14.0 14.0

(e) Supplies and materials 36.0 36.0

(f) Contractual services 110.0 110.0

(g) Operating costs 333.0 333.0

(h) Capital outlay 3.0 3.0

(i) Out-of-state travel 2.0 2.0

Authorized FTE: 89.00 Permanent

(3) Manufactured housing division:

(a) Personal services 365.0 365.0

(b) Employee benefits 122.0 122.0

(c) Travel 36.0 36.0

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 6.0 6.0

(f) Operating costs 52.0 52.0

(g) Out-of-state travel 1.0 1.0

Authorized FTE: 14.00 Permanent

(4) Financial institutions division:

(a) Personal services 703.6 703.6

(b) Employee benefits 230.0 230.0

(c) Travel 92.0 92.0

(d) Maintenance and repairs 3.0 3.0

(e) Supplies and materials 8.0 8.0

(f) Operating costs 80.0 80.0

(g) Out-of-state travel 17.0 17.0

Authorized FTE: 24.00 Permanent

(5) New Mexico state board of public accountancy: 233.1 233.1

Authorized FTE: 3.00 Permanent

(6) Acupuncture board: 50.9 50.9

Authorized FTE: .80 Permanent

(7) New Mexico athletic commission: 34.3 34.3

Authorized FTE: .30 Permanent

(8) Athletic trainers: 13.3 13.3

Authorized FTE: .20 Permanent

(9) State board of barber examiners: 71.1 71.1

Authorized FTE: 1.65 Permanent

(10) Chiropractic board: 64.9 64.9

Authorized FTE: 1.05 Permanent

(11) State board of cosmetologists: 348.0 348.0

Authorized FTE: 5.35 Permanent; 1.00 Term

(12) Board of dentistry:		163.8		163.8
Authorized FTE: 3.00 Permanent				
(13) Hearing aid advisory board:		12.5		12.5
Authorized FTE: .25 Permanent				
(14) Landscape architects board:		23.2		23.2
Authorized FTE: .15 Permanent				
(15) State board of nursing home administrators:		29.1		29.1
Authorized FTE: .36 Permanent				
(16) Occupational therapy board:		22.8		22.8
Authorized FTE: .30 Permanent				
(17) Board of optometry:	26.6			26.6
Authorized FTE: .42 Permanent				
(18) Board of osteopathic medical examiners:	43.0			43.0
Authorized FTE: .45 Permanent				
(19) Board of pharmacy:	754.8		754.8	
Authorized FTE: 11.00 Permanent				
(20) Physical therapists licensing board:	60.6			60.6
Authorized FTE: 1.10 Permanent				
(21) New Mexico state board of podiatry:	17.2			17.2
Authorized FTE: .20 Permanent				
(22) Polygraphy board:	4.3			4.3

Authorized FTE: .05 Permanent

(23) Board of private investigators: 103.4 103.4

Authorized FTE: 1.65 Permanent

(24) New Mexico state board of psychologist examiners: 86.7 86.7

Authorized FTE: 1.30 Permanent

(25) New Mexico real estate commission: 605.1 605.1

Authorized FTE: 11.00 Permanent

(26) Respiratory care advisory board: 23.0 23.0

Authorized FTE: .32 Permanent

(27) Speech, language and audio visual advisory board: 31.5 31.5

Authorized FTE: .55 Permanent

(28) State board of thanatopractice: 36.2 36.2

Authorized FTE: .35 Permanent

(29) Nutrition and dietetics practice board: 22.4 22.4

Authorized FTE: .35 Permanent

(30) Board of social work examiners: 123.7 123.7

Authorized FTE: 2.00 Permanent

No part of the appropriation to the board of social work examiners may be expended prior to the board's issuance of a regulation authorizing prior licensees to retake the social work licensing examination an unlimited number of times. No prior licensee who is a state employee shall receive any reduction in grade or salary as long as that employee is eligible to take the written examination.

(31) Interior design board: 28.3 28.3

Authorized FTE: .40 Permanent

(32) Real estate commission recovery: 147.5 147.5

(33) Real estate commission appraisers: 98.2 98.2

Authorized FTE: 1.20 Permanent

(34) Board of massage therapy: 110.7 110.7

Authorized FTE: 1.65 Permanent

Category transfers and budget increases from other state funds are specifically authorized for the boards and commissions. Such other state funds are appropriated.

(35) Alcohol and gaming division:

(a) Personal services 323.6 323.6

(b) Employee benefits 102.0 102.0

(c) Travel 4.0 4.0

(d) Maintenance and repairs 7.0 7.0

(e) Supplies and materials 7.0 7.0

(f) Contractual services 10.0 10.0

(g) Operating costs 70.0 70.0

(h) Out-of-state travel 3.0 3.0

Authorized FTE: 12.00 Permanent

(36) Securities division:

(a) Personal services 565.0 565.0

(b) Employee benefits 170.0 170.0

(c) Travel 4.0 4.0

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 8.0 8.0

(f) Contractual services 3.0 3.0

(g) Operating costs 104.0 104.0

(h) Capital outlay 21.0 1.0

(i) Out-of-state travel 10.0 10.0

Authorized FTE: 19.00 Permanent

(37) Securities division education and training fund:

(a) Travel 4.5 4.5

(b) Supplies and materials 3.0 3.0

(c) Operating costs 18.2 18.2

(d) Capital outlay 4.0 4.0

Category transfers and division transfers are specifically authorized for the regulation and licensing department.

Subtotal 11,753.9

STATE CORPORATION COMMISSION:

(1) Administration division:

(a) Personal services 1,003.0 1,003.0

(b) Employee benefits 296.0 296.0

(c) Travel 5.0 76.8 81.8

(d) Maintenance and repairs 29.0 29.0

(e) Supplies and materials 13.0 13.0

(f) Contractual services 108.0 108.0

(g) Operating costs 132.0 283.1 415.1

(h) Capital outlay 10.0 10.0

(i) Out-of-state travel 10.0 10.0

Authorized FTE: 31.00 Permanent

Budget increases from internal service funds/interagency transfers are specifically authorized for the administration division of the state corporation commission. Such internal service funds/interagency transfers are appropriated.

(2) Corporations division:

(a) Personal services 457.0 457.0

(b) Employee benefits 171.0 171.0

(c) Maintenance and repairs 6.0 6.0

(d) Supplies and materials 8.0 8.0

(e) Contractual services 2.0 2.0

(f) Operating costs 316.0 316.0

(g) Capital outlay 6.0 6.0

Authorized FTE: 22.00 Permanent

(3) Telecommunications division:

(a) Personal services 206.0 206.0

(b) Employee benefits 62.0 62.0

(c) Travel 2.0 2.0

(d) Supplies and materials 2.0 2.0

(e) Operating costs 29.0 29.0

(f) Capital outlay 2.0 2.0

(g) Out-of-state travel 2.0 2.0

Authorized FTE: 7.00 Permanent

(4) Transportation division:

(a) Personal services		526.3		526.3
(b) Employee benefits	189.2		189.2	
(c) Travel	39.2		39.2	
(d) Maintenance and repairs		4.7		4.7
(e) Supplies and materials	3.5		3.5	
(f) Contractual services	2.0		2.0	
(g) Operating costs	202.9		202.9	
(h) Capital outlay	41.5		41.5	
(i) Out-of-state travel	.8		.8	

Authorized FTE: 23.00 Permanent

The other state funds appropriation of one million ten thousand one hundred dollars ($1,010,100) to the transportation division of the state corporation commission shall be made from the state road fund.

Unexpended or unencumbered balances in the state corporation commission remaining at the end of the eighty-second fiscal year from appropriations made from the state road fund shall revert to the state road fund.

(5) Pipeline division:

(a) Personal services	77.0			77.5	154.5
(b) Employee benefits	26.0		26.0	52.0	
(c) Travel	6.0	6.7	12.7		
(d) Maintenance and repairs			.1	.1	
(e) Supplies and materials	4.0		4.2	8.2	
(f) Contractual services			.5	.5	
(g) Operating costs	21.0	21.6	42.6		

(h) Capital outlay			.7	.7		
(i) Out-of-state travel	2.0				2.3	4.3
Authorized FTE: 5.00 Permanent						
(6) State fire marshal:						
(a) Personal services		448.3				448.3
(b) Employee benefits		150.1				150.1
(c) Travel	55.2			55.2		
(d) Maintenance and repairs		5.4				5.4
(e) Supplies and materials	18.0				18.0	
(f) Contractual services	4.3				4.3	
(g) Operating costs	226.2				226.2	
(h) Capital outlay	66.4				66.4	
(i) Out-of-state travel		5.0				5.0
Authorized FTE: 18.00 Permanent						
(7) Firefighter training academy:						
(a) Personal services		322.3				322.3
(b) Employee benefits		102.8				102.8
(c) Travel	20.9			20.9		
(d) Maintenance and repairs		104.3				104.3
(e) Supplies and materials		56.5				56.5
(f) Contractual services		46.5				46.5
(g) Operating costs	95.9				95.9	
(h) Other costs	27.1				27.1	

(i) Capital outlay		9.3		9.3	
(j) Out-of-state travel		2.2		2.2	

Authorized FTE: 13.00 Permanent

(8) Department of insurance:

(a) Personal services		1,707.2	71.6	1,778.8	
(b) Employee benefits	563.0	20.5		583.5	
(c) Travel	3.0	18.2		21.2	
(d) Maintenance and repairs		7.0	12.5		19.5
(e) Supplies and materials	7.0	14.8		21.8	
(f) Contractual services	22.0	1,018.0		1,040.0	
(g) Operating costs		573.3		573.3	
(h) Other costs		8,500.0		8,500.0	
(i) Capital outlay		20.0		20.0	
(j) Out-of-state travel		12.0	7.5	19.5	

Authorized FTE: 65.00 Permanent; 1.00 Term

Budget increases from other state funds are specifically authorized for the department of insurance. Such other state funds are appropriated.

The other state funds appropriation to the department of insurance includes twenty thousand dollars ($20,000) from the insurance examination fund, one hundred seventy-four thousand nine hundred dollars ($174,900) from the insurance licensee continuing education fund, five hundred thousand eight hundred dollars ($500,800) from the title insurance maintenance fund, five million three hundred three thousand six hundred dollars ($5,303,600) from the patient's compensation fund and four million two hundred fifty-seven thousand one hundred dollars ($4,257,100) from the subsequent injury fund.

Category transfers and division transfers are specifically authorized for the state corporation commission.

Subtotal	18,866.9

NEW MEXICO BOARD OF MEDICAL EXAMINERS:

(a) Personal services		167.3		167.3
(b) Employee benefits	65.9		65.9	
(c) Travel	10.2		10.2	
(d) Maintenance and repairs		3.5		3.5
(e) Supplies and materials	4.3		4.3	
(f) Contractual services		186.0		186.0
(g) Operating costs	47.3		47.3	
(h) Capital outlay	5.5		5.5	
(i) Out-of-state travel		3.0		3.0

Authorized FTE: 8.00 Permanent

Category transfers and budget increases from other state funds are specifically authorized for the New Mexico board of medical examiners. Such other state funds are appropriated.

Subtotal			493.0	

BOARD OF NURSING:

(a) Personal services		248.4		248.4
(b) Employee benefits		75.3		75.3
(c) Travel	14.0		14.0	
(d) Maintenance and repairs		9.1		9.1
(e) Supplies and materials	6.0		6.0	
(f) Contractual services		77.1		77.1
(g) Operating costs	91.9		91.9	
(h) Capital outlay	4.5		4.5	

(i) Out-of-state travel		2.3	2.3

Authorized FTE: 8.00 Permanent; 1.00 Term

Category transfers and budget increases from other state funds are specifically authorized for the board of nursing. Such other state funds are appropriated.

Subtotal			528.6

STATE FAIR COMMISSION:

(a) Personal services		3,332.2	3,332.2
(b) Employee benefits		799.8	799.8
(c) Travel	61.2		61.2
(d) Maintenance and repairs		237.8	237.8
(e) Supplies and materials	95.6		95.6
(f) Contractual services		3,343.1	3,343.1
(g) Operating costs	1,313.3		1,313.3
(h) Other costs	3,025.8		3,025.8
(i) Capital outlay	327.3		327.3
(j) Out-of-state travel		11.4	11.4

Authorized FTE: 48.00 Permanent; 136.00 Temporary

Category transfers and budget increases from other state funds are specifically authorized for the state fair commission. Such other state funds are appropriated.

Subtotal			12,547.5

STATE BOARD OF REGISTRATION FOR PROFESIONAL ENGINEERS AND LAND SURVEYORS:

(a) Personal services		103.1	103.1
(b) Employee benefits	34.5		34.5
(c) Travel	14.3		14.3

(d) Maintenance and repairs		4.7		4.7
(e) Supplies and materials	5.4		5.4	
(f) Contractual services		65.9		65.9
(g) Operating costs	91.7		91.7	
(h) Capital outlay	8.6		8.6	
(i) Out-of-state travel		7.7		7.7

Authorized FTE: 5.00 Permanent

Category transfers and budget increases from other state funds are specifically authorized for the state board of registration for professional engineers and land surveyors. Such other state funds are appropriated.

Subtotal			335.9	

NEW MEXICO RACING COMMISSION:

(a) Personal services	447.3			447.3
(b) Employee benefits	148.0			148.0
(c) Travel	35.0		35.0	
(d) Maintenance and repairs	3.0			3.0
(e) Supplies and materials	17.0		17.0	
(f) Contractual services	540.0			540.0
(g) Operating costs	95.0		95.0	
(h) Capital outlay	22.0		22.0	
(i) Out-of-state travel	3.0			3.0

Authorized FTE: 12.48 Permanent; 3.00 Temporary

Subtotal			1,310.3	

BOARD OF VETERINARY EXAMINERS:

(a) Personal services		18.5		18.5	
(b) Employee benefits		7.6		7.6	
(c) Travel	9.2		9.2		
(d) Maintenance and repairs		.2			.2
(e) Supplies and materials		1.5		1.5	
(f) Contractual services		52.2		52.2	
(g) Operating costs	18.8		18.8		
(h) Capital outlay	3.5		3.5		
(i) Out-of-state travel		5.5		5.5	

Authorized FTE: 1.00 Permanent

Category transfers and budget increases from other state funds are specifically authorized for the board of veterinary examiners. Such other state funds are appropriated.

Subtotal			117.0	
TOTAL COMMERCE AND INDUSTRY		26,988.0	35,960.9	667.7
6,089.7	69,706.3			

E. AGRICULTURE, ENERGY AND NATURAL RESOURCES

OFFICE OF CULTURAL AFFAIRS:

(1) Administrative services division:

(a) Personal services 646.0 646.0

(b) Employee benefits 198.0 198.0

(c) Travel 5.0 5.0

(d) Maintenance and repairs 22.0 22.0

(e) Supplies and materials 5.0 7.5 12.5

(f) Contractual services 49.5 49.5

(g) Operating costs 10.0 71.8 81.8

(h) Other costs 141.0 141.0

(i) Capital outlay 1.2 1.2

(j) Out-of-state travel 2.0 2.0

Authorized FTE: 21.00 Permanent

The general fund appropriation to the administrative services division of the office of cultural affairs in the other costs category includes *twenty-five thousand dollars ($25,000) for the celebrate youth program and* one hundred sixteen thousand dollars ($116,000) to develop the New Mexico Hispanic cultural center.

(2) Museum division:

(a) Personal services 3,399.0 481.0 3,880.0

(b) Employee benefits 1,121.0 377.2 1,498.2

(c) Travel 35.5 35.5

(d) Maintenance and repairs 47.0 238.1 285.1

(e) Supplies and materials 24.0 108.4 132.4

(f) Contractual services 100.0 98.0 198.0

(g) Operating costs 456.0 158.2 614.2

(h) Other costs 194.0 194.0

(i) Capital outlay 54.1 54.1

(j) Out-of-state travel 3.0 3.0

Authorized FTE: 144.50 Permanent; 9.50 Term

The general fund appropriation to the museum division of the office of cultural affairs in the contractual services category includes one hundred thousand dollars ($100,000) to design and plan the Fort Sumner state monument in Bosque Redondo.

(3) Contract archeology:

(a) Personal services 758.6 758.6

(b) Employee benefits 254.4 254.4

(c) Travel 76.7 76.7

(d) Maintenance and repairs 10.2 10.2

(e) Supplies and materials 22.2 22.2

(f) Contractual services 194.1 194.1

(g) Operating costs 25.2 25.2

(h) Capital outlay 57.9 57.9

Authorized FTE: 32.00 Term

(4) Natural history museum:

(a) Personal services 1,198.0 196.3 80.3 1,474.6

(b) Employee benefits 400.0 64.7 27.6 492.3

(c) Travel 23.3 23.3

(d) Maintenance and repairs 2.0 118.8 120.8

(e) Supplies and materials 10.0 89.8 99.8

(f) Contractual services 5.0 98.0 103.0

(g) Operating costs 167.0 274.5 441.5

(h) Capital outlay 23.6 23.6

(i) Out-of-state travel 6.0 6.0

Authorized FTE: 51.50 Permanent; 12.75 Term

(5) Arts division:

(a) Personal services 369.0 39.0 408.0

(b) Employee benefits 111.0 12.0 123.0

(c) Travel 24.0 24.0

(d) Maintenance and repairs 5.0 5.0

(e) Supplies and materials 14.0 14.0

(f) Contractual services 95.0 115.0 210.0

(g) Operating costs 84.0 84.0

(h) Other costs 595.0 530.0 1,125.0

(i) Capital outlay 8.0 100.0 108.0

(j) Out-of-state travel 4.0 4.0

Authorized FTE: 12.50 Permanent; 2.50 Term

(6) Library division:

(a) Personal services 1,200.0 254.8 1,454.8

(b) Employee benefits 382.0 81.5 463.5

(c) Travel 15.0 61.0 76.0

(d) Maintenance and repairs 10.0 7.6 17.6

(e) Supplies and materials 62.0 34.6 9.0 105.6

(f) Contractual services 380.0 117.0 497.0

(g) Operating costs 180.0 7.2 99.6 286.8

(h) Other costs 550.0 283.4 833.4

(i) Capital outlay 10.0 10.0

(j) Out-of-state travel 1.0 5.0 6.0

Authorized FTE: 44.00 Permanent; 15.00 Term

The general fund appropriation to the library division of the office of cultural affairs in the other costs category includes three hundred fifty thousand dollars ($350,000) for the statewide adult literacy program.

(7) Historic preservation division:

(a) Personal services 320.0 20.0 229.2 569.2

(b) Employee benefits 97.0 5.0 75.6 177.6

(c) Travel 12.5 12.5

(d) Maintenance and repairs 25.0 25.0

(e) Supplies and materials 11.8 11.8

(f) Contractual services 76.0 76.0

(g) Operating costs 25.6 25.6

(h) Other costs 270.0 270.0

(i) Capital outlay 40.0 40.0

(j) Out-of-state travel 5.0 5.0

Authorized FTE: 10.00 Permanent; 9.00 Term

(8) Space center:

(a) Personal services 599.0 85.5 684.5

(b) Employee benefits 187.0 23.9 210.9

(c) Travel 10.5 10.5

(d) Maintenance and repairs 28.0 62.3 90.3

(e) Supplies and materials 99.7 99.7

(f) Contractual services 7.8 7.8

(g) Operating costs 64.0 125.3 189.3

(h) Capital outlay 8.0 8.0

Authorized FTE: 25.00 Permanent; 5.00 Term

(9) Farm and ranch heritage museum:

(a) Personal services 67.0 67.0

(b) Employee benefits 17.9 17.9

(c) Travel 1.0 1.0

(d) Supplies and materials 3.0 3.0

(e) Contractual services 5.0 5.0

(f) Operating costs 4.9 4.9

(g) Capital outlay 5.5 5.5

Authorized FTE: 3.00 Permanent

Category transfers, division transfers and budget increases from internal service funds/interagency transfers are specifically authorized for the office of cultural affairs. Such internal service funs/interagency transfers are appropriated.

Unexpended or unencumbered balances in the office of cultural affairs remaining at the end of the eighty-first and eighty-second fiscal years from appropriations made from the general fund shall not revert.

Subtotal 20,711.4

NEW MEXICO LIVESTOCK BOARD:

(a) Personal services 229.0 1,470.0 241.7 1,940.7

(b) Employee benefits 79.0 543.5 83.3 705.8

(c) Travel 20.0 226.2 22.0 268.2

(d) Maintenance and repairs 3.3 .3 3.6

(e) Supplies and materials 3.0 87.9 3.4 94.3

(f) Contractual services 15.0 117.3 20.2 152.5

(g) Operating costs 10.0 126.4 10.7 147.1

(h) Other costs 61.2 61.2

(i) Capital outlay 12.0 197.9 13.3 223.2

(j) Out-of-state travel 4.5 .8 5.3

Authorized FTE: 78.80 Permanent

The general fund appropriation to the New Mexico livestock board for its meat inspection program, including administrative costs, is contingent upon a dollar-for-dollar match of federal funds for that program.

Category transfers and budget increases from other state funds are specifically authorized for the New Mexico livestock board. Such other state funds are appropriated.

Subtotal 3,601.9

DEPARTMENT OF GAME AND FISH:

(1) Administration:

(a) Personal services 4,514.5 2,787.0 7,301.5

(b) Employee benefits 1,580.4 975.6 2,556.0

(c) Travel 640.5 396.4 1,036.9

(d) Maintenance and repairs 236.8 145.7 382.5

(e) Supplies and materials 636.3 391.7 1,028.0

(f) Contractual services 959.4 590.2 1,549.6

(g) Operating costs 1,218.5 749.7 1,968.2

(h) Other costs 289.1 177.8 466.9

(i) Capital outlay 380.6 234.2 614.8

(j) Out-of-state travel 29.8 18.3 48.1

Authorized FTE: 224.00 Permanent; 7.00 Term; 11.50 Temporary

The game protection fund appropriation to the department of game and fish administration includes fifty-one thousand three hundred dollars ($51,300) to establish a landowner coordinator program. The department may spend an additional amount not to exceed one hundred forty-eight thousand seven hundred dollars ($148,700) for this program to the extent such funds are received from a new landowner authorization fee to be established by the state game commission.

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the department of game and fish. Such other state funds and internal service funds/interagency transfers are appropriated.

(2) Share with wildlife program: 82.2 82.2

Category transfers and budget increases from other state funds are specifically authorized for the share with wildlife program. Such other state funds are appropriated.

(3) Endangered species program:

(a) Personal services 42.0 122.7 164.7

(b) Employee benefits 12.0 37.8 49.8

(c) Travel 4.0 14.7 18.7

(d) Maintenance and repairs 1.0 1.0

(e) Supplies and materials 1.0 4.7 5.7

(f) Contractual services 10.0 20.8 30.8

(g) Operating costs 3.0 11.4 14.4

(h) Capital outlay 4.0 12.2 16.2

(i) Out-of-state travel 2.2 2.2

(j) Cash flow revolving account 50.0 50.0

Authorized FTE: 5.00 Permanent

Fifty thousand dollars ($50,000) is appropriated from the share with wildlife fund to the endangered species program to establish a nonreverting cash flow revolving account to pay budgeted expenditures prior to receipt of federal funds reimbursement and shall not be expended for any other purpose and shall not revert to the share with wildlife fund.

Category transfers and budget increases from other state funds are specifically authorized for the endangered species program. Such other state funds are appropriated.

Subtotal 17,388.2

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT:

(1) Office of the secretary:

(a) Personal services 472.0 472.0

(b) Employee benefits 144.0 144.0

(c) Travel 11.0 11.0

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 10.0 10.0

(f) Contractual services 644.0 644.0

(g) Operating costs 119.0 119.0

(h) Capital outlay 2.0 2.0

(i) Out-of-state travel 25.0 25.0

Authorized FTE: 12.00 Permanent

The general fund appropriation to the office of the secretary of the energy, minerals and natural resources department in the contractual services category includes two hundred thousand dollars ($200,000) for youth conservation corps projects.

(2) Administrative services division:

(a) Personal services 1,041.0 124.5 1,165.5

(b) Employee benefits 371.0 43.5 414.5

(c) Travel 77.0 60.0 13.9 150.9

(d) Maintenance and repairs 14.0 4.4 18.4

(e) Supplies and materials 19.0 18.5 37.5

(f) Contractual services 25.0 1.9 26.9

(g) Operating costs 244.0 113.1 357.1

(h) Capital outlay 89.0 30.2 119.2

(i) Out-of-state travel 1.0 1.0

Authorized FTE: 36.00 Permanent; 5.00 Term

(3) Energy conservation and management division:

(a) Personal services 599.0 180.7 779.7

(b) Employee benefits 181.0 54.0 235.0

(c) Travel 8.0 12.8 20.8

(d) Maintenance and repairs 2.0 3.8 5.8

(e) Supplies and materials 3.0 12.9 15.9

(f) Contractual services 2.0 2,757.9 2,759.9

(g) Operating costs 68.0 79.2 147.2

(h) Other costs 170.0 170.0

(i) Capital outlay 2.0 13.7 15.7

(j) Out-of-state travel 5.0 7.9 12.9

Authorized FTE: 15.00 Permanent; 9.00 Term

The appropriation to the energy conservation and management division of the energy, minerals and natural resources department is contingent upon the use of at least fifty percent of eighty-second fiscal year expenditures from oil overcharge funds and interest for weatherization services and repair or replacement of heaters.

(4) Forestry division:

(a) Personal services 1,239.0 100.0 55.6 143.3 1,537.9

(b) Employee benefits 402.0 7.6 15.4 47.0 472.0

(c) Travel 92.0 4.9 31.3 128.2

(d) Maintenance and repairs 17.0 7.0 24.0

(e) Supplies and materials 18.0 2.5 20.0 40.5

(f) Contractual services 84.0 .2 250.0 334.2

(g) Operating costs 157.0 8.5 133.2 298.7

(h) Other costs 201.0 33.3 234.3

(i) Capital outlay 89.0 21.0 110.0

(j) Out-of-state travel 4.0 3.3 7.3

Authorized FTE: 40.00 Permanent; 10.00 Term; 2.00 Temporary

The general fund appropriation to the forestry division of the energy, minerals and natural resources department in the personal services category includes thirty-five thousand dollars ($35,000) for the re-leaf program.

The general fund appropriation to the forestry division in the other costs category includes one hundred sixty-one thousand dollars ($161,000) for soil and water projects conducted pursuant to the Soil and Water Conservation District Act.

(5) State park and recreation division:

(a) Personal services 2,832.0 1,789.7 114.7 4,736.4

(b) Employee benefits 1,138.0 719.2 51.4 1,908.6

(c) Travel 216.0 136.7 19.4 372.1

(d) Maintenance and repairs 472.0 298.4 8.3 778.7

(e) Supplies and materials 168.0 106.8 42.5 317.3

(f) Contractual services 147.0 93.0 261.7 501.7

(g) Operating costs 705.0 445.9 1.3 1,152.2

(h) Other costs 201.0 1.0 202.0

(i) Capital outlay 754.0 287.2 90.8 1,132.0

(j) Out-of-state travel 1.0 1.0 4.8 6.8

Authorized FTE: 172.00 Permanent; 32.00 Term; 59.00 Temporary

The general fund appropriation to the state park and recreation division of the energy, minerals and natural resources department in the other costs and capital outlay categories includes one hundred fifty thousand dollars ($150,000) to prepare a feasibility study and master plan for the addition, expansion and improvement to the

Red Rock state park convention center and arena complex in Gallup, fifty thousand dollars ($50,000) to replace riprap and make other dam improvements at Storrie Lake state park, fifty thousand dollars ($50,000) to improve McAllister Lake and two hundred fifty thousand dollars ($250,000) to improve conditions in New Mexico's state parks.

(6) Mining and minerals division:

(a) Personal services 266.0 72.5 679.8 1,018.3

(b) Employee benefits 65.0 35.3 234.4 334.7

(c) Travel 15.0 6.3 45.9 67.2

(d) Maintenance and repairs 2.0 .1 6.1 8.2

(e) Supplies and materials 7.0 .6 18.7 26.3

(f) Contractual services 6.0 2.8 1,606.2 1,615.0

(g) Operating costs 44.0 5.5 125.5 175.0

(h) Capital outlay 7.0 .6 15.2 22.8

(i) Out-of-state travel 5.0 .4 13.5 18.9

Authorized FTE: 10.00 Permanent; 20.00 Term

(7) Oil conservation division:

(a) Personal services 1,936.0 15.4 126.9 2,078.3

(b) Employee benefits 617.0 5.0 40.4 662.4

(c) Travel 62.0 .6 9.4 72.0

(d) Maintenance and repairs 41.0 .3 41.3

(e) Supplies and materials 54.0 .5 54.5

(f) Contractual services 104.0 .9 102.8 207.7

(g) Operating costs 556.0 6.0 23.2 585.2

(h) Capital outlay 143.9 5.2 149.1

(i) Out-of-state trvel 17.0 1.3 3.3 21.6

Authorized FTE: 66.00 Permanent; 4.00 Term

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the energy, minerals and natural resources department. Such other state funds and internal service funds/interagency transfers are appropriated.

Subtotal 29,336.3

INTER-TRIBAL INDIAN CEREMONIAL ASSOCIATION:

(a) Personal services 60.0 47.6 107.6

(b) Employee benefits 18.0 13.9 31.9

(c) Travel 10.0 10.0

(d) Maintenance and repairs 2.9 2.9

(e) Supplies and materials 45.0 45.0

(f) Contractual services 13.0 115.3 128.3

(g) Operating costs 8.0 92.9 100.9

(h) Other costs 203.3 203.3

(i) Capital outlay 12.0 12.0

(j) Out-of-state travel 1.5 1.5

Authorized FTE: 3.00 Permanent; 2.60 Temporary

Category transfers and budget increases from other state funds are specifically authorized for the inter-tribal Indian ceremonial association. Such other state funds are appropriated.

Subtotal 643.4

COMMISSIONER OF PUBLIC LANDS:

(a) Personal services 4,044.0 4,044.0

(b) Employee benefits 1,203.3 1,203.3

(c) Travel 102.4 102.4

(d) Maintenance and repairs 111.3 111.3

(e) Supplies and materials 73.0 73.0

(f) Contractual services 318.0 318.0

(g) Operating costs 463.4 463.4

(h) Capital outlay 114.1 114.1

(i) Out-of-state travel 61.6 61.6

Authorized FTE: 139.00 Permanent; 2.00 Term; 4.00 Temporary

Budget increases from other state funds are specifically authorized for the commissioner of public lands. Such other state funds are appropriated.

Category transfers are specifically authorized for the commissioner of public lands.

Subtotal 6,491.1

NEW MEXICO PEANUT COMMISSION:

(a) Travel .5 .5

(b) Supplies and materials .7 .7

(c) Contractual services 30.0 30.0

(d) Operating costs 1.3 1.3

(e) Out-of-state travel 2.0 2.0

The appropriation to the New Mexico peanut commission is contingent upon compliance with the Open Meetings Act.

Subtotal 34.5

STATE ENGINEER:

(1) Administration:

(a) Personal services 4,806.0 85.5 4,891.5

(b) Employee benefits 1,481.0 24.3 1,505.3

(c) Travel 159.0 13.3 172.3

(d) Maintenance and repairs 32.0 32.0

(e) Supplies and materials 97.0 97.0

(f) Contractual services 887.0 887.0

(g) Operating costs 842.0 8.9 850.9

(h) Capital outlay 151.0 151.0

(i) Out-of-state travel 23.0 23.0

Authorized FTE: 159.10 Permanent; 1.00 Term; .69 Temporary

The general fund appropriation to the state engineer includes fifteen thousand dollars ($15,000) to increase the salary of the state engineer.

In addition to the other state funds appropriation to administration, all receipts from the Pecos valley artesian conservancy district for repayment of the cost of the Roswell basin water master to the state engineer for expenditure in accordance with the budget submitted pursuant to the provisions of the decree in State ex rel. Reynolds v. Lewis (Chaves county cause nos. 20294 and 22600 consolidated) are appropriated to the state engineer.

(2) Irrigation works construction

fund programs 1,500.0 1,500.0

The appropriation from the irrigation works construction fund includes: a) seventy-five thousand dollars ($75,000) to plan watershed projects benefiting irrigation in cooperation with the United States department of agriculture pursuant to the Watershed Protection and Flood Prevention Act (P.L. 83-566); b) two hundred thousand dollars ($200,000) to cooperate with the United States department of agriculture in designing and supervising construction of projects for improving, repairing and protecting from floods the dams, reservoirs, ditches, flumes and appurtenances of community ditch associations in the state; c) forty thousand dollars ($40,000) to cooperate with the United States in programs authorized by congress to reduce the nonbeneficial evaporation and transpiration of water in the Pecos river basin in New Mexico; and d) one hundred thousand dollars ($100,000) to construct, improve, repair and protect from floods the dams, reservoirs, ditches, flumes and appurtenances of community ditch associations in the state. Not more than fifteen percent of the total cost of any one project shall be paid out of the appropriation in item d) of this paragraph, and not more than fifteen thousand dollars ($15,000) of the appropriation in item d) of this paragraph shall be granted to any one community ditch. The state engineer may enter into

cooperative agreements with the owners or commissioners of ditch associations to ensure that the work will be done in the most efficient and economical manner and may contract with the federal government or any of its agencies or instrumentalities that provide matching funds or assistance.

(3) Improvement of Rio Grande income fund programs 1,237.0 1,237.0

(4) Special litigation fund 1,278.0 1,278.0

Authorized FTE: 16.00 Term; .23 Temporary

All unexpended balances in the irrigation works construction fund and the improvement of the Rio Grande income fund are appropriated for the purpose of those funds, subject to the approval of the department of finance and administration.

None of the money appropriated to the state engineer for operating or trust purposes shall be expended for primary clearing of vegetation in a phreatophyte removal project, except insofar as is required to meet the terms of the Pecos river compact between Texas and New Mexico. However, this prohibition shall not apply to removal of vegetation incidentalto the construction, operation or maintenance of works for flood control or carriage of water or both.

Category transfers and budget increases from other state funds are specifically authorized for the state engineer. Such other state funds are appropriated.

Subtotal 12,625.0

PUBLIC SERVICE COMMISSION:

(a) Personal services 1,798.0 1,798.0

(b) Employee benefits 552.0 552.0

(c) Travel 23.0 23.0

(d) Maintenance and repairs 100.0 100.0

(e) Supplies and materials 32.0 32.0

(f) Contractual services 207.0 207.0

(g) Operating costs 170.0 170.0

(h) Capital outlay 24.0 24.0

(i) Out-of-state travel 35.0 35.0

Authorized FTE: 50.00 Permanent

The general fund appropriation to the public service commission for contractual services includes seventy-two thousand dollars ($72,000) to be expended only for court reporting and no other purpose.

Category transfers*, excluding transfers out of contractual services,* are specifically authorized for the public service commission in the eighty-second fiscal year.

Subtotal 2,941.0

NEW MEXICO ORGANIC COMMODITY COMMISSION:

(a) Travel 3.1 2.0 5.1

(b) Maintenance and repairs .2 .2

(c) Supplies and materials 5.0 2.0 7.0

(d) Contractual services 23.6 2.1 25.7

(e) Operating costs 17.0 1.0 18.0

(f) Out-of-state travel 1.0 .7 1.7

The general fund appropriation to the New Mexico organic commodity commission includes fifteen thousand dollars ($15,000) to assist in operation of a farmers' market nutrition pilot program and a state nutrition plan in the eighty-first and eighty-second fiscal years.

Category transfers are specifically authorized for the New Mexico organic commodity commission.

Unexpended or unencumbered balances in the New Mexico organic commodity commission remaining at the end of the eighty-first fiscal year from appropriations made from the general fund are appropriated to contract for technical and administrative services to ensure compliance with federal accreditation requirements in the eighty-second fiscal year.

Subtotal 57.7

TOTAL AGRICULTURE, ENERGY AND NATURAL RESOURCES	43,934.9	31,084.4	1,475.2	17,336.0	93,830.5

F. HEALTH, HOSPITALS AND HUMAN SERVICES

COMMISSION ON THE STATUS OF WOMEN:

(a) Personal services 194.0 194.0

(b) Employee benefits 57.0 57.0

(c) Travel 14.0 14.0

(d) Supplies and materials 6.0 6.0

(e) Contractual services 2.0 2.0

(f) Operating costs 61.0 61.0

(g) Capital outlay 1.0 1.0

(h) Out-of-state travel 2.0 2.0

Authorized FTE: 8.00 Permanent

Category transfers are specifically authorized for the commission on the status of women.

Subtotal 337.0

COMMISSION FOR DEAF AND HARD OF HEARING PERSONS:

(a) Personal services 129.0 129.0

(b) Employee benefits 39.0 39.0

(c) Travel 7.0 7.0

(d) Supplies and materials 8.0 8.0

(e) Contractual services 31.0 31.0

(f) Operating costs 43.0 43.0

(g) Capital outlay 5.0 5.0

(h) Out-of-state travel 2.0 2.0

Authorized FTE: 5.00 Permanent

Category transfers and budget increases from internal service funds/interagency transfers are specifically authorized for the commission for deaf and hard of hearing persons. Such internal service funds/interagency transfers are appropriated.

Subtotal 264.0

MARTIN LUTHER KING, JR. COMMISSION:

(a) Personal services 27.0 27.0

(b) Employee benefits 9.0 9.0

(c) Travel 2.0 2.0

(d) Maintenance and repairs 1.0 1.0

(e) Supplies and materials 7.0 7.0

(f) Contractual services 25.0 25.0

(g) Operating costs 11.0 11.0

(h) Capital outlay 7.0 7.0

(i) Out-of-state travel 2.0 2.0

Authorized FTE: 1.50 Permanent

The general fund appropriation to the Martin Luther King, Jr. commission in the contractual services category includes twenty-five thousand dollars ($25,000) to promote African American days at the New Mexico state fair.

Category transfers are specifically authorized for the Martin Luther King, Jr. commission.

Subtotal 91.0

COMMISSION FOR THE BLIND:

(a) Personal services 488.0 553.9 1,086.0 2,127.9

(b) Employee benefits 131.0 164.3 340.7 636.0

(c) Travel 37.0 15.9 42.0 94.9

(d) Maintenance and repairs 7.0 22.5 8.9 38.4

(e) Supplies and materials 20.0 5.3 45.0 70.3

(f) Contractual services 20.0 27.8 4.4 52.2

(g) Operating costs 65.0 51.7 169.9 286.6

(h) Other costs 609.0 481.0 1,055.9 2,145.9

(i) Capital outlay 23.0 92.9 115.9

(j) Out-of-state travel 2.0 2.7 4.2 8.9

Authorized FTE: 102.00 Permanent; 3.00 Term

Category transfers and budget increases from other state funds are specifically authorized for the commission for the blind. Such other state funds are appropriated.

Unexpended or unencumbered balances in the commission for the blind remaining at the end of the eighty-second fiscal year from appropriations made from the general fund shall not revert.

Subtotal 5,577.0

OFFICE OF INDIAN AFFAIRS:

(a) Personal services 329.0 329.0

(b) Employee benefits 87.0 87.0

(c) Travel 13.0 13.0

(d) Maintenance and repairs 1.0 1.0

(e) Supplies and materials 6.0 6.0

(f) Contractual services 331.0 321.4 652.4

(g) Operating costs 25.0 25.0

(h) Capital outlay 41.0 41.0

(i) Out-of-state travel 2.0 2.0

Authorized FTE: 11.00 Permanent

The general fund appropriation to the office of Indian affairs in the personal services and employee benefits categories includes *thirty thousand dollars ($30,000) for a full-time classified position;* twenty-eight thousand dollars ($28,000) for a full-time substance abuse counselor for the Cudei chapter house in San Juan county*; and fifty-five thousand dollars ($55,000) for a full-time Indian arts and crafts investigator*

The general fund appropriation to the office of Indian affairs in the contractual services category includes thirty-five thousand dollars ($35,000) to update a feasibility study for a nursing home to be annexed to the health center in Dulce in the eighty-first fiscal year; thirty thousand dollars ($30,000) to provide an intensive five-week language institute to train paraprofessionals and Native Americans who teach in bilingual programs; *forty thousand dollars ($40,000) to create a dual taxation study task force;* fifty thousand dollars ($50,000) for an urban alcoholism referral and treatment placement service at the Albuquerque Indian center*; and one hundred thousand dollars ($100,000) to fund a planning grant for Isleta pueblo to study creation of an intergovernmental and intercommunity network to deal with environmental issues along the Rio Grande, with emphasis on water quality and water quality monitoring and linking the program with technical capabilities of the southwestern Indian polytechnic institute, Los Alamos national laboratory and the scientific community in Albuquerque*.

The general fund appropriation to the office of Indian affairs in the capital outlay category includes forty thousand dollars ($40,000) to equip, furnish and improve the playground and purchase a minivan school bus for the Twin Lakes chapter headstart facility in McKinley county.

Category transfers and budget increases from internal service funds/interagency transfers are specifically authorized for the office of Indian affairs. Such internal service funds/interagency transfers are appropriated.

Subtotal 1,156.4

STATE AGENCY ON AGING:

(1) Administration:

(a) Personal services 454.5 271.1 725.6

(b) Employee benefits 146.6 87.8 234.4

(c) Travel 20.0 10.8 30.8

(d) Maintenance and repairs .5 .5

(e) Supplies and materials 5.0 2.5 7.5

(f) Contractual services 10.8 5.3 16.1

(g) Operating costs 50.0 25.4 75.4

(h) Other costs .3 .3

(i) Capital outlay 7.0 3.1 10.1

(j) Out-of-state travel 3.5 1.2 4.7

Authorized FTE: 24.00 Permanent

The general fund appropriation to the administration component of the state agency on aging in the personal services, employee benefits, travel, supplies and materials, contractual services, operating costs and out-of-state travel categories includes sixty-one thousand four hundred dollars ($61,400) to hire a nutritionist and a secretary.

(2) Special programs:

(a) Personal services 121.0 116.4 237.4

(b) Employee benefits 34.0 33.6 67.6

(c) Travel 3.0 13.1 16.1

(d) Maintenance and repairs .5 .5

(e) Supplies and materials 3.0 1.8 4.8

(f) Contractual services 1.0 1.0

(g) Operating costs 14.0 30.9 44.9

(h) Other costs 39.0 90.0 129.0

(i) Out-of-state travel 1.0 7.7 8.7

Authorized FTE: 7.00 Permanent; 1.00 Term

(3) Employment programs 777.0 369.4 1,146.4

(4) Community programs 8,131.0 4,929.8 13,060.8

The general fund appropriation to community programs in the state agency on aging includes three hundred fifteen thousand dollars ($315,000) to provide supportive services to victims of Alzheimer's disease and related disorders and to their families and

care givers; four hundred thousand dollars ($400,000) to provide meal programs for Navajo senior citizens; two hundred thousand dollars ($200,000) to provide supplemental funding for legal assistance, guardianship and conservatorship programs for senior citizens; thirty thousand dollars ($30,000) to provide Los Volcanes intergenerational programs; forty thousand dollars ($40,000) for Cudei senior program operations in San Juan county; fifty thousand dollars ($50,000) to pay partial operating costs of program and transportation for the Francis adult day care center in Gallup in McKinley county; one hundred thousand dollars ($100,000) to expand the senior day care facility at Barelas senior center in Albuquerque in Bernalillo county; one hundred fifty thousand dollars ($150,000) for in-home services, transportation, nutrition and other services to keep the elderly independent and in their homes; *seventy-five thousand dollars ($75,000) to continue renovation of the John Marshall nutrition building in Bernalillo county;* and one hundred thousand dollars ($100,000) to purchase physical therapy equipment for the stroke victims center in Espanola in Rio Arriba county.

The amount from the general fund for community programs included in the appropriation to the state agency on aging to supplement federal Older Americans Act programs shall be contracted to the designated area agencies on aging.

(5) Volunteer programs: 1,876.0 1,876.0

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the state agency on aging. Such other state funds and internal service funds/interagency transfers are appropriated.

Unexpended or unencumbered balances in the state agency on aging remaining at the end of the eighty-second fiscal year from appropriations made from the general fund shall revert to the general fund sixty days after eighty-second fiscal year audit reports have been approved by the state auditor.

Subtotal 17,698.6

HUMAN SERVICES DEPARTMENT:

(1) Administrative services division:

(a) Personal services 2,222.0 2,653.1 4,875.1

(b) Employee benefits 754.0 900.2 1,654.2

(c) Travel 40.0 48.5 88.5

(d) Maintenance and repairs 128.0 153.8 281.8

(e) Supplies and materials 53.0 63.9 116.9

(f) Contractual services 1,333.0 1,592.2 2,925.2

(g) Operating costs 3,016.0 3,601.7 6,617.7

(h) Capital outlay 20.0 24.9 44.9

(i) Out-of-state travel 4.0 5.6 9.6

Authorized FTE: 162.50 Permanent; 4.00 Term; 1.00 Temporary

(2) Child support enforcement division:

(a) Personal services 360.0 1,253.5 3,068.4 4,681.9

(b) Employee benefits 100.0 421.4 1,052.2 1,573.6

(c) Travel 6.0 25.3 63.3 94.6

(d) Maintenance and repairs 1.0 4.8 12.0 17.8

(e) Supplies and materials 11.0 49.0 122.3 182.3

(f) Contractual services 151.0 259.0 707.5 1,117.5

(g) Operating costs 80. 337.0 841.3 1,258.3

(h) Capital outlay 10.0 43.3 108.1 161.4

(i) Out-of-state travel 1.0 6.4 15.8 23.2

Authorized FTE: 200.00 Permanent

The general fund appropriation to the child support enforcement division of the human services department in the contractual services category includes one hundred fifty thousand dollars ($150,000) to contract with the Navajo nation for development and implementation of a child support enforcement program with offices in Crownpoint in McKinley county and Shiprock in San Juan county to provide cooperative tribal and state enforcement of child support enforcement orders.

(3) Medical assistance division:

(a) Personal services 533.0 109.7 1,183.7 1,826.4

(b) Employee benefits 173.0 37.2 387.4 597.6

(c) Travel 5.0 1.9 14.2 21.1

(d) Maintenance and repairs 2.0 .2 5.1 7.3

(e) Supplies and materials 40.0 8.1 88.8 136.9

(f) Contractual services 2,295.0 163.5 6,483.3 8,941.8

(g) Operating costs 235.0 14.8 471.1 720.9

(h) Capital outlay 13.6 14.7 28.3

(i) Out-of-state travel 3.0 .1 5.7 8.8

Authorized FTE: 66.00 Permanent

(4) Medicaid payments 143,541.0 18,742.8 8,995.0 507,241.6 678,520.4

(5) Income support division:

(a) Personal services 8,022.0 11,098.3 19,120.3

(b) Employee benefits 2,961.0 3,801.8 6,762.8

(c) Travel 241.0 241.2 482.2

(d) Maintenance and repairs 152.0 152.2 304.2

(e) Supplies and materials 327.0 327.6 654.6

(f) Contractual services 731.0 4,785.2 5,516.2

(g) Operating costs 2,784.0 2,784.7 5,568.7

(h) Other costs 23,748.0 2,466.5 77,235.6 103,450.1

(i) Capital outlay 99.0 99.0 198.0

(j) Out-of-state travel 15.0 15.8 30.8

Authorized FTE: 848.00 Permanent; 9.00 Term; 21.70 Temporary

The general fund appropriation to the income support division of the human services department in the contractual services category includes twenty-five thousand dollars ($25,000) to contract with southern New Mexico legal services and twenty-five thousand dollars ($25,000) to contract with northern New Mexico legal services to provide legal representation for disabled persons seeking benefits from the federal social security administration.

The general fund appropriation to the income support division in the other costs category includes one million twenty thousand dollars ($1,020,000) for the general assistance program.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the human services department. Such other state funds and internal service funds/interagency transfers are appropriated.

Subtotal 858,621.9

LABOR DEPARTMENT:

(1) Office of the secretary:

(a) Personal services 620.3 620.3

(b) Employee benefits 190.0 190.0

(c) Travel 17.3 17.3

(d) Maintenance and repairs 3.3 3.3

(e) Supplies and materials 25.6 25.6

(f) Contractual services 2.3 2.3

(g) Operating costs 73.7 73.7

(h) Other costs 12.2 12.2

(i) Capital outlay 2.7 2.7

(j) Out-of-state travel 11.3 11.3

Authorized FTE: 19.00 Permanent; 1.00 Term; 1.00 Temporary

(2) Administrative services division:

(a) Personal services 3,090.4 3,090.4

(b) Employee benefits 1,006.0 1,006.0

(c) Travel 25.8 25.8

(d) Maintenance and repairs 282.9 282.9

(e) Supplies and materials 90.6 90.6

(f) Contractual services 81.7 81.7

(g) Operating costs 450.0 450.0

(h) Other costs 43.6 43.6

(i) Capital outlay 10.8 10.8

(j) Out-of-state travel 23.9 23.9

Authorized FTE: 122.00 Permanent; 3.00 Term; .50 Temporary

(3) Penalty and interest fund:

(a) Personal services 92.6 92.6

(b) Employee benefits 8.7 8.7

(c) Supplies and materials 15.0 15.0

(d) Contractual services 45.0 45.0

(e) Operating costs 30.0 30.0

(f) Other costs 86.7 86.7

(g) Capital outlay 321.6 321.6

Authorized FTE: 8.47 Temporary

(4) Employment security division:

(a) Personal services 11,371.1 11,371.1

(b) Employee benefits 3,863.1 3,863.1

(c) Travel 273.7 273.7

(d) Maintenance and repairs 402.3 402.3

(e) Supplies and materials 470.2 470.2

(f) Contractual services 266.1 266.1

(g) Operating costs 1,556.5 1,556.5

(h) Other costs 6,020.1 6,020.1

(i) Capital outlay 700.7 700.7

(j) Out-of-state travel 65.4 65.4

Authorized FTE: 504.00 Permanent; 1.00 Term; 11.00 Temporary

(5) Job training division:

(a) Personal services 1,579.4 1,579.4

(b) Employee benefits 505.4 505.4

(c) Travel 75.4 75.4

(d) Maintenance and repairs 7.4 7.4

(e) Supplies and materials 61.2 61.2

(f) Contractual services 400.0 43.9 443.9

(g) Operating costs 385.9 385.9

(h) Other costs 1,108.1 8,717.5 9,825.6

(i) Capital outlay 9.3 9.3

(j) Out-of-state travel 47.7 47.7

Authorized FTE: 53.00 Permanent; 5.00 Term; 1.00 Temporary

The general fund appropriation to the job training division of the labor department in the contractual services category includes four hundred thousand dollars ($400,000) to contract with a nonprofit corporation for remedial education, work maturity skills training, pre-employment skills and work experience to targeted at-risk, in- and out-of-school youth to ensure they have the necessary skills to succeed in the workplace.

(6) Labor and industrial division:

(a) Personal services 641.0 641.0

(b) Employee benefits 203.0 203.0

(c) Travel 18.0 18.0

(d) Maintenance and repairs 3.0 3.0

(e) Supplies and materials 10.0 10.0

(f) Contractual services 4.0 4.0

(g) Operating costs 123.0 123.0

(h) Out-of-state travel 1.0 1.0

Authorized FTE: 24.00 Permanent

(7) Human rights division:

(a) Personal services 394.5 75.7 470.2

(b) Employee benefits 107.5 69.1 176.6

(c) Travel 21.0 .3 21.3

(d) Maintenance and repairs 1.0 1.9 2.9

(e) Supplies and materials 8.0 1.3 9.3

(f) Contractual services 2.0 2.0 4.0

(g) Operating costs 75.0 45.5 120.5

(h) Capital outlay 2.0 2.0

(i) Out-of-state travel 4.0 4.0

Authorized FTE: 19.00 Permanent

Category and division transfers are specifically authorized for the labor department.

Subtotal 46,408.2

WORKERS' COMPENSATION ADMINISTRATION:

(1) Office of the director:

(a) Personal services 1,008.8 1,008.8

(b) Employee benefits 301.7 301.7

(c) Travel 65.2 65.2

(d) Maintenance and repairs 5.7 5.7

(e) Supplies and materials 17.5 17.5

(f) Contractual services 62.5 62.5

(g) Operating costs 116.3 116.3

(h) Out-of-state travel 12.0 12.0

Authorized FTE: 29.00 Permanent

(2) Operations division:

(a) Personal services 1257.5 1,257.5

(b) Employee benefits 401.6 401.6

(c) Travel 36.0 36.0

(d) Maintenance and repairs 143.3 143.3

(e) Supplies and materials 39.7 39.7

(f) Contractual services 791.4 791.4

(g) Operating costs 570.1 570.1

(h) Other costs 6.9 6.9

(i) Capital outlay 156.0 156.0

(j) Out-of-state travel 5.5 5.5

Authorized FTE: 60.00 Permanent

(3) Regulations division:

(a) Personal services 1,350.5 1,350.5

(b) Employee benefits 415.6 415.6

(c) Travel 61.5 61.5

(d) Maintenance and repairs 2.4 2.4

(e) Supplies and materials 23.7 23.7

(f) Contractual services 16.0 16.0

(g) Operating costs 350.6 350.6

(h) Capital outlay 2.0 2.0

(i) Out-of-state travel 19.1 19.1

Authorized FTE: 54.00 Permanent

Category transfers, division transfers and budget increases from other state funds are specifically authorized for the workers' compensation administration. Such other state funds are appropriated.

Unexpended or unencumbered balances in the workers' compensation administration remaining at the end of the eighty-second fiscal year from appropriations made from the workers' compensation fund shall revert to the workers' compensation fund.

Subtotal 7,239.1

DIVISION OF VOCATIONAL REHABILITATION:

(1) Rehabilitative services unit:

(a) Personal services 870.0 4,000.5 4,870.5

(b) Employee benefits 292.0 1,164.5 1,456.5

(c) Travel 30.0 132.4 162.4

(d) Maintenance and repairs 26.0 102.2 128.2

(e) Supplies and materials 50.0 170.8 220.8

(f) Contractual services 138.0 998.8 1,136.8

(g) Operating costs 362.0 1,423.4 1,785.4

(h) Other costs 1,465.0 5,810.0 7,275.0

(i) Capital outlay 83.0 328.5 411.5

(j) Out-of-state travel 4.0 29.6 33.6

Authorized FTE: 177.00 Permanent; 11.00 Term

(2) Disability determination unit:

(a) Personal services 12.5 2,524.8 2,537.3

(b) Employee benefits 763.1 763.1

(c) Travel 13.0 13.0

(d) Maintenance and repairs 57.3 57.3

(e) Supplies and materials 41.0 41.0

(f) Contractual services 683.8 683.8

(g) Operating costs 697.8 697.8

(h) Other costs 2,601.4 2,601.4

(i) Capital outlay 361.1 361.1

(j) Out-of-state travel 16.5 16.5

Authorized FTE: 84.00 Permanent; 11.00 Term

The division of vocational rehabilitation shall transfer to the general fund earnings generated by the statewide cost allocation plan.

Category transfers and budget increases from other state funds are specifically authorized for the division of vocational rehabilitation. Such other state funds are appropriated.

Unexpended or unencumbered balances in the division of vocational rehabilitation remaining at the end of the eighty-second fiscal year from appropriations made from the general fund shall not revert.

Subtotal 25,253.0

GOVERNOR'S COMMITTEE ON CONCERNS OF THE HANDICAPPED:

(a) Personal services 167.0 63.9 230.9

(b) Employee benefits 50.0 18.6 68.6

(c) Travel 8.0 3.8 11.8

(d) Maintenance and repairs 2.0 .1 2.1

(e) Supplies and materials 9.0 1.6 10.6

(f) Contractual services 19.0 .5 19.5

(g) Operating costs 29.0 2.3 31.3

(h) Other costs 2.0 2.0

(i) Capital outlay 13.0 13.0

(j) Out-of-state travel 5.0 5.0

Authorized FTE: 6.00 Permanent; 2.20 Term

Budget increases from internal service funds/interagency transfers are specifically authorized for the governor's committee on concerns of the handicapped. Such internal service funds/interagency transfers are appropriated.

Category transfers are specifically authorized for the governor's committee on concerns of the handicapped.

Subtotal 394.8

DEVELOPMENTAL DISABILITIES PLANNING COUNCIL:

(a) Personal services 133.0 9.3 63.5 205.8

(b) Employee benefits 48.0 2.7 18.6 69.3

(c) Travel 3.0 13.1 16.1

(d) Supplies and materials 8.0 1.0 9.0

(e) Contractual services 1.0 6.5 7.5

(f) Operating costs 9.0 4.4 45.7 59.1

(g) Other costs 3.0 389.8 392.8

Authorized FTE: 6.00 Permanent; 1.00 Term

The general fund appropriation to the developmental disabilities planning council includes fifty thousand dollars ($50,000) for the head injury task force program and one full-time head injury coordinator.

Category transfers are specifically authorized for the developmental disabilities planning council.

Subtotal 759.6

MINERS' HOSPITAL:

(a) Personal services 4,563.7 46.5 4,610.2

(b) Employee benefits 1,583.4 20.0 1,603.4

(c) Travel 42.1 42.1

(d) Maintenance and repairs 270.8 270.8

(e) Supplies and materials 1,386.7 1,386.7

(f) Contractual services 867.4 58.5 925.9

(g) Operating costs 584.5 584.5

(h) Other costs 4.7 4.7

(i) Capital outlay 224.3 224.3

(j) Out-of-state travel 5.1 5.1

Authorized FTE: 187.50 Permanent; 13.50 Term

Category transfers, division transfers and budget increases from other state funds are specifically authorized for miners' hospital. Such other state funds are appropriated.

Subtotal 9,657.7

DEPARTMENT OF HEALTH:

(1) Office of the secretary:

(a) Personal services 259.0 259.0

(b) Employee benefits 71.0 71.0

(c) Travel 5.0 5.0

(d) Maintenance and repairs 3.0 3.0

(e) Supplies and materials 4.0 4.0

(f) Contractual services 10.0 10.0

(g) Operating costs 14.0 14.0

(h) Out-of-state travel 3.0 3.0

Authorized FTE: 5.00 Permanent; 1.00 Term

(2) Administrative services division:

(a) Personal services 1,658.0 56.1 807.5 2,521.6

(b) Employee benefits 565.0 17.4 275.6 858.0

(c) Travel 11.0 .6 5.7 17.3

(d) Maintenance and repairs 34.0 .1 17.0 51.1

(e) Supplies and materials 43.0 .5 21.5 65.0

(f) Contractual services 105.0 52.3 157.3

(g) Operating costs 591.0 .5 292.4 883.9

(h) Capital outlay 22.0 2.1 10.6 34.7

(i) Out-of-state travel 2.0 1.2 3.2

Authorized FTE: 92.00 Permanent; 3.00 Term

(3) Internal audit:

(a) Personal services 171.0 171.0

(b) Employee benefits 48.0 48.0

(c) Travel 12.0 12.0

(d) Maintenance and repairs 1.0 1.0

(e) Supplies and materials 2.0 2.0

(f) Operating costs 29.0 29.0

(g) Capital outlay 4.0 4.0

(h) Out-of-state travel 2.0 2.0

Authorized FTE: 6.00 Permanent

(4) General counsel:

(a) Personal services 368.0 368.0

(b) Employee benefits 115.0 115.0

(c) Travel 7.0 7.0

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 5.0 5.0

(f) Contractual services 10.0 10.0

(g) Operating costs 22.0 22.0

(h) Capital outlay 2.0 2.0

(i) Out-of-state travel 1.0 1.0

Authorized FTE: 10.00 Permanent

(5) Epidemiology:

(a) Personal services 435.0 265.1 700.1

(b) Employee benefits 112.0 81.4 193.4

(c) Travel 5.0 10.0 15.0

(d) Maintenance and repairs 2.0 3.5 5.5

(e) Supplies and materials 4.0 7.8 11.8

(f) Contractual services 2.0 170.0 172.0

(g) Operating costs 40.0 24.8 64.8

(h) Capital outlay 2.4 2.4

(i) Out-of-state travel 1.0 8.0 9.0

Authorized FTE: 11.00 Permanent; 8.50 Term

(6) Long-term care and restorative services division:

(a) Personal services 432.0 223.1 655.1

(b) Employee benefits 138.0 70.5 208.5

(c) Travel 14.0 9.2 23.2

(d) Maintenance and repairs 3.0 .7 3.7

(e) Supplies and materials 10.0 2.7 12.7

(f) Contractual services 5.0 5.0

(g) Operating costs 35.0 5.8 40.8

(h) Capital outlay 5.0 3.6 8.6

(i) Out-of-state travel 2.0 1.0 3.0

Authorized FTE: 10.00 Permanent; 13.00 Term

(7) Health policy commission:

(a) Personal services 328.0 328.0

(b) Employee benefits 63.0 63.0

(c) Travel 26.0 26.0

(d) Maintenance and repairs 1.0 1.0

(e) Supplies and materials 12.0 12.0

(f) Contractual services 58.0 58.0

(g) Operating costs 44.0 44.0

(h) Capital outlay 1.0 1.0

(i) Out-of-state travel 4.0 4.0

Authorized FTE: 8.00 Permanent

The general fund appropriation to the health policy commission of the department of health in the personal services category includes one hundred fifty thousand dollars ($150,000) for three FTE.

The general fund appropriation to the department of health for the health policy commission shall be made directly to the health policy commission.

(8) Scientific laboratory division:

(a) Personal services 2,000.0 50.0 596.2 15.2 2,661.4

(b) Employee benefits 623.0 15.5 180.2 4.7 823.4

(c) Travel 25.0 25.0

(d) Maintenance and repairs 150.0 76.1 226.1

(e) Supplies and materials 500.0 33.5 250.0 5.1 788.6

(f) Contractual services 325.0 11.0 90.0 426.0

(g) Operating costs 28.0 20.0 172.5 220.5

(h) Other costs 35.0 35.0

(i) Capital outlay 200.0 200.0

(j) Out-of-state travel 6.0 6.0

Authorized FTE: 78.00 Permanent; 23.00 Term

(9) Public health division:

(a) Personal services 11,238.0 1,292.1 3,100.5 15,630.6

(b) Employee benefits 3,756.0 375.6 973.1 5,104.7

(c) Travel 441.0 44.0 178.0 663.0

(d) Maintenance and repairs 139.0 3.1 18.8 160.9

(e) Supplies and materials 2,435.0 116.9 533.3 3,085.2

(f) Contractual services 9,670.0 100.3 2,701.2 12,471.5

(g) Operating costs 1,695.0 121.2 432.5 2,248.7

(h) Other costs 1,784.0 1,850.0 4,068.1 7,702.1

(i) Capital outlay 67.0 67.0

(j) Out-of-state travel 27.0 6.5 49.0 82.5

Authorized FTE: 423.00 Permanent; 170.00 Term

The general fund appropriation to the public health division of the department of health in the contractual services category includes two hundred thousand dollars ($200,000) to monitor and assess health conditions for reduction of health risks in the San Jose area of Albuquerque; *seventy-five thousand dollars ($75,000) to staff and operate a state public health office in Los Alamos county, contingent upon matching funds of sixty thousand dollars ($60,000) from Los Alamos county; three hundred thirty thousand dollars ($330,000) for rural primary health care;* thirteen thousand dollars ($13,000) for an ambulance in Cimarron; twenty-five thousand dollars ($25,000) for the Mora clinic; *twenty-five thousand dollars ($25,000) for Mora valley community services; two hundred thousand dollars ($200,000) to contract with publicly funded clinics for persons infected with the human immune deficiency virus or having acquired immune deficiency syndrome to provide medical services to an increased number of patients and to fund the medication program serving an increased number of patients with an expanded scope of medication;* two hundred thousand dollars ($200,000) to contract for prevention education for an at-risk target population of persons infected with the human immune deficiency virus or having acquired immune deficiency syndrome; *five hundred thousand dollars ($500,000) to establish three FTE and the financial assistance distribution program under the Rural Primary Health Care Act;* twenty-five thousand dollars ($25,000) for southern New Mexico planned parenthood, twenty-five thousand dollars ($25,000) for Rio Grande planned parenthood; fifty-five thousand dollars ($55,000) for ambulance service in Vaughn; *thirty-four thousand dollars ($34,000) for education to increase access to treatment for persons infected with the human immune deficiency virus or having acquired immune deficiency syndrome;]* fifty thousand dollars ($50,000) for the expanded need of basic services for persons disabled with the human immune deficiency virus or acquired immune deficiency syndrome, including housing management and homemaking services, and to assist in establishment and staffing of an acquired immune deficiency syndrome service office in southern New Mexico to improve service delivery and to serve the expanding number of patients; one hundred

thousand dollars ($100,000) to provide case management services for an increased number of persons infected with the human immune deficiency virus and to contract with a services consortium on the human immune deficiency virus and acquired immune deficiency syndrome for coordination of services and to provide vouchers for transportation to receive medical services; one hundred thousand dollars ($100,000) for humanimmune deficiency virus antibody testing, educational expenses and travel expenses to train field staff; one hundred fifty thousand dollars ($150,000) for one FTE and laboratory costs to determine the current prevalence of the human immune deficiency virus in adolescents, persons attending sexually transmitted diseases clinics, women and ethnic populations; one hundred fifty thousand dollars ($150,000) for a voucher system for mental health and outpatient substance abuse services for persons infected with the human immune deficiency virus or having acquired immune deficiency syndrome and to provide inpatient, medically supervised detoxification treatment; and two hundred fifty thousand dollars ($250,000) for the rural health care practice model in Reserve.

The total general fund appropriation to the public health division is contingent upon the secretary of health dedicating two current department FTE to develop and implement a document fraud detection program by the vital records and statistics bureau of the public health division and for the department of health to conduct a study to determine suitable utilization of the old Saint Mary's hospital in Roswell.

(10) Women, infants and children program:

(a) Personal services 195.5 2,826.0 3,021.5

(b) Employee benefits 64.5 932.5 997.0

(c) Travel 110.2 110.2

(d) Maintenance and repairs 44.7 44.7

(e) Supplies and materials 1,000.0 21,493.0 22,493.0

(f) Contractual services 1,689.0 1,689.0

(g) Operating costs 520.3 520.3

(h) Capital outlay 180.1 180.1

(i) Out-of-state travel 11.3 11.3

Authorized FTE: 169.60 Term

The general fund appropriation to the women, infants and children program of the department of health includes one million dollars ($1,000,000) for nineteen and six-

tenths FTE and to increase food supplements, nutrition education for pregnant women and young children and to provide an access point for health care delivery services.

The total general fund appropriation to the women, infants and children program is contingent upon operation of the farmers' market nutrition pilot program and creation of the state nutrition plan. No more than seventeen percent of this appropriation may be expended in administrative costs incurred by the department for the pilot program.

(11) Community programs--substance abuse 356.0 6,798.8 4,772.4 11,927.2

(12) Community programs--mental health 16,959.0 2,504.8 19,463.8

The general fund appropriation to community programs--mental health includes ninety thousand dollars ($90,000) to provide competency evaluations, four million two hundred thousand dollars ($4,200,000) for comprehensive individualized mental health services for a selected group of seriously disabled mentally ill (SDMI) individuals, fifty thousand dollars ($50,000) for coordination of legal services*, one hundred thousand dollars ($100,000) for the rural public psychiatry program, three hundred fifty thousand dollars ($350,000) for community services and one hundred thousand dollars ($100,000) for emergency response services*.

(13) Community programs--developmental

disabilities 23,812.0 23,812.0

The general fund appropriation to community-based programs--developmentally disabilities includes three million five hundred thousand dollars ($3,500,000) for unit rate increases for community providers and to implement the variable cost reimbursement system. Through its contracts with service providers, the department of health will insure that the number of persons currently receiving services will not be decreased as a result of the unit rate increase.

Seventy-five thousand dollars ($75,000) of the general fund appropriation to community-based programs may be expended for special studies or other program enhancement initiatives as approved by the secretary of health.

(14) Community programs--audit 112.0 112.0

The appropriation to the community-based programs shall not be applied for any other purpose and shall be contingent upon no transfers occurring between the substance abuse, mental health and developmental disabilities components.

(15) Behavioral health services division:

(a) Personal services 472.0 128.5 600.5

(b) Employee benefits 138.0 35.1 173.1

(c) Travel 4.0 22.3 26.3

(d) Maintenance and repairs 10.1 10.1

(e) Supplies and materials 1.0 14.0 15.0

(f) Contractual services 20.0 20.0

(g) Operating costs 74.4 74.4

(h) Capital outlay 9.0 9.0

(i) Out-of-state travel 4.0 4.0

Authorized FTE: 15.00 Permanent; 7.00 Term

(16) Mental health division:

(a) Personal services 661.0 99.4 106.1 866.5

(b) Employee benefits 165.0 40.6 31.5 237.1

(c) Travel 10.0 28.9 38.9

(d) Maintenance and repairs 4.0 4.0

(e) Supplies and materials 20.0 11.3 31.3

(f) Contractual services 50.0 300.0 350.0

(g) Operating costs 20.0 85.7 105.7

(h) Out-of-state travel 5.2 5.2

Authorized FTE: 22.00 Permanent; 5.00 Term

The general fund appropriation to the mental health division of the department of health includes two hundred thousand dollars ($200,000) for three FTE to implement and manage individualized mental health services.

(17) Developmental disabilities division:

(a) Personal services 1,118.0 434.4 79.9 1,632.3

(b) Employee benefits 325.0 124.7 25.6 475.3

(c) Travel 35.0 13.6 9.2 57.8

(d) Maintenance and repairs 10.0 1.6 11.6

(e) Supplies and materials 21.0 6.8 1.5 29.3

(f) Contractual services 519.0 116.6 27.7 663.3

(g) Operating costs 148.0 54.0 9.0 211.0

(h) Other costs 1,580.0 1,580.0

(i) Capital outlay 19.0 15.1 34.1

(j) Out-of-state travel 8.0 3.7 11.7

Authorized FTE: 25.00 Permanent; 32.00 Term

The general fund appropriation to the developmental disabilities division of the department of health in the other costs category includes one million five hundred thousand dollars ($1,500,000), contingent upon certification by the secretary of health to and approval by the secretary of finance and administration that funds are required to establish program infrastructure within the developmental disabilities division for training, developing, monitoring and execution of the plan to move clients from Fort Stanton and Los Lunas hospitals.

(18) Turquoise lodge:

(a) Personal services 158.0 885.0 1,043.0

(b) Employee beefits 54.0 339.1 393.1

(c) Travel 6.7 6.7

(d) Maintenance and repairs 40.9 40.9

(e) Supplies and materials 115.5 115.5

(f) Contractual services 192.0 192.0

(g) Operating costs 62.4 62.4

(h) Other costs 1.5 1.5

(i) Capital outlay 20.0 20.0

Authorized FTE: 44.00 Permanent; 1.00 Term

The general fund appropriation to turquoise lodge of the department of health in the personal services and employee benefits categories includes seventy-five thousand dollars ($75,000) for three full-time classified nursing positions.

(19) Adolescent residential treatment facility:

(a) Personal services 1,112.0 752.2 1,864.2

(b) Employee benefits 340.0 230.4 570.4

(c) Travel 5.0 3.9 8.9

(d) Maintenance and repairs 28.0 19.1 47.1

(e) Supplies and materials 92.0 62.5 154.5

(f) Contractual services 78.0 53.4 131.4

(g) Operating costs 88.0 59.7 147.7

(h) Other costs 6.0 4.1 10.1

(i) Capital outlay 24.0 16.2 40.2

(j) Out-of-state travel .4 .4

Authorized FTE: 90.50 Permanent

(20) Southern New Mexico rehabilitation center:

(a) Personal services 791.0 2,003.8 2,794.8

(b) Employee benefits 269.0 757.8 1,026.8

(c) Travel 4.0 11.8 15.8

(d) Maintenance and repairs 31.0 93.3 124.3

(e) Supplies and materials 65.0 136.9 201.9

(f) Contractual services 42.0 67.4 109.4

(g) Operating costs 464.0 190.8 654.8

(h) Other costs 2.0 7.7 9.7

(i) Capital outlay 3.0 11.2 14.2

(j) Out-of-state travel 2.2 2.2

Authorized FTE: 108.00 Permanent; 8.00 Term

The general fund appropriation to the southern New Mexico rehabilitation center of the department of health in the personal services and employee benefits categories includes seventy-five thousand dollars ($75,000) for three classified nursing FTE.

(21) Northern New Mexico rehabilitation center:

(a) Personal services 797.0 869.6 81.0 1,747.6

(b) Employee benefits 280.0 337.2 54.0 671.2

(c) Travel 3.0 4.8 15.0 22.8

(d) Maintenance and repairs 11.0 14.2 25.2

(e) Supplies and materials 42.0 51.3 93.3

(f) Contractual services 84.0 101.0 185.0

(g) Operating costs 42.0 51.1 93.1

(h) Other costs 3.0 3.8 6.8

(i) Capital outlay 4.0 5.6 9.6

(j) Out-of-state travel 1.0 1.3 2.3

Authorized FTE: 76.00 Permanent; 8.00 Term

(22) New Mexico state hospital:

(a) Personal services 14,505.0 5,535.3 693.8 20,734.1

(b) Employee benefits 5,309.0 2,115.9 226.2 7,651.1

(c) Travel 59.0 23.8 9.4 92.2

(d) Maintenance and repairs 405.0 161.7 2.9 569.6

(e) Supplies and materials 858.0 342.2 32.4 1,232.6

(f) Contractual services 1,151.0 459.0 14.7 1,624.7

(g) Operating costs 995.0 396.8 91.7 1,483.5

(h) Other costs 153.0 61.2 .2 214.4

(i) Capital outlay 65.0 26.1 4.0 95.1

(j) Out-of-state travel 6.0 2.7 .3 9.0

Authorized FTE: 940.00 Permanent; 49.00 Term

(23) Fort Bayard medical center:

(a) Personal services 682.0 5,824.1 71.3 123.7 6,701.1

(b) Employee benefits 259.0 2,213.0 27.1 47.0 2,546.1

(c) Travel 5.0 45.2 .6 .9 51.7

(d) Maintenance and repairs 52.0 444.2 5.4 9.4 511.0

(e) Supplies and materials 127.0 1,086.5 13.3 23.1 1,249.9

(f) Contractual services 7.0 66.0 .8 1.5 75.3

(g) Operating costs 51.0 439.1 5.4 9.3 504.8

(h) Other costs 1.0 15.4 .2 .3 16.9

(i) Capital outlay 20.0 173.2 2.1 3.7 199.0

(j) Out-of-state travel 3.5 .1 3.6

Authorized FTE: 325.00 Permanent; 25.00 Term

(24) Los Lunas hospital:

(a) Personal services 3,522.0 13,032.1 19.0 16,573.1

(b) Employee benefits 1,369.0 5,887.5 7.0 7,263.5

(c) Travel 58.7 58.7

(d) Maintenance and repairs 393.0 393.0

(e) Supplies and materials 1,283.3 1,283.3

(f) Contractual services 1,435.0 1,435.0

(g) Operating costs 909.4 909.4

(h) Other costs 8.9 232.6 241.5

(i) Capital outlay 200.0 200.0

(j) Out-of-state travel 12.0 12.0

Authorized FTE: 677.00 Permanent; 172.00 Term

(25) Fort Stanton hospital:

(a) Personal services 701.0 3,820.3 4,521.3

(b) Employee benefits 227.0 1,578.4 1,805.4

(c) Travel 4.0 32.6 36.6

(d) Maintenance and repairs 23.0 161.1 184.1

(e) Supplies and materials 72.0 505.1 577.1

(f) Contractual services 19.0 136.4 155.4

(g) Operating costs 63.0 440.4 503.4

(h) Other costs 1.0 9.6 10.6

(i) Capital outlay 7.0 52.4 59.4

(j) Out-of-state travel 2.2 2.2

Authorized FTE: 216.00 Permanent; 17.00 Term

(26) New Mexico veterans' center:

(a) Personal services 427.0 2,284.4 790.9 3,502.3

(b) Employee benefits 142.0 739.1 255.9 1,137.0

(c) Travel 2.0 15.0 5.2 22.2

(d) Maintenance and repairs 24.0 152.2 52.6 228.8

(e) Supplies and materials 70.0 445.2 154.2 669.4

(f) Contractual services 16.0 106.3 36.8 159.1

(g) Operating costs 31.0 197.1 68.3 296.4

(h) Other costs 3.0 23.3 8.0 34.3

(i) Capital outlay 13.0 83.1 28.7 124.8

(j) Out-of-state travel .9 .4 1.3

Authorized FTE: 142.00 Permanent; 34.00 Term

(27) Community coordinated in-home care

waivers: 5,555.0 5,555.0

The general fund appropriation to the community coordinated in-home care waivers includes two hundred thousand dollars ($200,000) for the physically handicapped and elderly medicaid waiver program and fifty thousand dollars ($50,000) for rent and contracts associated with medical review and document processing.

One hundred percent federally funded programs requested by the department of health in its eighty-second fiscal year budget request submission may be included in the eighty-second fiscal year operating budget.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the department of health. Such other state funds and internal service funds/interagency transfers are appropriated.

Subtotal 258,903.6

DEPARTMENT OF ENVIRONMENT:

(1) Office of the secretary:

(a) Personal services 405.0 255.7 660.7

(b) Employee benefits 117.0 76.6 193.6

(c) Travel 10.0 7.6 17.6

(d) Maintenance and repairs 2.0 1.8 3.8

(e) Supplies and materials 1.0 1.3 2.3

(f) Contractual services 14.0 10.7 24.7

(g) Operating costs 13.0 10.3 23.3

(h) Capital outlay .6 .6

Authorized FTE: 11.00 Permanent; 8.00 Term
(2) Administrative services division:

(a) Personal services 759.0 34.7 944.3 1,738.0

(b) Employee benefits 251.0 9.7 263.1 523.8

(c) Travel 5.0 5.9 10.9

(d) Maintenance and repairs 57.0 2.4 59.8 119.2

(e) Supplies and materials 12.0 .5 12.9 25.4

(f) Contractual services 200.0 52.4 252.4

(g) Operating costs 58.0 6.2 63.2 127.4

(h) Capital outlay 3.0 3.9 6.9

(i) Out-of-state travel 1.0 1.0 2.0

Authorized FTE: 40.00 Permanent; 19.00 Term

The general fund appropriation to the administrative services division of the department of environment in the contractual services category includes one hundred fifty thousand dollars ($150,000) to be expended only for the construction programs bureau of the administrative services division to enter into a contract for that amount with the IDAP program at the university of New Mexico for work on community infrastructure needs.

(3) Environmental protection division:

(a) Personal services 1,754.0 1,398.0 1,904.1 5,056.1

(b) Employee benefits 534.0 422.4 570.4 1,526.8

(c) Travel 92.0 76.1 106.3 274.4

(d) Maintenance and repairs 22.0 18.7 26.2 66.9

(e) Supplies and materials 56.0 46.1 64.7 166.8

(f) Contractual services 85.0 16,952.0 24.7 17,061.7

(g) Operating costs 211.0 173.3 242.3 626.6

(h) Capital outlay 22.0 180.1 249.8 451.9

(i) Out-of-state travel 19.0 15.9 22.2 57.1

Authorized FTE: 82.00 Permanent; 104.00 Term

(4) Field operations division:

(a) Personal services 2,682.0 289.5 2,971.5

(b) Employee benefits 776.0 83.8 859.8

(c) Travel 198.0 21.4 219.4

(d) Maintenance and repairs 12.0 1.3 13.3

(e) Supplies and materials 50.0 5.4 55.4

(f) Operating costs 424.0 45.7 469.7

(g) Capital outlay 36.0 4.0 40.0

Authorized FTE: 91.00 Permanent; 12.00 Term

(5) Water and waste management division:

(a) Personal service 1,739.0 122.6 86.9 2,546.7 4,495.2

(b) Employee benefits 510.0 36.2 25.7 756.7 1,328.6

(c) Travel 63.0 5.6 4.0 131.8 204.4

(d) Maintenance and repairs 14.0 1.2 .9 29.2 45.3

(e) Supplies and materials 45.0 4.0 2.9 95.4 147.3

(f) Contractual services 139.0 38.8 27.4 1,316.9 1,522.1

(g) Operating costs 142.0 12.6 8.9 297.5 461.0

(h) Capital outlay 23.0 6.4 4.6 202.4 236.4

(i) Out-of-state travel 15.0 1.4 1.0 33.0 50.4

Authorized FTE: 64.00 Permanent; 91.00 Term

The total appropriation to the department of environment is contingent upon the department of environment coordinating the development of its eighty-second fiscal year operating budget with the department of finance and administration and the legislative finance committee prior to submission of that budget to ensure that major deviations in the budgets for the programs and bureaus from the eighty-second fiscal year recommendation for those programs and bureaus adopted by the legislative finance committee are justified.

Notwithstanding the provisions of Section 25-1-5, Subsection B of Section 74-4-4.6, Section 74-1-11 and Subsection H of Section 74-6-5 NMSA 1978, the other state funds appropriation to the department of environment shall be used to administer the food fee program, the underground storage tank program, the water supply program and the discharge permit program.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the department of environment. Such other state funds and internal service funds/interagency transfers are appropriated.

Subtotal 42,140.7

VETERANS' SERVICE COMMISSION:

(a) Personal services 666.0 666.0

(b) Employee benefits 223.0 223.0

(c) Travel 43.0 43.0

(d) Maintenance and repairs 8.0 8.0

(e) Supplies and materials 9.0 9.0

(f) Contractual services 224.0 224.0

(g) Operating costs 82.0 82.0

(h) Other costs 3.0 3.0

(i) Capital outlay 1.0 1.0

(j) Out-of-state travel 2.0 2.0

Authorized FTE: 27.00 Permanent

Category transfers are specifically authorized for the veterans' service commission.

Subtotal 1,261.0

CHILDREN, YOUTH AND FAMILIES DEPARTMENT:

(1) Office of the secretary:

(a) Personal services 934.6 204.0 1,138.6

(b) Employee benefits 299.4 45.8 345.2

(c) Travel 38.0 15.0 53.0

(d) Supplies and materials 21.0 21.0

(e) Contractual services 243.2 243.2

(f) Operating costs 80.0 57.7 137.7

(g) Other costs 250.0 235.2 485.2

(h) Capital outlay 3.0 3.0

(i) Out-of-state travel 5.0 5.0

(j) Managed care pool 2,000.0 2,000.0

Authorized FTE: 30.00 Permanent; 3.50 Term

The general fund appropriation to the office of the secretary of the children, youth and families department in the personal services and employee benefits categories includes two hundred thousand dollars ($200,000) to hire four additional FTE and two hundred fifty thousand dollars ($250,000) in the other costs category for managed care to contract for services for nonmedicaid-eligible adolescents.

The general fund appropriation of two million dollars ($2,000,000) to the office of the secretary of the children, youth and families department in the managed care pool category is contingent upon certification by the secretary of children, youth and families to the secretary of finance and administration that the children, youth and families department has developed a single point-of-entry system for residential and nonresidential psychiatric treatment services and provided that a client and financial tracking system is developed within the department in the eighty-second fiscal year. *This appropriation shall be expended only for transferring medicaid-eligible children who are currently in inpatient hospital treatment into more appropriate community-based treatment or for diverting medicaid-eligible children who would otherwise be placed in inpatient psychiatric hospitals.*

(2) Administrative services division:

(a) Personal services 1,414.0 500.0 1,914.0

(b) Employee benefits 388.0 200.0 588.0

(c) Travel 39.0 39.0

(d) Maintenance and repairs 33.0 50.0 83.0

(e) Supplies and materials 35.0 25.0 60.0

(f) Contractual services 70.0 70.0

(g) Operating costs 473.0 100.0 573.0

(h) Other costs 151.0 137.1 288.1

(i) Out-of-state travel 4.0 4.0

Authorized FTE: 66.00 Permanent

(3) Juvenile justice services division director:

(a) Personal services 163.5 163.5

(b) Employee benefits 65.0 65.0

(c) Travel 13.0 13.0

(d) Supplies and materials 1.0 1.0

(e) Operating costs 25.0 25.0

(f) Out-of-state travel 1.0 1.0

Authorized FTE: 5.00 Permanent

The general fund appropriation to the juvenile justice services division of the children, youth and families department in the personal services and employee benefits categories includes twenty-one thousand five hundred dollars ($21,500) to convert a half-time detention monitor position to full time.

(4) Juvenile reintegration centers:

(a) Personal services 1,709.0 45.0 1,754.0

(b) Employee benefits 669.0 17.5 686.5

(c) Travel 44.0 5.0 49.0

(d) Maintenance and repairs 68.0 68.0

(e) Supplies and materials 171.0 65.8 236.8

(f) Contractual services 57.0 57.0

(g) Operating costs 297.0 5.0 302.0

(h) Other costs 20.0 20.0

(i) Capital outlay 4.0 4.0

Authorized FTE: 75.00 Permanent; 1.50 Term

(5) New Mexico boys' school:

(a) Personal services 4,047.3 250.0 97.4 4,394.7

(b) Employee benefits 1,575.1 89.8 37.9 1,702.8

(c) Travel 55.0 6.5 61.5

(d) Maintenance and repairs 137.0 137.0

(e) Supplies and materials 330.0 219.3 549.3

(f) Contractual services 172.0 39.9 211.9

(g) Operating costs 315.0 315.0

(h) Other costs 87.0 5.8 92.8

(i) Capital outlay 48.0 48.0

(j) Out-of-state travel 3.0 3.0

Authorized FTE: 185.00 Permanent

The general fund appropriation to the New Mexico boys' school of the children, youth and families department in the personal services and employee benefits categories includes seventy-seven thousand four hundred dollars ($77,400) for three additional juvenile correction officers.

(6) Youth diagnostic and development center:

(a) Personal services 2,425.1 159.3 47.4 2,631.8

(b) Employee benefits 874.6 100.0 12.8 987.4

(c) Travel 9.0 1.0 10.0

(d) Maintenance and repairs 66.0 66.0

(e) Supplies and materials 251.0 106.5 357.5

(f) Contractual services 88.0 88.0

(g) Operating costs 264.0 2.0 266.0

(h) Other costs 20.0 10.5 30.5

(i) Capital outlay 14.0 14.0

(j) Out-of-state travel 1.0 1.0

Authorized FTE: 106.00 Permanent

The general fund appropriation to the youth diagnostic and development center of the children, youth and families department in the personal services and employee benefits categories includes thirty thousand dollars ($30,000) to hire an intake classification officer.

(7) Community residential services division:

(a) Personal services 4,373.3 11.1 373.8 4,758.2

(b) Employee benefits 1,380.0 .9 115.6 1,496.5

(c) Travel 113.0 11.6 124.6

(d) Maintenance and repairs 23.0 1.5 24.5

(e) Supplies and materials 75.0 3.0 78.0

(f) Contractual services 1,655.0 1,655.0

(g) Operating costs 348.0 8.0 356.0

(h) Other costs 3,394.0 13.0 7.2 3,414.2

(i) Capital outlay 15.0 3.5 18.5

(j) Out-of-state travel 5.0 5.0

(k) Juvenile justice community

correction grant fund 1,484.0 1,484.0

Authorized FTE: 166.50 Permanent; 21.5 Term

The general fund appropriation to the community residential services division of the children, youth and families department in the personal services, employee benefits, travel, operating costs and capital outlay categories includes forty thousand dollars ($40,000) for a surveillance officer FTE to establish a Chaves county juvenile probation services program; thirty-seven thousand four hundred dollars ($37,400) to hire a juvenile probation and parole officer in Dona Ana county; thirty-seven thousand four hundred dollars ($37,400) to hire a juvenile probation and parole officer in Las Vegas in San Miguel county; and eight thousand five hundred dollars ($8,500) to hire a half-time clerk in the tenth judicial district.

The general fund appropriation to the community residential services division in the contractual services category includes fifty thousand dollars ($50,000) to contract with a company having the technology to remove graffiti and restore a surface to its original condition.

The general fund appropriation to the community residential services division in the other costs category includes one million six hundred thousand dollars ($1,600,000) for residential treatment centers for substance abuse and mental health services for nonmedicaid-eligible children.

The federal funds appropriation to the community residential services division includes five hundred twenty-four thousand two hundred dollars ($524,200) from medicaid

matching funds for sixteen surveillance officers, two and one-half juvenile probation and parole officers and three secretaries.

(8) Risk reduction services division:

(a) Personalservices 476.0 476.0

(b) Employee benefits 136.0 136.0

(c) Travel 32.0 32.0

(d) Supplies and materials 23.0 23.0

(e) Contractual services 2,419.0 589.8 3,008.8

(f) Operating costs 62.0 62.0

(g) Other costs 2,059.0 3,864.0 5,923.0

(h) Out-of-state travel 12.0 12.0

Authorized FTE: 10.00 Permanent; 6.00 Term

The general fund appropriation to the risk reduction services division of the children, youth and families department in the contractual services category includes nineteen thousand dollars ($19,000) to contract with a nonprofit organization that provides drug abuse services *in Hobbs*; one hundred thousand dollars ($100,000) for a substance abuse prevention program *in the Espanola public schools; fifty thousand dollars ($50,000) to contract for a youth employment program in Dona Ana county*; two hundred thousand dollars ($200,000) for a school mediation program to reduce the incidence of school violence and to mediate truancy and family related problems impacting school behavior and performance; one million dollars ($1,000,000) for substance abuse contracts; seven hundred fifty thousand dollars ($750,000) to contract for gang intervention programs, of which thirty thousand dollars ($30,000) shall be expended for a gang intervention program *in Chaparral* in Dona Ana county; three hundred thousand dollars ($300,000) to contract with a nonprofit organization to operate a comprehensive statewide alcohol, DWI and drug prevention education program in an after-school setting for elementary school children and their families; in the other costs category includes two hundred thousand dollars ($200,000) to be distributed *equally to each of the four middle schools in Hatch, Lynn, Sierra and Vista* in Dona Ana county to implement a pilot program to provide at-risk youth with conflict resolution, employment training and recreational opportunities and one hundred thousand dollars ($100,000) for a CHINS program *in Lovington* in Lea county.

(9) Preventive services division director:

(a) Personal services 190.0 26.9 216.9

(b) Employee benefits 56.0 6.1 62.1

(c) Travel 10.0 3.0 13.0

(d) Maintenance and repairs 1.0 1.0

(e) Supplies and materials 15.0 2.0 17.0

(f) Contractual services 661.0 285.5 946.5

(g) Operating costs 58.0 15.0 73.0

(h) Other costs 500.0 500.0

(i) Capital outlay 11.0 11.0

(j) Out-of-state travel 3.0 1.5 4.5

Authorized FTE: 6.00 Permanent; 1.00 Temporary

The general fund appropriation to the preventive services division of the children, youth and families department in the personal services, employee benefits, travel, supplies and materials, contractual services, operating costs and capital outlay categories includes one hundred thirty-six thousand dollars ($136,000) for three FTE to respond to statutory requirements to train day care providers and other child development specialists.

The general fund appropriation to the preventive services division in the contractual services category includes five hundred eighty-five thousand nine hundred dollars ($585,900) to provide pre-school programs for children up to the age of five and in the other costs category includes five hundred thousand dollars ($500,000) *to provide, coordinate and improve family health services and human needs and* to support the pilot projects of the healthier communities programs.

(10) Child care bureau:

(a) Personal services 1,362.0 1,362.0

(b) Employee benefits 422.0 422.0

(c) Travel 43.0 43.0

(d) Supplies and materials 20.0 20.0

(e) Operating costs 247.0 247.0

(f) Other costs 4,200.0 400.0 13,038.3 17,638.3

Authorized FTE: 24.00 Permanent; 36.00 Term

(11) Child care food bureau:

(a) Personal services 623.8 623.8

(b) Employee benefits 191.9 191.9

(c) Travel 42.0 42.0

(d) Maintenance and repairs 5.0 5.0

(e) Supplies and materials 45.6 45.6

(f) Contractual services 77.5 77.5

(g) Operating costs 190.6 190.6

(h) Other costs 30,323.8 30,323.8

(i) Capital outlay 14.0 14.0

(j) Out-of-state travel 16.0 16.0

Authorized FTE: 25.00 Term

(12) Child care licensure bureau:

(a) Personal services 529.0 529.0

(b) Employee benefits 166.0 166.0

(c) Travel 35.0 35.0

(d) Maintenance and repairs 3.0 3.0

(e) Supplies and materials 10.0 10.0

(f) Contractual services 38.0 38.0

(g) Operating costs 75.0 75.0

(h) Out-of-state travel 1.0 1.0

Authorized FTE: 20.00 Permanent

(13) Social services division:

(a) Personal services 10,247.9 5,000.0 5,091.9 20,339.8

(b) Employee benefits 2,709.1 2,000.0 2,000.0 6,709.1

(c) Travel 33.0 50.0 947.9 1,030.9

(d) Maintenance and repairs 54.0 25.0 31.0 110.0

(e) Supplies and materials 183.0 25.0 30.0 238.0

(f) Contractual services 3,396.0 93.0 565.1 4,139.7 8,193.8

(g) Operating costs 1,283.0 723.3 585.2 1,000.0 3,591.5

(h) Other costs 6,161.0 1,037.5 11,895.3 19,093.8

(i) Capital outlay 51.0 150.0 65.0 266.0

(j) Out-of-state travel 24.0 15.0 39.0

Authorized FTE: 802.72 Permanent; 4.00 Term

The general fund appropriation to the social services division of the children, youth and families department in the personal services, employee benefits, travel, operating costs and capital outlay categories includes one hundred thousand dollars ($100,000) for two and seven-tenths additional adult protective services workers, five hundred thousand dollars ($500,000) for seven and one-half FTE and overtime expenses and four hundred thousand dollars ($400,000) for eleven field investigators.

The general fund appropriation to the social services division in the contractual services category includes ten thousand dollars ($10,000) for adult protective services worker training, five hundred thousand dollars ($500,000) for domestic violence programs, two hundred thousand dollars ($200,000) for adult day care programs, three hundred thousand dollars ($300,000) for housekeeping and personal care for elderly and handicapped adults to supplement existing funding, eighty thousand dollars ($80,000) to contract for youth recreation programs *in Tularosa* in Otero county, five hundred thousand dollars ($500,000) to contract for day treatment services for troubled adolescents and two hundred ten thousand dollars ($210,000) for the big brothers, big sisters program*, of which thirty-five thousand dollars ($35,000) shall be expended to*

institute a program in Silver City and twenty-five thousand dollars ($25,000) shall be expended to augment the established program in Roswell.

The general fund appropriation to the social services division in the other costs category includes six hundred ninety thousand dollars ($690,000) to supplement existing attendant care program funding. Two million five hundred fifty-five thousand dollars ($2,555,000) of the appropriation in the other costs category shall be expended for social services medicals.

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the children, youth and families department. Such other state funds and internal service funds/interagency transfers are appropriated.

Subtotal 160,128.7
TOTAL HEALTH, HOSPITALS AND
HUMAN SERVICES 429,287.3 140,443.6 21,113.7 845,047.7 1,435,892.3

G. PUBLIC SAFETY

DEPARTMENT OF MILITARY AFFAIRS:

(1) Military division:

(a) Personal services 510.0 510.0

(b) Employee benefits 232.0 232.0

(c) Travel 11.0 11.0

(d) Maintenance and repairs 42.0 42.0

(e) Supplies and materials 8.0 8.0

(f) Contractual services 4.0 4.0

(g) Operating costs 119.0 39.4 158.4

(h) Other costs 2.0 2.0

(i) Out-of-state travel 3.0 3.0

Authorized FTE: 20.00 Permanent

The general fund appropriation to the military division of the department of miliary affairs in the personal services category contains sixty-two thousand eight hundred one dollars

($62,801) for the adjutant general's salary and forty-five thousand one hundred sixty-three dollars ($45,163) for the deputy adjutant general's salary in the eighty-second fiscal year.

(2) Air national guard:

(a) Personal services 90.0 302.0 392.0

(b) Employee benefits 31.0 100.5 131.5

(c) Maintenance and repairs 52.0 52.0

(d) Operating costs 59.0 59.0

(e) Out-of-state travel 3.4 3.4

Authorized FTE: 19.00 Term

(3) Civil air patrol:

(a) Personal services 20.0 20.0

(b) Employee benefits 8.0 8.0

(c) Travel 49.0 49.0

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 1.0 1.0

(f) Contractual services 1.0 1.0

(g) Operating costs 14.0 14.0

Authorized FTE: 1.00 Permanent

(4) Veterans' approval:

(a) Personal services 48.2 48.2

(b) Employee benefits 12.8 12.8

(c) Travel 1.7 1.7

(d) Supplies and materials 2.3 2.3

(e) Operating costs 3.1 3.1

(f) Capital outlay 5.1 5.1

(g) Out-of-state travel 4.8 4.8

Authorized FTE: 1.00 Term

Category and division transfers are specifically authorized for the department of military affairs.

Subtotal 1,781.3

STATE ARMORY BOARD:

(a) Personal services 192.0 307.9 499.9

(b) Employee benefits 67.0 105.7 172.7

(c) Travel 8.0 5.2 13.2

(d) Maintenance and repairs 266.0 266.0

(e) Supplies and materials 10.0 10.0

(f) Contractual services 6.0 6.0

(g) Operating costs 471.0 78.1 549.1

(h) Out-of-state travel 3.0 10.8 13.8

Authorized FTE: 7.00 Permanent; 16.00 Term

Category transfers and budget increases from other state funds are specifically authorized for the state armory board. Such other state funds are appropriated.

Subtotal 1,530.7

CRIME STOPPERS COMMISSION:

(a) Personal services 96.0 96.0

(b) Employee benefits 31.0 31.0

(c) Travel 10.0 10.0

(d) Supplies and materials 1.0 1.0

(e) Contractual services 9.0 9.0

(f) Operating costs 31.0 31.0

(g) Out-of-state travel 1.0 1.0

Authorized FTE: 4.00 Permanent

Budget increases from internal service funds/interagency transfers are specifically authorized for the crime stoppers commission in the eighty-first and eighty-second fiscal years. Such internal service funds/interagency transfers are appropriated.

Subtotal 179.0

TRANSPORTATION AND EXTRADITION OF PRISONERS: 434.0 434.0

Subtotal 434.0

PAROLE BOARD:

(a) Personal services 333.0 333.0

(b) Employee benefits 114.0 114.0

(c) Travel 18.0 18.0

(d) Maintenance and repairs 1.0 1.0

(e) Supplies and materials 5.0 5.0

(f) Contractual services 3.0 3.0

(g) Operating costs 56.0 56.0

(h) Capital outlay 11.0 11.0

(i) Out-of-state travel 7.0 7.0

Authorized FTE: 10.00 Permanent

Category transfers are specifically authorized for the parole board.

Subtotal 548.0

JUVENILE PAROLE BOARD:

(a) Personal services 97.0 97.0

(b) Employee benefits 34.0 34.0

(c) Travel 15.0 15.0

(d) Supplies and materials 3.0 3.0

(e) Contractual services 1.0 1.0

(f) Operating costs 26.0 26.0

Authorized FTE: 4.00 Permanent

Category transfers are specifically authorized for the juvenile parole board.

Subtotal 176.0

CORRECTIONS DEPARTMENT:

(1) Administrative services division:

(a) Personal services 1,964.0 49.0 2,013.0

(b) Employee benefits 632.0 19.1 651.1

(c) Travel 33.0 1.0 34.0

(d) Maintenance and repairs 65.0 65.0

(e) Supplies and materials 24.0 .6 24.6

(f) Contractual services 105.0 105.0

(g) Operating costs 636.0 1,175.8 6.4 1,818.2

(h) Capital outlay 32.0 32.0

(i) Out-of-state travel 7.0 7.0

Authorized FTE: 70.00 Permanent

The other state funds appropriation to the administrative services division of the corrections department is appropriated to the corrections department building fund.

(2) Training academy division:

(a) Personal services 853.0 853.0

(b) Employee benefits 444.0 444.0

(c) Travel 19.0 19.0

(d) Maintenance and repairs 35.0 35.0

(e) Supplies and materials 97.0 97.0

(f) Contractual services 104.0 104.0

(g) Operating costs 61.0 61.0

(h) Other costs 8.0 8.0

(i) Out-of-state travel 1.0 1.0

Authorized FTE: 16.00 Permanent

(3) Field services:

(a) Personal services 5,189.0 750.7 5,939.7

(b) Employee benefits 1,810.0 223.4 2,033.4

(c) Travel 184.0 10.8 194.8

(d) Maintenance and repairs 38.0 37.1 75.1

(e) Supplies and materials 75.0 3.1 78.1

(f) Contractual services 1.0 1.0

(g) Operating costs 853.0 72.5 925.5

(h) Other costs 455.0 129.8 584.8

(i) Capital outlay 64.0 64.0

(j) Out-of-state travel 4.0 4.0

Authorized FTE: 238.00 Permanent

(4) Community corrections:

(a) Personal services 217.0 217.0

(b) Employee benefits 132.0 132.0

(c) Travel 8.0 8.0

(d) Supplies and materials 3.0 3.0

(e) Operating costs 11.0 11.0

(f) Other costs 2,131.0 51.4 2,182.4

(g) Out-of-state travel 1.0 1.0

Authorized FTE: 8.00 Permanent

(5) Adult institutions division director:

(a) Personal services 455.0 455.0

(b) Employee benefits 190.0 190.0

(c) Travel 6.0 6.0

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 2.0 2.0

(f) Contractual services 192.0 192.0

(g) Operating costs 28.0 28.0

(h) Other costs 5,899.0 5,899.0

(i) Out-of-state travel 2.0 2.0

Authorized FTE: 12.00 Permanent

(6) Los Lunas correctional center:

(a) Personal services 1,460.0 33.3 1,493.3

(b) Employee benefits 587.0 11.7 598.7

(c) Travel 42.0 42.0

(d) Maintenance and repairs 115.0 .6 115.6

(e) Supplies and materials 538.0 47.4 585.4

(f) Operating costs 195.0 195.0

(g) Other costs 88.0 105.2 8.0 201.2

(h) Capital outlay 7.0 7.0

Authorized FTE: 60.00 Permanent; 2.00 Term

(7) Roswell correctional center:

(a) Personal services 996.0 16.7 1,012.7

(b) Employee benefits 422.0 5.8 427.8

(c) Travel 56.0 56.0

(d) Maintenance and repairs 92.0 92.0

(e) Supplies and materials 291.0 50.2 341.2

(f) Operating costs 106.0 106.0

(g) Other costs 67.0 100.1 4.0 171.1

(h) Capital outlay 21.0 21.0

(i) Out-of-state travel 1.0 1.0

Authorized FTE: 43.00 Permanent; 1.00 Term

(8) Camp Sierra Blanca:

(a) Personal services 706.0 16.8 722.8

(b) Employee benefits 285.0 5.9 290.9

(c) Travel 18.0 18.0

(d) Maintenance and repairs 43.0 43.0

(e) Supplies and materials 123.0 32.0 155.0

(f) Operating costs 74.0 74.0

(g) Other costs 43.0 46.6 4.0 93.6

(h) Capital outlay 7.0 7.0

Authorized FTE: 29.00 Permanent; 1.00 Term

(9) Central New Mexico correctional facility:

(a) Personal services 6,486.0 17.0 6,503.0

(b) Employee benefits 3,170.0 5.9 3,175.9

(c) Travel 57.0 57.0

(d) Maintenance and repairs 331.0 331.0

(e) Supplies and materials 1,516.0 2.7 1,518.7

(f) Contractual services 31.0 31.0

(g) Operating costs 973.0 973.0

(h) Other costs 114.0 120.5 4.0 238.5

(i) Capital outlay 88.0 88.0

(j) Out-of-state travel 1.0 1.0

Authorized FTE: 293.00 Permanent; 1.00 Term

Three hundred forty thousand dollars ($340,000) is appropriated from the general fund operating reserve for twenty-seven FTE positions at the new one-hundred-thirty-two-bed wing in the minimum restrict unit at the central New Mexico correctional facility, contingent upon certification of need due to growth in male inmate population in the eighty-second fiscal year by the secretary of corrections to the secretary of finance and administration and notification to the legislative finance committee.

(10) Southern New Mexico correctional facility:

(a) Personal services 5,542.0 62.1 16.7 5,620.8

(b) Employee benefits 2,430.0 5.8 2,435.8

(c) Travel 57.0 57.0

(d) Maintenance and repairs 329.0 329.0

(e) Supplies and materials 1,216.0 2.4 1,218.4

(f) Contractual services 30.0 30.0

(g) Operating costs 885.0 885.0

(h) Other costs 82.0 132.6 4.0 218.6

(i) Capital outlay 44.0 44.0

(j) Out-of-state travel 2.0 2.0

Authorized FTE: 257.00 Permanent; 4.00 Term

(11) Western New Mexico correctional facility:

(a) Personal services 4,369.0 8.4 41.6 4,419.0

(b) Employee benefits 1,974.0 2.9 14.6 1,991.5

(c) Travel 63.0 63.0

(d) Maintenance and repairs 178.0 178.0

(e) Supplies and materials 1,061.0 2.6 1,063.6

(f) Contractual services 30.0 30.0

(g) Operating costs 729.0 729.0

(h) Other costs 30.0 129.0 6.0 165.0

(i) Capital outlay 39.0 39.0

(j) Out-of-state travel 1.0 1.0

Authorized FTE: 204.00 Permanent; 3.00 Term

(12) Penitentiary of New Mexico:

(a) Personal services 14,042.0 95.7 33.3 14,171.0

(b) Employee benefits 6,228.0 39.3 11.7 6,279.0

(c) Travel 78.6 78.6

(d) Maintenance and repairs 863.8 863.8

(e) Supplies and materials 3,009.6 3,009.6

(f) Contractual services 35.5 35.5

(g) Operating costs 1,770.4 1,770.4

(h) Other costs 999.2 8.0 1,007.2

(i) Capital outlay 64.0 64.0

(j) Out-of-state travel 2.0 2.0

Authorized FTE: 661.00 Permanent; 4.00 Term

(13) Adult health services:

(a) Personal services 1,329.0 1,329.0

(b) Employee benefits 569.0 569.0

(c) Travel 7.0 7.0

(d) Maintenance and repairs 6.0 6.0

(e) Supplies and materials 41.0 41.0

(f) Contractual services 8,243.0 8,243.0

(g) Operating costs 27.0 27.0

(h) Other costs 1.0 1.0

(i) Out-of-state travel 1.0 1.0

Authorized FTE: 47.00 Permanent

(14) Adult education:

(a) Personal services 55.0 55.0

(b) Employee benefits 94.0 94.0

(c) Travel 3.0 3.0

(d) Supplies and materials 1.0 1.0

(e) Contractual services 3,820.0 30.0 3,850.0

(f) Operating costs 3.0 3.0

Authorized FTE: 2.00 Permanent

In the event the corrections department determines that the most effective and efficient means of providing educational services is through its own employees, the department is authorized to create up to eighty-five exempt or term FTE positions.

In cooperation with the legislative finance committee, the corrections department shall conduct a study of comparable salaries for the teachers and instructors providing educational services for the department. The study's findings shall be presented to the legislative finance committee no later than September 30, 1993.

(15) Corrections industries:

(a) Personal services 272.0 824.5 1,096.5

(b) Employee benefits 470.8 470.8

(c) Travel 69.6 69.6

(d) Maintenance and repairs 101.0 101.0

(e) Supplies and materials 57.2 57.2

(f) Contractual services 310.6 310.6

(g) Operating costs 73.4 73.4

(h) Other costs 1,409.1 1,409.1

(i) Capital outlay 32.5 32.5

(j) Out-of-state travel 8.4 8.4

Authorized FTE: 38.00 Permanent; 2.00 Term

One million two hundred ninety thousand dollars ($1,290,000) appropriated from the general fund operating reserve in Laws 1992, Chapter 94, Section 5 is reauthorized for distribution to the corrections department in the eighty-first and eighty-second fiscal

years to pay the initial capital and connections costs to obtain services from a county owned water utility, contingent upon creation of a county water utility and an offer by that utility to extend water service to the penitentiary of New Mexico, provided that none of this appropriation shall be used by the corrections department for any purpose related to obtaining water services at the penitentiary of New Mexico from a privately owned water utility.

Category transfers and division transfers are specifically authorized for the corrections department.

Budget increases from other state funds are specifically authorized for the corrections department. Such other state funds are appropriated.

Budget increases from internal service funds/interagency transfers pursuant to highway and public works programs are specifically authorized for the corrections department in the eighty-second fiscal year. Such internal service funds/interagency transfers are appropriated.

Subtotal 110,051.0

CRIME VICTIMS REPARATION COMMISSION:

(a) Personal services 200.0 200.0

(b) Employee benefits 66.0 66.0

(c) Travel 6.0 6.0

(d) Supplies and materials 3.0 3.0

(e) Contractual services 31.0 31.0

(f) Operating costs 36.0 36.0

(g) Other costs 836.0 240.0 834.0 1,910.0

(h) Out-of-state travel 1.0 1.0

Authorized FTE: 7.00 Permanent; 2.00 Term

The general fund appropriation to the crime victims reparation commission in the contractual services category includes twenty-five thousand dollrs ($25,000) to contract with a private, nonprofit corporation for immediate victim assistance services.

Category transfers are specifically authorized for the crime victims reparation commission.

Budget increases from restitution funds for victim reparation payments are specifically authorized for the crime victims reparation commission. Such restitution funds are appropriated.

Subtotal 2,253.0

DEPARTMENT OF PUBLIC SAFETY:

(1) Administration:

(a) Personal services 2,033.3 53.7 38.3 60.0 2,185.3

(b) Employee benefits 730.7 16.3 13.0 760.0

(c) Travel 38.0 .6 .1 38.7

(d) Maintenance and repairs 507.0 1.1 7.4 515.5

(e) Supplies and materials 52.0 15.1 .7 67.8

(f) Contractual services 40.0 3.0 43.0

(g) Operating costs 736.0 27.8 21.3 785.1

(h) Capital outlay 81.0 81.0

(i) Out-of-state travel 5.0 10.5 15.5

Authorized FTE: 74.00 Permanent; 5.00 Term

(2) Special investigations division:

(a) Personal services 1,037.6 1,037.6

(b) Employee benefits 432.4 432.4

(c) Travel 133.0 133.0

(d) Maintenance and repairs 1.0 1.0

(e) Supplies and materials 21.0 21.0

(f) Contractual services 10.0 10.0

(g) Operating costs 26.0 26.0

(h) Other costs 12.0 12.0

(i) Capital outlay 13.0 13.0

(j) Out-of-state travel 9.0 9.0

Authorized FTE: 34.00 Permanent

(3) Training and recruiting division:

(a) Personal services 725.9 17.9 743.8

(b) Employee benefits 204.1 5.3 209.4

(c) Travel 58.5 58.5

(d) Maintenance and repairs 2.0 2.0

(e) Supplies and materials 186.0 186.0

(f) Contractual services 345.0 194.9 61.7 601.6

(g) Operating costs 57.0 57.0

(h) Other costs 15.0 15.0

(i) Capital outlay 57.0 57.0

(j) Out-of-state travel 18.0 18.0

Authorized FTE: 21.00 Permanent; 1.00 Term

(4) State police division:

(a) Personal services 15,986.0 77.0 16,063.0

(b) Employee benefits 6,948.0 1.0 6,949.0

(c) Travel 2,057.0 312.3 42.0 2,411.3

(d) Maintenance and repairs 218.0 218.0

(e) Supplies and materials 514.0 151.2 665.2

(f) Contractual services 158.0 158.0

(g) Operating costs 326.0 326.0

(h) Other costs 160.6 160.6

(i) Capital outlay 130.7 130.7

(j) Out-of-state travel 21.0 21.0

Authorized FTE: 574.00 Permanent

(5) Technical and emergency support division:

(a) Personal services 1,655.7 165.5 344.8 2,166.0

(b) Employee benefits 541.7 42.7 108.6 693.0

(c) Travel 39.0 5.3 39.1 83.4

(d) Maintenance and repairs 5.0 2.2 5.8 13.0

(e) Supplies and materials 32.0 36.5 10.3 78.8

(f) Contractual services 24.0 25.4 3.5 52.9

(g) Operating costs 1,963.0 222.4 40.0 49.9 2,275.3

(h) Other costs 19.0 28.9 47.9

(i) Capital outlay 2.0 8.8 10.8

(j) Out-of-state travel 10.0 20.3 30.3

Authorized FTE: 57.00 Permanent; 19.50 Term

Category transfers, division transfers and budget increases from other state funds and internal service funds/interagency transfers, excluding state forfeitures and forfeiture cash balances, are specifically authorized for the department of public safety. Such other state funds and internal service funds/interagency transfers are appropriated.

Subtotal 40,689.4

TOTAL PUBLIC SAFETY 139,023.9 15,468.2 653.4 2,496.9 157,642.4

H. TRANSPORTATION

STATE HIGHWAY AND TRANSPORTATION DEPARTMENT:

(1) Office of the secretary:

(a) Personal services 2,339.0 134.4 2,473.4

(b) Employee benefits 628.5 34.5 663.0

(c) Travel 89.7 16.0 105.7

(d) Maintenance and repairs 4.8 .2 5.0

(e) Supplies and materials 43.4 4.6 48.0

(f) Contractual services 460.4 145.0 605.4

(g) Operating costs 148.1 27.3 175.4

(h) Capital outlay 25.2 3.8 29.0

(i) Out-of-state travel 17.0 3.0 20.0

Authorized FTE: 74.00 Permanent

The appropriation to the office of the secretary of the state highway and transportation department in the contractual services category includes two hundred twenty thousand dollars ($220,000) in other state funds and eighty thousand dollars ($80,000) in federal funds to conduct a statewide disparity study.

(2) Administrative division:

(a) Personal services 5,531.8 5,531.8

(b) Employee benefits 8,341.4 8,341.4

(c) Travel 418.3 9.0 427.3

(d) Maintenance and repairs 1,908.5 1,908.5

(e) Supplies and materials 291.0 13.0 304.0

(f) Contractual services 957.0 957.0

(g) Operating costs 4,223.9 76.5 4,300.4

(h) Capital outlay 1,041.3 1,041.3

(i) Out-of-state travel 11.9 .6 12.5

Authorized FTE: 201.00 Permanent; 1.00 Term

(3) Engineering design division:

(a) Personal services 5,852.3 5,490.2 11,342.5

(b) Employee benefits 1,638.7 1,539.7 3,178.4

(c) Travel 430.6 430.6

(d) Maintenance and repairs 41.4 41.4

(e) Supplies and materials 210.4 210.4

(f) Contractual services 380.0 380.0

(g) Operating costs 371.2 371.2

(h) Capital outlay 346.4 346.4

(i) Out-of-state travel 18.6 18.6

Authorized FTE: 349.00 Permanent; 20.00 Term

(4) Field operations division:

(a) Personal services 38,018.6 8,253.8 46,272.4

(b) Employee benefits 12,355.1 2,635.2 14,990.3

(c) Travel 10,519.5 10,519.5

(d) Maintenance and repairs 1,344.0 1,344.0

(e) Supplies and materials 1,041.4 1,041.4

(f) Contractual services 2,002.8 2,002.8

(g) Operating costs 3,353.8 3,353.8

(h) Capital outlay 11,160.6 11,160.6

(i) Out-of-state travel 13.0 13.0

Authorized FTE: 2,001.00 Permanent; 24.00 Term

(5) Road betterment division:

(a) Supplies and materials 24,000.0 24,000.0

(b) Contractual Services 133,147.8 228,402.6 361,550.4

(c) Other costs 24,081.0 24,081.0

One million five hundred thousand dollars ($1,500,000) of the other state funds appropriation to the road betterment division in the other costs category may be expended by local governments to match funds for cooperative, school bus route, municipal arterial or county arterial roads in the event of financial hardship as determined by the state highway commission.

The appropriation to the road betterment division from the state road fund is contingent upon implementation of a fourteen percent annual goal for the disadvantaged business program in the eighty-second fiscal year.

Budget increases from other state funds, including the state road fund, are specifically authorized for the road betterment division. Such other state funds are appropriated.

(6) Aviation division:

(a) Personal services 287.0 287.0

(b) Employee benefits 77.6 77.6

(c) Travel 11.8 10.2 22.0

(d) Maintenance and repairs 1.3 1.3

(e) Supplies and materials 8.9 8.9

(f) Contractual services 52.1 165.0 217.1

(g) Operating costs 66.0 66.0

(h) Other costs 953.2 953.2

(i) Capital outlay 2.0 2.0

(j) Out-of-state travel 3.5 1.5 5.0

Authorized FTE: 9.00 Permanent

(7) Transportation programs division:

(a) Personal services 567.5 372.0 939.5

(b) Employee benefits 187.0 82.2 269.2

(c) Travel 15.2 10.8 26.0

(d) Maintenance and repairs 20.7 .5 21.2

(e) Supplies and materials 135.4 76.0 211.4

(f) Contractual services 1,489.0 3,262.0 4,751.0

(g) Operating costs 152.0 17.3 169.3

(h) Capital outlay 25.5 8.4 33.9

(i) Out-of-state travel 2.8 21.9 24.7

Authorized FTE: 30.00 Permanent; 5.00 Term

(8) Planning division:

(a) Personal services 1,190.5 1,303.4 2,493.9

(b) Employee benefits 331.8 367.5 699.3

(c) Travel 81.5 178.7 260.2

(d) Maintenance and repairs 6.1 22.5 28.6

(e) Supplies and materials 47.3 60.7 108.0

(f) Contractual services 585.1 1,200.4 1,785.5

(g) Operating costs 69.3 150.2 219.5

(h) Other costs 110.3 110.3

(i) Capital outlay 2,045.2 180.7 2,225.9

(j) Out-of-state travel 7.8 12.0 19.8

Authorized FTE: 75.00 Permanent; 6.00 Term

The appropriation to the planning division of the state highway and transportation department in the capital outlay category includes two million dollars ($2,000,000) for

the state transportation authority to purchase right-of-way along and adjoining the proposed Rio Grande rapid rail corridor in Santa Fe and Bernalillo counties as directed by the state transportation authority.

Division transfers are specifically authorized for the office of the secretary, administrative, engineering design, field operations, aviation, transportation programs and planning divisions.

Budget increases from other state funds are specifically authorized from sources other than the state road fund for the office of the secretary, administrative, engineering design, field operations, aviation, transportation programs and planning divisions. Such other state funds are appropriated.

Budget increases from the state road fund are specifically authorized for the office of the secretary, administrative, engineering design, field operations, aviation, transportation programs and planning divisions to match federal funds. Such other state funds are appropriated.

Category transfers are specifically authorized for the state highway and transportation department.

Subtotal 559,635.1

TOTAL TRANSPORTATION 305,341.8 254,293.3 559,635.1

I. OTHER EDUCATION

STATE DEPARTMENT OF PUBLIC
EDUCATION:

(1) Administration:

(a) Personal services 4,606.0 41.5 31.8 2,119.0 6,798.3

(b) Employee benefits 1,189.0 11.1 11.2 558.5 1,769.8

(c) Travel 266.0 5.0 4.4 126.8 402.2

(d) Maintenance and repairs 79.0 43.8 10.5 133.3

(e) Supplies and materials 88.0 23.4 47.7 64.8 223.9

(f) Contractual services 199.0 32.7 376.7 608.4

(g) Operating costs 95.0 160.7 2.9 372.4 631.0

(h) Other costs 205.0 205.0

(i) Capital outlay 48.0 6.8 21.6 76.4

(j) Out-of-state travel 34.0 .5 29.2 63.7

Authorized FTE: 164.00 Permanent; 53.00 Term

The appropriation to the state department of public education includes one hundred sixty thousand dollars ($160,000) from federal Mineral Lands Leasing Act receipts.

The state transportation division shall operate as a separate and distinct division within the state department of public education pursuant to Section 22-16-1 NMSA 1978.

Category transfers and budget increases from other state funds and internal service funds/interagency transfers are specifically authorized for the state department of public education. Such other state funds and internal service funds/interagency transfers are appropriated.

Unexpended or unencumbered balances in the state department of public education remaining at the end of the eighty-second fiscal year from appropriations made from the general fund shall not revert.

(2) Special projects: 3,289.0 3,289.0

The general fund appropriation to the state department of public education for special projects shall include expenditure of funds for high school programs in parenting and care of pre-kindergarten children in approved child care training and parenting labs and includes four hundred twenty-five thousand dollars ($425,000) for family development training programs coordinated by the university of New Mexico, contingent upon receipt of matching funds of not less than twenty-five thousand dollars ($25,000) from other than state sources, and two hundred forty thousand dollars ($240,000) to provide an alternative education curriculum to at-risk students. The state department of public education shall consider the advice of community educational advancement organizations and geographic diversity in determining the best disbursement of these funds.

The state department of public education shall conduct an application and review process to determine the specific dollar amounts for local school districts or individual projects and may apply an indirect cost rate of up to three percent for administering and monitoring special projects.

Subtotal 14,201.0

ADULT BASIC EDUCATION: 1,687.0 1,419.6 3,106.6

Unexpended or unencumbered balances in adult basic education remaining at the end of the eighty-second fiscal year from appropriations made from the general fund shall not revert.

Subtotal 3,106.6

NEW MEXICO SCHOOL FOR THE VISUALLY HANDICAPPED:

6,470.4 6,470.4

Subtotal 6,470.4

NEW MEXICO SCHOOL FOR THE DEAF:

709.0 6,448.4 7,157.4

Subtotal 7,157.4

TOTAL OTHER EDUCATION 12,289.0 13,243.8 98.5 5,304.1 30,935.4

J. HIGHER EDUCATION

Upon approval of the commission on higher education, the state budget division of the department of finance and administration may approve increases in budgets of state agencies in this subsection whose other state funds exceed amounts specified in this subsection. Such other state funds are appropriated. In approving budget increases, the director of the state budget division shall advise the legislature through its officers and appropriate committees, in writing, of the conditions under which the increases are approved and the expenditures authorized, together with justification for the approval.

Except as otherwise provided, balances remaining at the end of the eighty-second fiscal year shall not revert to the general fund.

COMMISSION ON HIGHER EDUCATION:

(1) Administration:

(a) Personal services 601.0 3.5 11.0 615.5

(b) Employee benefits 177.0 1.0 2.9 180.9

(c) Travel 39.0 1.0 40.0

(d) Maintenance and repairs 7.0 7.0

(e) Supplies and materials 8.0 2.1 10.1

(f) Contractual services 208.0 25.0 233.0

(g) Operating costs 89.0 1.4 90.4

(h) Capital outlay 11.0 11.0

(i) Out-of-state travel 3.0 1.6 4.6

Authorized FTE: 16.00 Permanent

Category transfers are specifically authorized for the commission on higher education.

Unexpended or unencumbered balances in the commission on higher education remaining at the end of the eighty-second fiscal year from appropriations made from the general fund shall revert to the general fund.

(2) State student incentive grant 6,096.0 350.0 6,446.0

(3) Nursing student loan program 362.0 135.5 497.5

(4) Medical student loan program 200.0 263.9 463.9

(5) Osteopathic student loan program 184.0 184.0

(6) Work-study program 4,062.0 4,062.0

(7) Student Choice Act 601.0 601.0

(8) Vietnam veterans'
scholarship fund 141.0 141.0

(9) Graduate Fellowship Act 624.0 624.0

(10) New Mexico Scholars Act 1,731.0 1,731.0

(11) Small business development centers 1,339.0 1,339.0

(12) Minority doctoral assistance 200.0 200.0

(13) Educational options information 102.0 102.0

(14) Student child care 500.0 500.0

(15) Southeastern New Mexico
minority and handicapped teachers
scholarships 232.0 84.0 316.0

(16) Math, engineering and science achievement 400.0 400.0

(17) Graduate student research 100.0 100.0

Notwithstanding the provisions of Subsection J of Section 4 of Chapter 94 of Laws 1992, cash balances in individual financial aid accounts shall not revert in the eighty-first and eighty-second fiscal years. Earnings from the investment of state financial aid appropriations shall be expended to offset unanticipated costs of the Vietnam veterans' and New Mexico scholars scholarship programs; thereafter, the earnings shall revert to the general fund upon certification by the commission on higher education.

The general fund appropriation to the commission on higher education in the educational options information category shall be expended for an adult campaign that embodies the preparation and dissemination of information on postsecondary opportunities in New Mexico.

The general fund appropriation to the commission on higher education in the graduate student research category shall be expended at the university of New Mexico, New Mexico state university, New Mexico highlands university, western New Mexico university, eastern New Mexico university and New Mexico institute of mining and technology for graduate student research.

The general fund appropriation to all two- and four-year institutions includes a three and one-half percent compensation increase for faculty and staff.

Subtotal 18,899.9

UNIVERSITY OF NEW MEXICO:

(a) Instruction and general purposes 103,471.0 60,100.0 5,545.7 169,116.7

(b) Medical school instruction
and general purposes 28,014.0 9,617.4 37,631.4

(c) Athletics 2,027.0 8,340.7 11.0 10,378.7

(d) Educational television 1,082.0 3,351.3 613.3 5,046.6

(e) Extended services instruction 358.0 284.9 642.9

(f) Gallup branch 4,530.0 3,095.5 52.4 7,677.9

(g) Los Alamos branch 1,256.0 1,337.1 25.9 2,619.0

(h) Valencia county branch 2,125.0 1,526.3 1,458.2 5,109.5

(i) Poison control center 636.0 636.0

(j) Student exchange program 2,191.0 206.3 2,397.3

(k) Cancer center 1,723.0 6,333.6 8,056.6

(l) State medical investigator 2,157.0 273.2 2,430.2

(m) Emergency medical services academy 564.0 117.2 681.2

(n) Out-of-county indigent fund 1,700.0 1,700.0

(o) Children's psychiatric hospital 1,494.0 5,238.3 6,732.3

(p) Special health programs 2,709.0 286.0 2,995.0

(q) Young children's health center 118.0 50.4 168.4

(r) Pediatric pulmonary center 119.0 26.1 145.1

(s) Health resources registry 16.0 28.3 44.3

(t) Substance abuse program 160.0 160.0

(u) Area health education centers 46.0 46.0

(v) Judicial selection 61.0 61.0

(w) Grief intervention 158.0 158.0

(x) Carrie Tingley hospital 1,329.0 5,964.3 7,293.3

(y) Pediatric dysmorphology 132.0 132.0

(z) Southwest research center 717.0 717.0

(aa) Native American studies program 250.0 250.0

(bb) Bureau of business and economic research 50.0 50.0

(cc) Resource geographic information system 200.0 200.0

(dd) New Mexico natural heritage 50.0 50.0

(ee) Southwest Indian law clinic 80.0 80.0

(ff) Other (medical center) 72,014.7 18,000.0 90,014.7

(gg) Other - main campus 91,917.3 55,253.6 147,170.9

The general fund appropriation to the university of New Mexico for instruction and general purposes includes two hundred thousand dollars ($200,000) to continue the efforts of the Ibero-American science and technology education consortium through the hemispheric initiative, *fifty thousand dollars ($50,000) for a Spanish resource center for continuing education,* not less than one hundred thousand dollars ($100,000) for the New Mexico historical review, *not more than one hundred eighty thousand dollars ($180,000) for the Latin American institute* and fifty thousand dollars ($50,000) to establish a youth education and recreation program.

The general fund appropriation to the university of New Mexico medical school for instruction and general purposes includes three hundred seventy thousand dollars ($370,000) for rural physicians programs and one hundred twenty-seven thousand six hundred dollars ($127,600) for the rural family practice residency program.

The general fund appropriation to the university of New Mexico for athletics includes seventy-five thousand dollars ($75,000) to be expended on women's athletics in compliance with Title 9 of federal education amendments of 1972 and is contingent upon the basketball program scheduling at least one home game with one of New Mexico's regional universities during the 1993-94 season.

The general fund appropriation to the university of New Mexico for extended services instruction includes one hundred forty thousand dollars ($140,000) for a four-year teacher education program in Gallup, contingent upon matching funds of fifty thousand dollars ($50,000) from the Navajo nation and ten thousand dollars ($10,000) from Zuni pueblo.

The general fund appropriation to the university of New Mexico for Carrie Tingley hospital includes one hundred thousand dollars ($100,000) to establish a dental treatment program.

The general fund appropriation to the university of New Mexico for the southwest research center includes fifty thousand dollars ($50,000) for the Don Diego de Vargas project; three hundred ninety-two thousand dollars ($392,000) for the center for regional studies; *fifty thousand dollars ($50,000) for the fourth centennial commemoration of the first families of New Mexico of 1598 with funds to coordinate international, national and state participation in commemoration of the fourth centennial anniversary;* and two hundred twenty-five thousand dollars ($225,000) for the Spanish colonial research center.

The general fund appropriation to the university of New Mexico for the Native American studies program includes one hundred thousand dollars ($100,000) to expand the Native American studies center for academic advising, information services and faculty development.

Subtotal 510,592.0

NEW MEXICO STATE UNIVERSITY:

(a) Instruction and general

purposes 66,033.0 35,658.0 2,048.1 103,739.1

(b) Athletics 1,895.0 3,266.7 5,161.7

(c) Educational television 887.0 234.0 372.2 1,493.2

(d) Extended services

instruction 170.0 225.0 395.0

(e) Alamogordo branch 3,694.0 1,209.2 258.7 5,161.9

(f) Carlsbad branch 2,149.0 1,036.7 309.0 3,494.7

(g) Dona Ana branch 5,405.0 2,443.2 776.6 8,624.8

(h) Grants branch 1,426.0 564.8 1,990.8

(i) Department of

agriculture 4,672.0 2,604.0 180.0 7,456.0

(j) Agricultural experiment

station 8,812.0 2,116.4 4,704.9 15,633.3

(k) Cooperative extension

service 6,427.0 2,247.9 2,761.3 11,436.2

(l) Water resources

research 392.0 536.1 125.0 1,053.1

(m) Joint border

research 210.0 210.0

(n) Indian resources

development program 251.0 251.0

(o) International business

center 100.0 100.0

(p) Manufacturing development

program 300.0 300.0

(q) Other 38,788.8 76,646.0 115,434.8

The general fund appropriation to New Mexico state university for instruction and general purposes includes one hundred thousand dollars ($100,000) for an endowed telemetering fellowship.

The general fund appropriation to New Mexico state university for athletics includes one hundred thousand dollars ($100,000) to be expended on women's athletics in compliance with Title 9 of federal education amendments of 1972 and is contingent upon the basketball program scheduling at least one home game with one of New Mexico's regional universities during the 1993-94 season.

The general fund appropriation to New Mexico state university for the department of agriculture includes seventy-five thousand dollars ($75,000) for development of a system to facilitate production and market development of high value products, not more than three hundred four thousand dollars ($304,000) for animal damage control *and fifty thousand dollars ($50,000) to develop and implement an Africanized honeybee state emergency response plan and provide information and training on management and control of the Africanized honeybee*.

Subtotal 281,935.6

NEW MEXICO HIGHLANDS UNIVERSITY:

(a) Instruction and general purposes 12,844.0 2,867.0 3,300.0 19,011.0

(b) Athletics 765.0 175.0 23.2 963.2

(c) Extended services instruction 75.0 80.0 155.0

(d) Visiting scientist 20.0 20.0

(e) Upward bound 24.0 24.0

(f) Diverse population studies 100.0 100.0

(g) Other 2,807.0 4,175.0 6,982.0

The general fund appropriation to New Mexico highlands university for instruction and general purposes includes twenty-five thousand dollars ($25,000) for law enforcement equipment and officer training.

The general fund appropriation to New Mexico highlands university for athletics includes fifty thousand dollars ($50,000) to be expended on women's athletics in compliance with Title 9 of federal education amendments of 1972.

Subtotal 27,255.2

WESTERN NEW MEXICO UNIVERSITY:

(a) Instruction and general purposes 8,549.0 2,363.5 310.0 11,222.5

(b) Athletics 737.0 225.0 2.5 964.5

(c) Extended services instruction 62.0 300.0 362.0

(d) Instructional television 100.0 100.0

(e) Other 2,175.0 2,600.0 4,775.0

The general fund appropriation to western New Mexico university for instruction and general purposes includes three hundred fifty thousand dollars ($350,000) to establish a two-year registered nursing associate degree program.

The general fund appropriation to western New Mexico university for athletics includes fifty thousand dollars ($50,000) to be expended on women's athletics in compliance with Title 9 of federal education amendments of 1972.

Subtotal 17,424.0

EASTERN NEW MEXICO UNIVERSITY:

(a) Instruction and general purposes 16,103.0 5,585.5 1,300.0 22,988.5

(b) Athletics 883.0 385.0 1,268.0

(c) Educational television 844.0 288.3 500.0 1,632.3

(d) Extended services instruction 130.0 396.0 526.0

(e) Roswell branch 5,261.0 4,855.2 1,000.0 11,116.2

(f) Center for teaching excellence 256.0 256.0

(g) Ruidoso off-campus center 142.0 307.5 200.0 649.5

(h) Blackwater Draw and museum 92.0 21.8 113.8

(i) Other 8,500.0 4,905.7 13,405.7

The general fund appropriation to eastern New Mexico university for instruction and general purposes provides for an Americans with Disabilities Act facilitator to work with the university community's hearing disabled and physically challenged in carrying out the provisions of the Americans with Disabilities Act.

The general fund appropriation to eastern New Mexico university for athletics includes fifty thousand dollars ($50,000) to be expended on women's athletics in compliance with Title 9 of federal education amendments of 1972.

Subtotal 51,956.0

NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY:

(a) Instruction and general purposes 13,159.0 5,102.1 2.0 18,263.1

(b) Athletics 134.0 134.0

(c) Geophysical research center 601.4 100.0 701.4

(d) Bureau of mines 2,731.0 50.0 2,781.0

(e) Petroleum recovery research center 1,189.0 150.0 400.0 1,739.0

(f) Bureau of mine inspection 240.0 30.0 270.0

(g) Energetic research material center 200.0 200.0

(h) Other 750.0 26,568.0 27,318.0

The appropriation to New Mexico institute of mining and technology for the bureau of mines includes one hundred thousand dollars ($100,000) from federal Mineral Lands Leasing Act receipts.

The general fund appropriation to New Mexico institute of mining and technology for athletics includes seventy-five thousand dollars ($75,000) for club sports.

The general fund appropriation to New Mexico institute of mining and technology for the petroleum recovery research center includes five hundred thousand dollars ($500,000) to match federal and other funds to continue the research and services of the petroleum recovery research center at New Mexico institute of mining and technology.

Subtotal 51,406.5

NORTHERN NEW MEXICO STATE SCHOOL:

(a) Instruction and general purposes 4,821.0 1,995.6 2,232.3 9,048.9

(b) Taos center 228.0 767.0 995.0

(c) Other 51.0 289.0 340.0

In the event that a change in the parent institution for the Taos center is approved as provided in Section 21-14A-3 NMSA 1978, the appropriation to northern New Mexico state school for the Taos center shall be transferred to the approved parent institution.

Subtotal 10,383.9

SANTA FE COMMUNITY COLLEGE:

(a) Instruction and general purposes 3,971.0 4,862.6 945.0 9,778.6

(b) Other 16,498.4 1,260.0 17,758.4

Subtotal 27,537.0

TECHNICAL-VOCATIONAL INSTITUTE:

(a) Instruction and general purposes 22,638.0 20,800.0 1,700.0 45,138.0

(b) Other *300.0* 6,950.0 4,900.0 12,150.0

The general fund appropriation to the technical-vocational institute includes fifteen thousand dollars ($15,000) for computer equipment for the Albuquerque public schools juvenile detention center/technical-vocational institute liaison program.

The general fund appropriation to the technical-vocational institute in the other category shall be expended to contract with a nonprofit organization to implement a business program promoting minority and women owned businesses in New Mexico.

Subtotal 57,288.0

LUNA VOCATIONAL TECHNICAL INSTITUTE:

(a) Instruction and general purposes 4,792.0 705.0 230.0 5,727.0

(b) Other 73.2 795.0 868.2

Subtotal 6,595.2

TUCUMCARI AREA VOCATIONAL SCHOOL:

(a) Instruction and general purposes 1,635.0 153.0 110.0 1,898.0

(b) Other 120.0 120.0

Subtotal 2,018.0

NEW MEXICO JUNIOR COLLEGE:

(a) Instruction and general purposes 2,356.3 4,722.0 852.0 7,930.3

(b) Athletic 32.0 324.0 356.0

(c) Other 1,079.0 91.0 1,170.0

Subtotal 9,456.3

SAN JUAN COLLEGE: 3,231.0 9,710.0 1,627.9 14,568.9

CLOVIS COMMUNITY COLLEGE: 4,714.0 2,800.0 2,300.0 9,814.0

NEW MEXICO MILITARY INSTITUTE:

(a) Instruction and general
purposes and transfers 11,364.2 11,364.2

(b) Athletics 669.0 669.0

(c) Other 5,652.4 5,652.4

Subtotal 17,685.6

TOTAL HIGHER EDUCATION 393,989.7 488,929.9 231,896.5 1,114,816.1

K. PUBLIC SCHOOL SUPPORT

Except as otherwise provided, balances of appropriations made in this subsection shall not revert at the end of the fiscal year.

PUBLIC SCHOOL SUPPORT:

(1) State equalization guarantee distribution 1,003,520.6 1,003,520.6

(2) Transportation basic and
vocational distribution 71,444.4 71,444.4

(3) Supplemental distributions:

(a) Out-of-state tuition 312.0 312.0

(b) Emergency 11,200.0 11,200.0

(c) Emergency capital outlay 313.0 313.0

(4) Training and experience 1,400.0 1,400.0

The general fund appropriation of one million four hundred thousand dollars ($1,400,000) for training and experience and one million eight hundred thousand dollars ($1,800,000) from the state support reserve fund shall enable the superintendent of public instruction to make an additional distribution to certain local school districts. Any local school district that did not receive a waiver from the superintendent of public instruction in the calculation of the October 1992 training and experience index for instructional staff shall receive an additional distribution for the 1993-94 school year. That distribution shall be calculated as follows: number of membership program units in that district times .008 times the unit value established by the superintendent of public instruction for the 1993-94 school year.

The rate for the distribution in the state equalization guarantee distribution shall be based on a program unit value determined by the superintendent of public instruction. The superintendent of public instruction shall determine a preliminary unit value not later than April 1, 1993. That unit value shall be used for the purpose of establishing tentative budgets for the 1993-94 school year. Upon determination of final budgets or verification

of the number of units statewide for the eighty-second fiscal year, the superintendent of public instruction may adjust the program unit value.

Included in the supplemental emergency distribution is ten million dollars ($10,000,000) to increase the minimum salary level to twenty-two thousand dollars ($22,000) for teachers in all school districts. In addition, forty million five hundred thousand dollars ($40,500,000) is included in the state equalization guarantee distribution and one million three hundred thousand dollars ($1,300,000) is included in the transportation basic and vocational distribution to provide an average six percent salary increase to all employees earning less than thirty-two thousand dollars ($32,000) and an average four percent salary increase to all employees earning more than thirty-two thousand dollars ($32,000), contingent upon enactment of senate bill 366 of the forty-first legislature, first session.

The superintendent of public instruction shall require written documentation for each school district that the minimum teacher salary stipulation of twenty-two thousand dollars ($22,000) is met.

The superintendent of public instruction shall study and review the minimum salary appropriation and make recommendations to the legislature prior to the eighty-third fiscal year regarding incorporation of this minimum salary requirement into the state equalization guarantee distribution and the salary schedules for teachers.

The superintendent of public instruction may utilize supplemental emergency funds for mid-year increases in student membership resulting from expansion of military bases and for increases in student membership that occur as a result of eligible children with developmental delays reaching their third birthday.

The superintendent of public instruction shall certify to the secretary of finance and administration that the need exists before supplemental emergency funds can be released.

The general fund appropriation to the public school fund shall be reduced by the amounts transferred to the public school fund from the current school fund and from federal Mineral Lands Leasing Act receipts otherwise unappropriated.

Unexpended or unencumbered balances in the distributions authorized remaining at the end of the eighty-second fiscal year from appropriations made from the general fund shall revert to the general fund.

Subtotal 1,088,190.0

INSTRUCTIONAL MATERIAL FUND: 21,292.0 2,000.0 23,292.0

This appropriation is made from federal Mineral Lands Leasing Act receipts.

Up to two million dollars ($2,000,000) of unexpended or unencumbered balances in the instructional material fund may be redistributed among schools, institutions and adult basic education centers with approval of the state instructional material director and the superintendent of public instruction.

Subtotal 23,292.0

TOTAL PUBLIC SCHOOL SUPPORT 1,109,482.0 2,000.0 1,111,482.0

GRAND TOTAL EIGHTY-SECOND

FISCAL YEAR

APPROPRIATIONS 2,316,352.5 1,047,579.2 261,365.9 1,364,459.9 4,989,757.5.

Section 5

Section 5. DEFICIENCY AND SUPPLEMENTAL APPROPRIATIONS.--

There is appropriated from the general fund or other funds as indicated for expenditure in the eighty-first fiscal year, unless otherwise indicated, the amounts set out in this section. Disbursement of these appropriations shall be subject to the following conditions: certification by the state agency to the department of finance and administration that no other funds are available in the eighty-first fiscal year for the purpose specified in the appropriation, approval by the department of finance and administration and notification of such approval to the legislative finance committee. Unless otherwise indicated, unexpended or unencumbered balances remaining at the end of the eighty-first fiscal year shall revert to the appropriate fund.

A. one hundred seven thousand six hundred dollars ($107,600) to the administrative office of the courts to distribute to judicial agencies for an average three percent salary increase on the hire date of unclassified employees;

B. twenty-nine thousand four hundred dollars ($29,400) to the jury and witness fee fund to meet eightieth fiscal year expenses;

C. three hundred sixty-three thousand dollars ($363,000) to the jury and witness fee fund;

D. seventy-eight thousand seven hundred dollars ($78,700) to the mental health attorney fees fund;

E. twenty-eight thousand two hundred dollars ($28,200) to the third judicial district court to pay expenses associated with a new judgeship;

F. eight thousand dollars ($8,000) to the thirteenth judicial district court to pay expenses associated with a new judgeship;

G. fifteen thousand dollars ($15,000) to the third judicial district attorney to pay relocation expenses;

H. two thousand five hundred dollars ($2,500) to the tenth judicial district attorney to pay attorney costs associated with conflict cases;

I. three hundred thousand dollars ($300,000) to the department of finance and administration for the state fiscal agent contract;

J. two hundred forty-eight thousand six hundred dollars ($248,600) to the public defender department for contract attorney fees;

K. one thousand one hundred dollars ($1,100) to the commission of public records to pay employee benefits costs incurred in the eightieth fiscal year;

L. one million ninety-one thousand eight hundred dollars ($1,091,800) to the human services department for the medicaid program to meet medicaid group home, residential treatment and other mental health costs;

M. five hundred seventy-two thousand eight hndred dollars ($572,800) to the human services department for the general assistance program;

N. three million seven hundred thirty-seven thousand eight hundred dollars ($3,737,800) to the human services department for the medicaid program;

O. one million thirty-seven thousand dollars ($1,037,000) to the human services department *to be matched with two million five hundred seventy-six thousand two hundred dollars ($2,576,200) in federal funds* for the aid to families with dependent children program;

P. seventeen million five hundred sixteen thousand seven hundred dollars ($17,516,700) to the human services department *to be matched with fifty-five million two hundred eighty-six thousand two hundred dollars ($55,286,200) in federal funds* for the medical assistance program;

Q. one hundred eighty thousand six hundred dollars ($180,600) to the division of vocational rehabilitation of the state department of public education to match seven hundred seven thousand dollars ($707,000) in federal funds for client care and support and independent living services;

R. one hundred eighty-two thousand nine hundred dollars ($182,900) to the department of health to be matched with Robert Wood Johnson foundation funds for operation of the health policy commission;

S. one million dollars ($1,000,000) to the public health division of the department of health for the waiting list of people infected with the human immune deficiency virus or acquired immune deficiency syndrome;

T. an amount not to exceed five hundred thousand dollars ($500,000) to the administrative services division of the department of environment to serve only as repayment to the general fund of a five-hundred-thousand-dollar deficiency from eightieth fiscal year expenditures, provided that the department of environment substantiate the total deficiency amount with an official audit reviewed and approved by the department of finance and administration and the legislative finance committee;

U. two hundred thousand dollars ($200,000) to the environmental protection division of the department of environment to meet the continuing eligibility level requirements of the federal Clean Air Act;

V. six thousand three hundred dollars ($6,300) to the juvenile reintegration centers of the children, youth and families department to purchase hepatitis B vaccine for employees;

W. six thousand three hundred dollars ($6,300) to the youth diagnostic and development center of the children, youth and families department to purchase hepatitis B vaccine for employees;

X. one hundred twenty-one thousand eight hundred dollars ($121,800) to the New Mexico boys' school of the children, youth and families department to pay medical costs and purchase hepatitis B vaccine for employees;

Y. two hundred fifty thousand dollars ($250,000) to the crime victims reparation commission for care and support of crime victims;

Z. one hundred fifty-seven thousand six hundred dollars ($157,600) of the appropriation to the department of public safety in Laws 1988, Chapter 13, Section 5 is reappropriated to the department of public safety;

AA. five hundred thousand dollars ($500,000) from the state road fund to the aviation division of the state highway and transportation department to provide state match for federal aviation administration grants;

BB. five hundred thousand dollars ($500,000) to the state department of public education for in-plant training;

CC. one hundred ninety-five thousand dollars ($195,000) to the commission on higher education for the New Mexico scholars program;

DD. one million dollars ($1,000,000) to public school support for the transportation basic and vocational distribution for school transportation needs in the

areas of special education, per capita feeders, route mileage changes and additional bus replacements, to be distributed upon certification by the state superintendent of public instruction to the secretary of finance and administration;

EE. three hundred fifty thousand dollars ($350,000) from the New Mexico retiree health care authority reserve funds to the retiree health care authority for building purchase;

FF. fifty thousand dollars ($50,000) to the department of insurance of the state corporation commission for salary adjustments for upper level professional and supervisory employees; and

GG. one hundred thousand dollars ($100,000) to the department of environment to match federal grant commitments of three hundred thousand dollars ($300,000) for the Resource Conservation and Recovery Act program.

Section 6

Section 6. APPROPRIATION REDUCTIONS.--All amounts set out under the general fund column in Section 4 of the General Appropriation Act of 1993 shall be reduced by thirty-five one-hundredths of one percent rounded to the nearest tenth of a thousand dollars. The department of finance and administration shall adjust all totals, rates of distribution and language accordingly.

Section 7

Section 7. TRANSFER AUTHORITY.--If at the end of the eighty-second fiscal year revenue and transfers to the general fund, excluding transfers to the operating reserve, the appropriation contingency fund and the public school state support reserve fund are not sufficient to meet appropriations, the governor, with state board of finance approval, may transfer at the end of that year the amount necessary to meet the year's obligations from the unencumbered balance remaining in the general fund operating reserve an amount not to exceed thirty million dollars ($30,000,000).

Section 8

Section 8. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

_____ HB 2.

CHAPTER 366

MAKING APPROPRIATIONS TO CERTAIN STATE AGENCIES; AUTHORIZING THE TRANSFER OF CERTAIN FUNDS.

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

Section 1

Section 1. COMPUTER SYSTEMS ENHANCEMENT FUND--FUND TRANSFERS--USE OF FUND BALANCES.--

A. The following amounts from the following funds and agencies are transferred to the computer systems enhancement fund in the eighty-first fiscal year:

(1) six million five hundred thousand dollars ($6,500,000) from the state unemployment compensation fund;

(2) five million dollars ($5,000,000) from the workers' compensation administration fund;

(3) six hundred forty-seven thousand three hundred dollars ($647,300) from the general fund; and

(4) the amount of all unencumbered balances on April 1, 1993 from license plate replacement fee revenues appropriated to the taxation and revenue department pursuant to Subsection D of Section 66-3-14 NMSA 1978 and all revenue collected from that fee from April 1 to July 1, 1993, notwithstanding the provisions of that section of law to the contrary.

B. All unexpended and unencumbered balances in the computer systems enhancement fund on April 1, 1993 shall not revert to the general fund but shall remain in the fund for appropriation by the legislature for the purposes of the fund.

Section 2

Section 2. APPROPRIATIONS.--The following amounts are appropriated from the computer systems enhancement fund to the following agencies for expenditure in the following fiscal
years for the following purposes:

A. one million dollars ($1,000,000) to the legislative council service for expenditure in the eighty-first through eighty-third fiscal years to implement phase two of the legislative information system;

B. four million five hundred thousand dollars ($4,500,000) to the supreme court for expenditure in the eighty-first through eighty-third fiscal years to provide for eight full-time equivalent positions and to purchase hardware, software and implementation services for statewide automation of the metropolitan, magistrate and district courts to establish a uniform statewide judicial information system, contingent

upon establishment of a judicial information system council by New Mexico supreme court order;

C. two million seven hundred fifty thousand dollars ($2,750,000) to the taxation and revenue department for expenditure in the eighty-first and eighty-second fiscal years to further develop the taxation and revenue information management system, contingent upon the taxation and revenue department coordinating development of this system with the statewide court automation system with respect to motor vehicle records and databases;

D. eight hundred twenty-four thousand eight hundred dollars ($824,800) to the taxation and revenue department for expenditure in the eighty-second fiscal year to operate the ONGARD service center, provided that positions, furnishings and equipment may be transferred from the energy, minerals and natural resources department to the taxation and revenue department to carry out this purpose;

E. four hundred thousand dollars ($400,000) to the department of finance and administration for expenditure in the eighty-second fiscal year to pay information systems division charges associated with the central financial reporting and accounting system;

F. four hundred thousand dollars ($400,000) to the department of finance and administration for expenditure in the eighty-first and eighty-second fiscal years to meet actual information systems division charges, net of refunds or rate reductions, associated with the central financial reporting and accounting system which exceed budgeted amounts;

G. two hundred thousand dollars ($200,000) to the department of finance and administration for expenditure in the eighty-second fiscal year to replace gross-to-net files and related functions;

H. one million dollars ($1,000,000) to the department of finance and administration for expenditure in the eighty-first and eighty-second fiscal years to develop a long-range plan and to implement the statewide financial systems network;

I. thirty thousand dollars ($30,000) to the secretary of state for expenditure in the eighty-first and eighty-second fiscal years for a computer network in the bureau of elections;

J. one million two hundred thousand dollars ($1,200,000) and two full-time equivalent positions to the state treasurer in the eighty-first and eighty-second fiscal years for a treasurer's bank letter system;

K. one million two hundred seventy-two thousand one hundred dollars ($1,272,100) to the commissioner of public lands for expenditure in the eighty-second fiscal year for ONGARD bond payments;

L. one hundred forty-eight thousand four hundred dollars ($148,400) to the state engineer for expenditure in the eighty-second fiscal year to purchase computer systems;

M. three hundred twenty-five thousand dollars ($325,000) to the public service commission for expenditure in the eighty-second fiscal year to develop an integrated office automation and case records management system;

N. five hundred thousand dollars ($500,000) to the human services department for expenditure in the eighty-first and eighty-second fiscal years to enhance accounting systems and establish two full-time equivalent positions;

O. two hundred thirty thousand dollars ($230,000) to the scientific laboratory division of the department of health for expenditure in the eighty-second fiscal year to develop an integrated database system;

P. two hundred seven thousand dollars ($207,000) to the department of health for expenditure in the eighty-second fiscal year to develop a facilities information system;

Q. eighty thousand dollars ($80,000) to the department of environment for expenditure in the eighty-second fiscal year to purchase hardware and software to enhance the accounting system;

R. five hundred thousand dollars ($500,000) to the children, youth and families department for expenditure in the eighty-first and eighty-second fiscal years to enhance accounting and client tracking systems;

S. fifty thousand dollars ($50,000) to the state department of public education for expenditure in the eighty-second fiscal year to design and begin implementation of a student tracking system which will gather appropriate information from preschool to higher education or job placement; and

T. thirty thousand dollars ($30,000) to the commission on higher education for expenditure in the eighty-second fiscal year to pay expenses associated with development and implementation of a higher education database.

Section 3

Section 3. SPECIAL APPROPRIATIONS. --Appropriated from the general fund, or other funds as indicated, are the following amounts for the purposes specified. Unless otherwise indicated, these appropriations may be expended in the eighty-first and eighty-second fiscal years. Unless otherwise indicated, unexpended or unencumbered balances remaining at the end of the eighty-second fiscal year shall revert to the appropriate fund.

A. fifty thousand dollars ($50,000) to the legislative council service to pay expenses associated with the governmental ethics oversight committee;

B. one million dollars ($1,000,000) from the court automation fund to the supreme court in the eighty-second fiscal year to pay maintenance and operation costs associated with implementation of statewide court automation and existing court automation system, contingent upon establishment of the judicial information system council by New Mexico supreme court order;

C. two hundred fifteen thousand two hundred dollars ($215,200) to the administrative office of the courts to distribute to judicial agencies for an average three percent salary increase granted in the eighty-first fiscal year on the hire date of unclassified employees;

D. ten thousand dollars ($10,000) to the first judicial district court to provide contractual security services in cooperation with Santa Fe county;

E. five thousand dollars ($5,000) to the tenth judicial district court to replace equipment and furniture;

F. four hundred twelve thousand three hundred dollars ($412,300) from the land maintenance fund to the taxation and revenue department in the eighty-second fiscal year to operate the ONGARD service center;

G. two million dollars ($2,000,000) from the state road fund and three million one hundred eighty thousand dollars ($3,180,000) from the corrective action fund to the department of finance and administration in the eighty-first through eighty-third fiscal years to pay for studies, services and corrective activities associated with the Terrero mine cleanup project and reclamation of the El Molino mill tailings site at the mine site, mill site, state campgrounds, roads and fish hatchery and to provide a grant not to exceed fifty thousand dollars ($50,000) to the village of Pecos to hire a private contractor to act on behalf of local citizens, inform them of the investigative and corrective work associated with the Terrero mine cleanup project and help the community understand the technical issues and participate in the cleanup project and related activities contingent upon the commitment or receipt of eighty percent of the project cost from one or more entities, other than the state of New Mexico, who share responsibility for adverse environmental effects associated with the Terrero mine and associated operations; unexpended or unencumbered balances in the department of finance and administration remaining at the end of the eighty-third fiscal year from appropriations made from the state road fund shall revert to the state road fund and unexpended or unencumbered balances remaining at the end of the eighty-third fiscal year from appropriations made from the corrective action fund shall revert to the corrective action fund;

H. three hundred thousand dollars ($300,000) to the department of finance and administration for the court expense contingency fund provided that balances remaining in the fund shall not revert;

I. one hundred twenty thousand dollars ($120,000) to the local government division of the department of finance and administration to pay certain costs of the southern Sandoval county arroyo flood control authority for operation and maintenance within the boundaries of the Corrales watershed district;

J. seventy-five thousand dollars ($75,000) to the local government division of the department of finance and administration to construct sewer and water supply lines in the camino Carlos Rael area in Santa Fe county, contingent upon Santa Fe county providing matching funds of not less than seventy-five thousand dollars ($75,000); nineteen thousand dollars ($19,000) from the appropriation to the local government division in Laws 1992, Chapter 94, Section 5 for sewer and water supply line connections is reappropriated to the division for engineering design and construction of sewer and water supply lines in the camino Carlos Rael area;

K. four hundred thousand dollars ($400,000) to the office of the secretary of general services to begin implementation of the commission on information and communications management, contingent upon enactment of house bill 576 of the forty-first legislature, first session;

L. one million five hundred thousand dollars ($1,500,000) from internal service funds/interagency transfers to the information systems division of the general services department in the eighty-second fiscal year to pay costs associated with the central financial reporting and accounting system, human resource system, the taxation and revenue information management system, ISD-2 system and other major state agency systems;

M. two million five hundred thousand dollars ($2,500,000) to the general services department to pay necessary costs associated with bringing state buildings into compliance with the Americans with Disabilities Act;

N. seven hundred fifty thousand dollars ($750,000) to the property control division of the general services department to fund a state library, records and archives building study committee and a comprehensive state library, records and archives building plan;

O. four hundred twenty-five thousand dollars ($425,000) from the public liability fund to the risk management division of the general services department to pay for certain litigation costs;

P. one million five hundred thousand dollars ($1,500,000) to the office of the governor to pay expenses associated with vacating the outstanding portions of the Duran v. King consent decree;

Q. three hundred thousand dollars ($300,000) from the public employees retirement fund to the public employees retirement association to provide expansion and improvements to the public employees retirement information system;

R. two hundred ninety-three thousand dollars ($293,000) to the secretary of state to implement governmental ethics provisions contingent upon enactment of house bill 105 of the forty-first legislature, first session;

S. twenty-five thousand dollars ($25,000) to the tourism department to purchase interactive video systems;

T. nine thousand dollars ($9,000) to the tourism department to support activities of the fiestas de Bernalillo in Sandoval county;

U. fifty thousand dollars ($50,000) to the library division of the office of cultural affairs for the adult literacy program;

V. one hundred twenty-five thousand dollars ($125,000) to the historic preservation division of the office of cultural affairs for the New Mexico endowment for the humanities to sponsor cultural, educational and historical activities statewide;

W. one hundred thousand dollars ($100,000) to the historic preservation division of the office of cultural affairs to carry out the provisions of the Historic Preservation Loan Act;

X. seventy thousand dollars ($70,000) to the museum division of the office of cultural affairs to purchase the historical archives of Mauro Montoya of Albuquerque;

Y. twenty thousand dollars ($20,000) to the historic preservation division of the office of cultural affairs to contract for maintenance and beautification of an historical cemetery in Carlsbad in Eddy county;

Z. two hundred thousand dollars ($200,000) to the office of the secretary of energy, minerals and natural resources to carry out the purposes of the Natural Lands Protection Act;

AA. three hundred seventy thousand dollars ($370,000) from the available cash balance in the state park and recreation division of the energy, minerals and natural resources department to the state park and recreation division to pay for unanticipated or emergency repairs to state parks in the eighty-first and eighty-second fiscal years and for normal maintenance and improvements at state parks occurring after February 1, 1994;

BB. thirty thousand dollars ($30,000) from the available cash balance in the state park and recreation division of the energy, minerals and natural resources

department to the state park and recreation division to provide safety training certification for state park employees in the eighty-first and eighty-second fiscal years;

CC. thirty thousand dollars ($30,000) to the state park and recreation division of the energy, minerals and natural resources department to study the feasibility of developing a Mesilla Valley regional nature center, perform preliminary cleanup and fence the property;

DD. seventy-five thousand dollars ($75,000) from the land maintenance fund to the commissioner of public lands to provide economic and legal studies of the interstate natural gas markets to improve the ability of New Mexico natural gas producers to compete in those markets;

EE. five hundred thousand dollars ($500,000) from the land maintenance fund to the commissioner of public lands to complete the ONGARD system development contract contingent upon enactment of house bill 479 of the forty-first legislature, first session;

FF. two hundred fifty thousand dollars ($250,000) to the state engineer to fund regional water planning;

GG. one hundred seventy-five thousand dollars ($175,000) to the public service commission to provide litigation, and technical and financial consultation services associated with the El Paso electric company bankruptcy proceedings;

HH. ten thousand dollars ($10,000) to the Martin Luther King, Jr. commission to pay operational expenses and cash flow;

II. one hundred thousand dollars ($100,000) to the division of vocational rehabilitation of the state department of public education for independent living services operating in Bernalillo, Cibola, Sandoval and Valencia counties;

JJ. one hundred twenty-five thousand dollars ($125,000) to the governor's committee on concerns of the handicapped in the eighty-second fiscal year to contract with independent living centers to provide community outreach to underserved areas of the state, disability rights education and Americans with Disabilities Act compliance training;

KK. thirty thousand dollars ($30,000) to the governor's committee on concerns of the handicapped in the eighty-second fiscal year to coordinate all departments providing in-home care services for physically disabled adults under age fifty-five;

LL. three hundred thousand dollars ($300,000) to the department of health to provide an asthma pilot project *in the south valley of Bernalillo county*;

MM. one hundred seventy-five thousand two hundred dollars ($175,200) to the department of health to be matched with Robert Wood Johnson foundation funds to operate the health policy commission;

NN. one hundred thirty thousand dollars ($130,000) to the department of health to purchase milk inspection equipment;

OO. three hundred twenty thousand dollars ($320,000) from the corrective action fund to the department of environment in the eighty-first through eighty-third fiscal years to hire an engineer and support staff for environmental activities associated with the Terrero mine cleanup project; unexpended or unencumbered balances in the department of environment remaining at the end of the eighty-third fiscal year from appropriations made from the corrective action fund shall revert to the corrective action fund;

PP. twenty-five thousand dollars ($25,000) to the environmental protection division of the department of environment to study and prepare plans for establishment of a solid waste transfer station in Rio Arriba county;

QQ. two hundred fifty thousand dollars ($250,000) to the environmental protection division of the department of environment to hire a one-year term training coordinator and to fund training and administrative expenses associated with assisting the *eight northern* Indian pueblos *council* with training of staff in knowledge of and compliance with federal and state environmental protection laws;

RR. one hundred fifty thousand dollars ($150,000) to the water and waste management division of the department of environment to locate and correct ground water contamination affecting the area of the well near Baca street in Santa Fe in Santa Fe county, including the extent and nature of such contamination, and to conduct sampling and other appropriate scientific studies or analyses of surface or subsurface conditions;

SS. two million four hundred thousand dollars ($2,400,000) from the general fund operating reserve to the department of finance and administration in the eighty-second fiscal year for quarterly distribution to the corrections department based upon the marginal cost of growth in state prison population beyond three thousand three hundred twenty-seven, providing that the department of finance and administration make quarterly reports to the legislative finance committee on this distribution;

TT. seventy thousand dollars ($70,000) to the state department of public education to acquire interactive television equipment for the Roy municipal schools;

UU. fifteen thousand dollars ($15,000) to the commission on higher education to expand cooperative education efforts to underrepresented groups in specified fields, particularly women and minorities in engineering;

VV. two hundred fifty thousand dollars ($250,000) to the department of agriculture in the eighty-second fiscal year to regulate and inspect milk products and sanitation in milk producing and processing facilities;

WW. five thousand dollars ($5,000) to New Mexico highlands university in the eighty-first fiscal year for instruction and general purposes to provide for storage and preservation of rare books;

XX. one hundred thousand dollars ($100,000) to the university of New Mexico for instruction and general purposes for law library book acquisitions;

YY. fifty thousand dollars ($50,000) to the university of New Mexico for instruction and general purposes for geographic education;

ZZ. one hundred thousand dollars ($100,000) to the state department of public education for the purpose of providing supplemental operational funding for a high school that offers alternative educational opportunities to students in need of drug and alcohol rehabilitation programs in Bernalillo county;

AAA. two hundred thousand dollars ($200,000) to the local government division of the department of finance and administration for the purpose of continuing the alternative sentencing facility pilot program in Bernalillo county; and

BBB. two hundred thousand dollars ($200,000) to the department of public safety for the purpose of contracting with a private, nonprofit organization for the purpose of establishing a youth education curriculum, youth violence prevention and law enforcement support program.

Section 4

Section 4. SPECIAL PROJECT APPROPRIATIONS.--Appropriated from the general fund, or other funds as indicated, are the following amounts for the purposes specified. Unless otherwise indicated, these appropriations may be expended in the eighty-second fiscal year. Unless otherwise indicated, unexpended or unencumbered balances remaining at the end of the eighty-second fiscal year shall revert to the appropriate fund.

A. eight hundred thirty-six thousand five hundred dollars ($836,500) to the administrative office of the courts for providing children's court hearing officers in the second judicial district and for additional guardian ad litem and contract attorneys as necessary to implement the provisions of house bill 473 of the forty-first legislature, first session, the changes and recodification of the Children's Code;

B. thirty thousand dollars ($30,000) to the second judicial district court for a probation officer to coordinate domestic violence cases in the second judicial district between the Bernalillo county metropolitan court and the second judicial district court;

C. ninety-five thousand dollars ($95,000) to the attorney general regular operations for litigation costs in The Apache Tribe of the Mescalero Reservation v. the State of New Mexico; and Bruce King, Governor of the State of New Mexico;

D. three hundred fifteen thousand dollars ($315,000) to the audit and compliance division of the taxation and revenue department to purchase an intelligent automated dialing and skip tracing system to further augment the revenue enhancement and administration program to generate at least an additional two million dollars ($2,000,000) in the eighty-second fiscal year over and above the amount included in the February, 1993 revenue estimates;

E. one hundred twenty-four thousand dollars ($124,000) to the financial control division of the department of finance and administration for consulting costs related to year-end financial reporting;

F. eight hundred thousand dollars ($800,000) to the state board of finance computerized voting machine revolving fund for the purpose of purchasing electronic voting machines by counties;

G. four hundred seventy-seven thousand dollars ($477,000) to the financial control division of the department of finance and administration to hire two FTE to provide post-implementation support to the central financial reporting and accounting system;

H. one million five hundred thousand dollars ($1,500,000) to the local government division of the department of finance and administration to provide basic electric service and other necessary capital improvements to the Colonias area of Dona Ana county, of which two hundred thousand dollars ($200,000) shall be expended for an archeological study at the Santa Teresa border crossing;

I. thirty thousand dollars ($30,000) to the local government division of the department of finance and administration to fund playground equipment, sidewalk improvements and shelters for parks and recreation in the city of Bloomfield, New Mexico;

J. one hundred thousand dollars ($100,000) to the local government division of the department of finance and administration for roof repairs of the Mora county courthouse;

K. seventy-five thousand dollars ($75,000) to the local government division of the department of finance and administration for sewer improvements in Mosquero;

L. one hundred forty thousand dollars ($140,000) to the local government division of the department of finance and administration for water system improvements for the Timberon water and sanitation district;

M. twelve million dollars ($12,000,000) from the general fund operating reserve to the local government division of the department of finance and administration for the following purposes: six million dollars ($6,000,000) for sewer and water projects, expanding sewer and water facilities and constructing sewer and water line extensions in the south valley located in Bernalillo county and six million dollars ($6,000,000) for sewer and water projects, expanding sewer and water facilities and constructing sewer and water line extensions in the north valley of Albuquerque located in Bernalillo county;

N. one million six hundred thousand dollars ($1,600,000) from the general fund and three million dollars ($3,000,000) from the public liability fund to the risk management division of the general services department for deposit in the "corrections employee settlement fund", hereby created. Money deposited in the corrections employee settlement fund shall be expended in the eighty-first, eighty-second and eighty-third fiscal years exclusively for payment of wage and employee benefits, damages, court costs and attorneys' fees arising out of the settlement of AFSCME v. Corrections Department of the State of New Mexico, Santa Fe County District Court No. SF90-1235. Money deposited in the fund shall be expended upon vouchers signed by the secretary of the department of finance and administration upon prior approval by the secretary of corrections, secretary of general services and the attorney general. Expenditures of monies in the corrections employee settlement fund are contingent upon approval of a settlement agreement in AFSCME v. Corrections Department of the State of New Mexico, Santa Fe District Court No. SF90-1235(c) by the State of New Mexico, AFSCME, state correctional officers and the court which shall provide for full settlement of all wage and damage claims and all court and arbitration costs and legal fees for all present and former corrections officers who are parties in this cause of action arising out of alleged violations of the Fair Labor Standards Act and other federal and state laws for not more than four million five hundred fifty-three thousand dollars ($4,553,000). This appropriation is further contingent upon AFSCME, the New Mexico Correctional Workers' Association and all plaintiffs and their officers, agents, employees, attorneys and anyone acting in concert with them being permanently barred and enjoined from advising, instituting or encouraging any individual or group to bring claims against the state or the corrections department that might have been asserted in AFSCME v. State of New Mexico, Santa Fe District Court No. SF90-1235. Included in this appropriation is forty-seven thousand dollars ($47,000) for any arbitration and other costs and fees directly associated with this settlement agreement. If the parties to this agreement and the court have not approved the settlement agreement prior to September 1, 1993, the general fund appropriation made by this subsection shall revert to the general fund on September 1, 1993, and the appropriation from the public liability fund shall revert to that fund. Unexpended or unencumbered balances remaining at the end of the eighty-third fiscal year from the general fund appropriation shall revert to the general fund. Unexpended or unencumbered balances remaining at the end of the eighty-third fiscal year from the public liability fund appropriation shall revert to that fund;

O. four million dollars ($4,000,000) from the general fund operating reserve to the property control division of the general services department to construct and equip a state library, records and archives building;

P. one million seven hundred forty thousand dollars ($1,740,000) to the general services department to purchase vehicles for state agencies to begin implementation of executive order 92-04 to centralize fleet management;

Q. thirty-six thousand dollars ($36,000) to the film division of the economic development department to hire a film development representative II;

R. one hundred fifty thousand dollars ($150,000) to the state housing division of the economic development department for the purpose of providing funds to counties, municipalities or Indian nations, tribes or pueblos to purchase building materials for constructing or renovating homes of indigent New Mexico veterans, goldstar mothers or veterans' widows;

S. seventy thousand dollars ($70,000) to the economic development department to contract with community-based groups in Chaves county to encourage New Mexico business owners and private citizens to develop proficiency in second languages;

T. one hundred fifty thousand dollars ($150,000) to the economic development division of the economic development department to provide technical and business development assistance to develop light industry in Silver City in Grant county;

U. one million five hundred thousand dollars ($1,500,000) to the office of cultural affairs for the purchase and renovation of a building for the New Mexico museum of natural history in Bernalillo county;

V. one hundred fifty thousand dollars ($150,000) to the New Mexico museum of natural history and science of the office of cultural affairs for the purpose of operating the natural resources education center in Bernalillo county;

W. one hundred thousand dollars ($100,000) to the mining and minerals division of the energy, minerals and natural resources department to carry out the purposes of the New Mexico Mining Act;

X. fifty thousand dollars ($50,000) to the office of Indian affairs for funding youth programs at the Isleta pueblo;

Y. three hundred fifty thousand dollars ($350,000) to the office of Indian affairs for planning, designing, preparing the site for and constructing a preschool facility in the community of Becenti located in McKinley county;

Z. two hundred forty thousand dollars ($240,000) contained in Chapter 112, Laws of 1992 from the computer enhancement fund for the COLTS plus computer project is hereby reauthorized for use in fiscal year eighty-two by the human services department;

AA. two hundred fifty thousand dollars ($250,000) to the human services department for the COLTS plus computer project to be matched with two million two hundred fifty thousand dollars ($2,250,000) in federal funds;

BB. four hundred thousand dollars ($400,000) to the developmental disabilities division of the department of health for pre-admission screening and annual resident review (PASARR) to meet federal mandates which require all states to annually assess current nursing facility residents and all applicants who are mentally ill or require a nursing facility level of care, and whether specialized services are required;

CC. five hundred thousand dollars ($500,000) to the New Mexico state hospital of the department of health for the secure treatment cottage that provides care and services for a dangerous population requiring a highly secure, protective environment;

DD. one hundred thousand dollars ($100,000) to the water and waste management division of the department of environment to carry out the purposes of the New Mexico Mining Act;

EE. three hundred thousand dollars ($300,000) from the general fund operating reserve to the department of environment for the following purposes: one hundred fifty thousand dollars ($150,000) for start-up costs associated with the Tire Recycling Act and one hundred fifty thousand dollars ($150,000) for start-up costs associated with the Oil and Oil Filter Recycling Act, provided that no later than June 30, 1994, the department of environment shall transfer to the general fund operating reserve an amount equal to the appropriations made in this subsection for the Tire Recycling Act and Oil and Oil Filter Recycling Act;

FF. one million one hundred two thousand six hundred dollars ($1,102,600) to the children, youth and families department to provide for additional children's court attorneys, families in need of services pilot projects, and to implement changes at the youth diagnostic and development center as necessary to implement the provisions of house bill 473, forty-first legislature, first session, the changes and recodification of the Children's Code;

GG. two hundred thousand dollars ($200,000) to the children, youth and families department for the purpose of renovating the muchmore house residential treatment facility located in Bernalillo county for severely emotionally impacted adolescents;

HH. sixty thousand nine hundred dollars ($60,900) to the juvenile parole board for personnel as necessary to carry out additional duties pursuant to the new provisions of house bill 473, forty-first legislature, first session, the changes and recodification of the Children's Code;

II. three hundred seventy-two thousand six hundred dollars ($372,600) to the department of public safety for salary increases in the eighty-first and eighty-second fiscal years for the state police;

JJ. one million dollars ($1,000,000) to the department of public safety to plan, design, construct and equip a training building at the department's training center in Santa Fe county;

KK. one million seven hundred forty thousand dollars ($1,740,000) to the department of public safety to purchase state police pursuit vehicles and other emergency response vehicles;

LL. one hundred thirty-seven thousand six hundred thirty-four dollars ($137,634) to the department of public safety, contingent upon matching funds from the Navajo nation and the federal government, each of which shall contribute over three hundred thousand dollars ($300,000), to provide equal funding to San Juan and McKinley counties for emergency management services to communities in those counties;

MM. forty thousand dollars ($40,000) to the Valencia branch of the university of New Mexico for architectural planning and designing of a student services building;

NN. four hundred thousand dollars ($400,000) to the Gallup branch of the university of New Mexico for a building to house an assembly hall, classrooms and science and computer laboratories;

OO. three million five hundred thousand dollars ($3,500,000) from the general fund operating reserve to the state department of public education to purchase computer equipment for statewide distribution to elementary schools to establish a computer-based language arts program for children to develop literacy skills. The writing-to-read programs should be implemented in kindergarten and first grades and upon such implementation may be made available to other elementary grades. To assist in program development, implementation and administration, the state board of education may appoint a subcommittee to review grant applications from elementary schools. Any public elementary school may apply to the state board of education's subcommittee for a grant for implementation of the computer-based program;

PP. twenty-five thousand dollars ($25,000) to the state department of public education for capital improvements and computer equipment for the Penasco elementary school in the Artesia public school district;

QQ. fifty thousand dollars ($50,000) to the state department of public education to resurface and pave the parking lot at the Pecos elementary school in the Pecos public school district;

RR. five hundred thousand dollars ($500,000) to the state department of public education for capital improvements to schools and school grounds in the Columbus area of the Deming public school district in partial response to increasing demands on schools in the area resulting from border initiatives;

SS. two hundred fifty thousand dollars ($250,000) to the state department of public education to plan and design a middle school in the Espanola public school district;

TT. two hundred thousand dollars ($200,000) to the state department of public education to plan and design a high school in the west Las Vegas public school district;

UU. three hundred fifty thousand dollars ($350,000) to the state department of public education to expand and construct sunset elementary school in the Roswell public school district;

VV. seven million dollars ($7,000,000) from the general fund operating reserve and seven hundred seventy-five thousand dollars ($775,000) from the general fund to the state department of public education to meet capital outlay needs *or make capital improvements for school districts in the following amounts: 1) twenty-five thousand dollars ($25,000) to Elida municipal schools; 2) fifty thousand dollars ($50,000) to Lake Arthur municipal schools; 3) five hundred thousand dollars ($500,000) to Dexter consolidated schools; 4) seven million dollars ($7,000,000) to Gadsden independent schools; 5) fifty thousand dollars ($50,000) to Clayton public schools; 6) one hundred thousand dollars ($100,000) to Lockwood elementary school in Clovis municipal schools; and 7) fifty thousand dollars ($50,000) to Tularosa municipal schools;*

WW. five hundred seventy thousand dollars ($570,000) to the state department of education to construct, install or make improvements to tracks in the following amounts: 1) three hundred thousand dollars ($300,000) to Silver consolidated schools; 2) twenty thousand dollars ($20,000) to West Mesa high school in the Albuquerque public schools; 3) one hundred fifty thousand dollars ($150,000) to Valley high school in the Albuquerque public schools; and 4) one hundred thousand dollars ($100,000) to La Cueva high school in Albuquerque public schools;

XX. one hundred sixty-five thousand dollars ($165,000) to the state department of public education to purchase playground equipment and make improvements to playgrounds in the Albuquerque public schools in the following amounts: 1) twenty-five thousand dollars ($25,000) to Harrison middle school to improve the baseball field; 2) twenty-five thousand dollars ($25,000) to Mountain View elementary; 3) twenty-five thousand dollars ($25,000) to Carlos Rey elementary; 4) twenty thousand dollars ($20,000) to Valle Vista elementary; 5) twenty thousand dollars ($20,000) to Lavaland elementary; and 6) fifty thousand dollars ($50,000) equally

allocated for computer equipment and playground equipment to Delores Gonzales elementary;

YY. five hundred thousand dollars ($500,000) from the general fund operating reserve to the state department of public education for the purpose of establishing a pilot program in Albuquerque public schools for kindergarten through twelfth grade to increase computer literacy by providing computer hardware and software, including related installation and maintenance, and training. Expenditure of this appropriation is contingent upon the school district securing an equal amount of matching funds *or in-kind contributions* from other than state sources;

ZZ. twenty-five thousand dollars ($25,000) to the eleventh judicial district court for capital outlay;

AAA. twenty thousand dollars ($20,000) to the eleventh judicial district attorney in Farmington for operations;

BBB. twenty-five thousand dollars ($25,000) to the local government division of the department of finance and administration for a document imaging program for Bernalillo county.

Section 5

Section 5. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

_____ HB 450

CHAPTER 367

RELATING TO CAPITAL EXPENDITURES; AUTHORIZING THE ISSUANCE OF SEVERANCE TAX BONDS; AUTHORIZING EXPENDITURES; MAKING APPROPRIATIONS FROM THE STATE ROAD FUND; MAKING APPROPRIATIONS TO CERTAIN STATE AGENCIES AND STATE FUNDS FOR CAPITAL IMPROVEMENTS, PLANNING AND OTHER PURPOSES; AUTHORIZING DISTRIBUTIONS; REAUTHORIZING CERTAIN SEVERANCE TAX BOND APPROPRIATIONS; CHANGING PURPOSES OF PRIOR APPROPRIATIONS; AUTHORIZING THE ISSUANCE OF NEW MEXICO FINANCE AUTHORITY REVENUE BONDS; AMENDING A CERTAIN SECTION OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1

Section 1. SEVERANCE TAX BONDS--AUTHORIZATIONS--APPROPRIATION OF PROCEEDS.--

A. The state board of finance may issue and sell severance tax bonds in compliance with the Severance Tax Bonding Act in an amount not to exceed the total of the amounts authorized for purposes specified in Sections 2 through 38 of this act. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible upon a finding by the board that the project has been developed sufficiently to justify the issuance and that the project can proceed to contract within a reasonable time. The state board of finance shall further take the appropriate steps necessary to comply with the Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated for the purposes specified in Sections 2 through 38 of this act.

B. The agencies named in Sections 2 through 38 of this act shall notify the state board of finance when the money from the proceeds of the severance tax bonds authorized in this section is needed for the purposes specified in the applicable sections of this act.

C. If the specified agency has not certified the need for the issuance of the bonds by the end of the eighty-third fiscal year, the authorization provided in this act shall be void.

D. Unless otherwise specified in this act, any unexpended or unencumbered balance remaining from the proceeds from severance tax bonds issued pursuant to Sections 2 through 38 of this act shall revert *to the capital projects fund* six months after completion of the project but not later than the end of the eighty-fourth fiscal year*, unless, in order to comply with the Internal Revenue Code of 1986, as amended, it is required that the balances revert* to the severance tax bonding fund. *In that event, the balances shall revert to the severance tax bonding fund six months after completion of the project.*

E. It is the intent of the legislature to authorize the expenditure of severance tax bond proceeds for projects set forth in this act. The state may utilize those proceeds to reimburse costs incurred in furtherance of a project authorized in this act if incurred after the effective date of this act but before the issuance of the bonds.

Section 2

Section 2. SEVERANCE TAX BONDS--STATE AGENCY ON AGING--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the state agency on aging that the need exists for the issuance of the bonds, the following amounts are appropriated to the state agency on aging for the following purposes:

A. one hundred thousand dollars ($100,000) to expand and improve the San Juan Pueblo senior citizens center located in Rio Arriba county;

B. seventy-five thousand dollars ($75,000) to continue construction of the Santa Clara pueblo senior citizens center located in Rio Arriba county;

C. two hundred fifty thousand dollars ($250,000) to plan, design and construct a senior citizens center and meal site located in Curry county;

D. one hundred thousand dollars ($100,000) to expand a senior daycare facility at Barelas senior center in Albuquerque located in Bernalillo county;

E. one hundred fifty thousand dollars ($150,000) to construct a building for the Blanco senior citizens center located in San Juan county;

F. twenty-five thousand dollars ($25,000) to establish a bus route for older Americans between the city of Clovis and Cannon air force base located in Curry county. The certification and issuance of the bonds is contingent upon receipt of federal matching funds and upon the city of Clovis providing matching funds for operational purposes;

G. one hundred twenty thousand dollars ($120,000) to plan, construct and equip restrooms and an addition to the San Jose senior citizens center located in Eddy county;

H. seventy-five thousand dollars ($75,000) to purchase, install and equip a modular building for the senior citizens center in the community of Manuelito located in McKinley county;

I. ninety thousand dollars ($90,000) to prepare a new site for, design, remodel, equip and furnish a senior citizens center in the village of Corona located in Lincoln county;

J. seventy-five thousand dollars ($75,000) to purchase a modular building for expansion of the senior citizens center at Crystal located in San Juan county;

K. one hundred thousand dollars ($100,000) to construct a youth facility addition to the Los Lunas senior citizens center located in Valencia county;

L. two hundred thousand dollars ($200,000) to plan, design, construct and equip a senior citizens center in Zuni Pueblo located in McKinley county;

M. two hundred thousand dollars ($200,000) to plan, design, construct and furnish a senior citizens center at San Miguel del Vado located in San Miguel county;

N. twenty-five thousand dollars ($25,000) to renovate the Ruidoso senior center located in Lincoln county;

O. one hundred fifty thousand dollars ($150,000) to purchase, renovate and furnish a building for a senior citizens center in Artesia in Eddy county;

P. twenty-five thousand dollars ($25,000) to purchase an eighteen-passenger van for the Milnesand senior citizens center in Roosevelt county;

Q. two hundred thousand dollars ($200,000) to design, construct and furnish a new senior citizens center in Portales in Roosevelt county;

R. fourteen thousand dollars ($14,000) to pave the parking lot at the Logan senior citizens center in Quay County;

S. twenty-five thousand dollars ($25,000) for improvements to the Los Volcanes senior citizens center in Bernalillo county;

T. thirty thousand dollars ($30,000) to repair and improve the east Las Cruces community center for senior citizens in Dona Ana county;

U. thirty-five thousand dollars ($35,000) for supplies for the meals on wheels program to feed homebound senior citizens in eight southwestern New Mexico counties; and

V. one thousand dollars ($1,000) for equipment at the Grady senior center in Curry county.

Section 3

Section 3. SEVERANCE TAX BONDS--GOVERNING BOARD OF ALBUQUERQUE TECHNICAL-VOCATIONAL INSTITUTE--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the governing board of the Albuquerque technical-vocational institute that the need exists for the issuance of the bonds, the following amounts are appropriated to the governing board of the Albuquerque technical-vocational institute for the following purposes:

A. one hundred fifty thousand dollars ($150,000) to plan for two new campuses on the west side of Albuquerque located in Bernalillo county; and

B. thirty-nine thousand six hundred fifty dollars ($39,650) to make academic library acquisitions at the campus located in Bernalillo county.

Section 4

Section 4. SEVERANCE TAX BONDS--OFFICE OF CULTURAL AFFAIRS--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the office of cultural affairs that the need exists for the issuance of the bonds, the following amounts are appropriated to the office of cultural affairs for the following purposes:

A. ninety thousand dollars ($90,000) to purchase a replacement bookmobile for the state library's statewide rural services program;

B. fifty thousand dollars ($50,000) to improve the museum and library in Grants located in Cibola county in order to comply with the federal Americans with Disabilities Act of 1990;

C. four hundred six thousand dollars ($406,000) to plan and design phase one of construction of a farm and ranch heritage museum *on the New Mexico state university campus located in Dona Ana county*;

D. one hundred thousand dollars ($100,000) to renovate the museum support center at the space center in Alamogordo located in Otero county;

E. one hundred thousand dollars ($100,000) to renovate the Santa Fe railroad depot in Las Cruces located in Dona Ana county;

F. one hundred fifty thousand dollars ($150,000) to improve and expand the Silver City museum located in Grant county;

G. five hundred thousand dollars ($500,000) to design and construct an amphitheater and veterans memorial in Albuquerque located in Bernalillo county, contingent upon equal matching funds from the city of Albuquerque;

H. three hundred thousand dollars ($300,000) for museum exhibits or audio-visual materials for El Malpais national monument located in Cibola county, contingent upon an equal amount of matching funds from nonstate sources;

I. three hundred thousand dollars ($300,000) *to contract with the appropriate nongovernmental entity* to continue construction of the Don Juan de Onate monument located in Rio Arriba county contingent upon the provisions of Section 71 of this act;

J. two hundred fifty thousand dollars ($250,000) to renovate the newly acquired old city library in Santa Fe for photographic archives, which are presently housed in an inadequate building located in Santa Fe county;

K. one hundred thousand dollars ($100,000) to plan, design, construct or equip the Hispanic cultural center in Albuquerque in Bernalillo county; and

L. one hundred seventy-five thousand dollars ($175,000) to construct a potash museum in Carlsbad located in Eddy county, contingent upon the city securing the matching funds from private donations of not less than two hundred fifty thousand dollars ($250,000) from sources other than state funds.

Section 5

Section 5. SEVERANCE TAX BONDS--COMMUNITY COLLEGE BOARD OF CLOVIS COMMUNITY COLLEGE--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the community college board of Clovis community college that the need exists for the issuance of the bonds, thirteen thousand two hundred fifty dollars ($13,250) is appropriated to the community college board of Clovis community cllege located in Curry county to make academic library acquisitions.

Section 6

Section 6. SEVERANCE TAX BONDS--CHILDREN, YOUTH AND FAMILIES DEPARTMENT--PURPOSES.

--Pursuant to the provisions of Section 1 of this act, upon certification by the children, youth and families department that the need exists for the issuance of the bonds, the following amounts are appropriated to the children, youth and families department for the following purposes:

A. three hundred thousand dollars ($300,000) to build an integrated child and family services area at the early childhood education center in Carlsbad located in Eddy county;

B. one hundred twenty-five thousand dollars ($125,000) to renovate a building for a youth and gang intervention center in the city of Deming located in Luna county. The certification and issuance of bonds is contingent upon the receipt of matching funds from the city of Deming;

C. thirty-five thousand dollars ($35,000) to purchase a handicapped-accessible passenger van and a regular passenger van for three-to-five year old children at the Jicarilla daycare center in Dulce located in San Juan county; and

D. one hundred thousand dollars ($100,000) to plan, evaluate, remodel or construct a building to house children in need of supervision or other troubled children under the age of eighteen in Lovington located in Lea county. The certification and issuance of bonds is contingent upon the city of Lovington providing administrative services.

Section 7

Section 7. SEVERANCE TAX BONDS--LOCAL GOVERNMENT DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the local government division of the department of finance and administration that the need exists for the issuance of the bonds, the following amounts are appropriated to the local government division of the department of finance and administration for the following purposes:

A. one hundred twenty-five thousand dollars ($125,000) to repair, renovate, equip and install improvements in the Curry county courthouse located in Curry county;

B. one hundred seventy-five thousand dollars ($175,000) to plan, design and construct a civic center in Roswell located in Chaves county;

C. fifty thousand dollars ($50,000) to provide for preliminary planning costs for the Rio Rancho department of public safety operational center located in Sandoval county;

D. one hundred thousand dollars ($100,000) to improve and landscape the municipal and state complex in Las Cruces located in Dona Ana county;

E. fifty thousand dollars ($50,000) to construct a multipurpose community center for the unincorporated community of Chaparral located in Dona Ana county;

F. four hundred thousand dollars ($400,000) to construct and expand a community services center in Anthony located in Dona Ana county;

G. one hundred seventy-five thousand dollars ($175,000) to construct a community center in Meadowlake located in Valencia county;

H. two hundred fifty thousand dollars ($250,000) to plan, design and renovate the Hillsboro community center located in Sierra county;

I. one hundred thousand dollars ($100,000) to remodel and renovate a building to be used as a library in Fort Sumner located in De Baca county;

J. three hundred twenty-five thousand dollars ($325,000) to construct a market center, also called a convento, in Espanola located in Rio Arriba county. The certification and issuance of bonds is contingent upon the city of Espanola providing equal matching funds, materials or in-kind services;

K. two hundred twenty-five thousand dollars ($225,000) to construct a fire station in Carlsbad located in Eddy county;

L. two hundred seventy-five thousand dollars ($275,000) to expand a building for the recreation and daycare portions of the collaborative master plan for the

Whittier school site located in Bernalillo county. The certification and issuance of bonds is contingent upon receiving matching funds from the city of Albuquerque in the amount of one hundred thousand seven hundred dollars ($100,700);

M. two hundred thousand dollars ($200,000) to plan, design, engineer, construct, landscape, furnish and equip a village hall complex in the village of Ruidoso Downs located in Lincoln county;

N. one hundred thousand dollars ($100,000) to construct new facilities, remodel and equip the Lincoln county fairgrounds in Capitan located in Lincoln county;

O. two hundred thousand dollars ($200,000) to expand the Duranes community center in Albuquerque located in Bernalillo county;

P. one hundred seventy-five thousand dollars ($175,000) to expand and improve a health and social services center at the eastside multiservice center in Albuquerque located in Bernalillo county;

Q. one hundred twenty-five thousand dollars ($125,000) to expand the Trumbull community center to provide family and recreational services in Albuquerque located in Bernalillo county;

R. four hundred thousand dollars ($400,000) to prepare the site, conduct preliminary engineering, design, acquire land, construct and furnish a multipurpose city office center in the village of Central located in Grant county;

S. one hundred thousand dollars ($100,000) to repair, renovate and equip the law enforcement complex in Jal located in Lea county;

T. twenty thousand dollars ($20,000) to renovate the Mountainair community center located in Torrance county in order to comply with the federal Americans with Disabilities Act of 1990;

U. fifty thousand dollars ($50,000) to build a park, museum, meeting rooms, library and public restrooms in the town of Red River located in Taos county;

V. three hundred thousand dollars ($300,000) to construct and pave a parking lot at the Lea county cultural center. The certification and issuance of bonds is contingent upon Lea county contributing two hundred thousand dollars ($200,000) in matching funds for the project;

W. one hundred thousand dollars ($100,000) to renovate and repair the Melrose village hall located in Curry county;

X. five hundred thousand dollars ($500,000) to purchase, renovate or construct a building for use as a DWI incarceration and treatment facility located in San Juan county;

Y. sixty-five thousand dollars ($65,000) to renovate the Milan village hall located in Cibola county;

Z. three hundred thousand dollars ($300,000) to develop a consolidated emergency communications center in Aztec to serve Aztec, Bloomfield, Farmington and San
Juan county;

AA. fifty thousand dollars ($50,000) to acquire road maintenance equipment for Taos county;

BB. twenty thousand dollars ($20,000) to purchase and repair equipment and purchase books for the Carlsbad municipal library located in Eddy county;

CC. one hundred seventy-five thousand dollars ($175,000) to purchase equipment and construct a neighborhood multiservice center to provide primary health and dental programs in Albuquerque located in Bernalillo county. The certification and issuance of bonds is contingent upon receipt of matching funds from the city of Albuquerque;

DD. fifty thousand dollars ($50,000) to preserve and restore the Chaves county courthouse located in Chaves county. The certification and issuance of bonds is contingent upon the receipt of matching funds in the amount of fifty thousand dollars ($50,000) from Chaves county;

EE. sixty thousand dollars ($60,000) to construct or purchase a modular building with a kitchen to house a new community center in Rio en Medio located in Santa Fe county;

FF. ten thousand dollars ($10,000) to purchase equipment and books for the city of Carlsbad for a literacy program located in Eddy county;

GG. two hundred fifty thousand dollars ($250,000) to plan, expand, renovate and construct the Westside community center in Bernalillo county in order to comply with the federal Americans with Disabilities Act of 1990;

HH. fifteen thousand dollars ($15,000) to plan, design and initiate renovation of the county courthouse in Mora located in Mora county;

II. four hundred fifty thousand dollars ($450,000) to provide landscaping, buffering and air pollution control measures for the proposed Sawmill metropolitan redevelopment area in Albuquerque located in Bernalillo county. This appropriation shall

be administered in accordance with an adopted project plan as prescribed by the Metropolitan Redevelopment Code;

JJ. one hundred fifty thousand dollars ($150,000) to repair, renovate and equip a West Mesa community center located in Bernalillo county;

KK. one hundred twenty thousand dollars ($120,000) to construct a medical clinic for the south central Colfax county special hospital district;

LL. fifty thousand dollars ($50,000) to purchase surplus road equipment for improving county roads located in Mora county;

MM. forty-one thousand dollars ($41,000) to plan, design, renovate and purchase equipment for the Barelas community center located in Bernalillo county;

NN. two hundred fifty thousand dollars ($250,000) to purchase land for a railroad station in Albuquerque located in Bernalillo county;

OO. one hundred fifty thousand dollars ($150,000) to design and construct improvements, including site drainage, at the Prospect Park public library in Albuquerque located in Bernalillo county;

PP. seven hundred fifty thousand dollars ($750,000) to construct and equip a gymnasium addition to the Paradise Hills community center located in Bernalillo county;

QQ. three hundred thousand dollars ($300,000) to renovate the Poe Corn center and improve Poe Corn park in the city of Roswell located in Chaves county;

RR. three hundred fifty thousand dollars ($350,000) to complete construction of the amphitheater component of the Rio San Jose riverwalk project in the city of Grants located in Cibola county;

SS. one hundred fifty thousand dollars ($150,000) to renovate, remodel and repair the police department building in the city of Grants located in Cibola county;

TT. one hundred thousand dollars ($100,000) to complete the final phase of construction of the Raton convention center located in Colfax county;

UU. sixty thousand dollars ($60,000) to construct and renovate the outdoor bathrooms, ballpark concession stand and bleachers and to make parking lot and drainage repairs at the Concilio Campesino del Sudoeste multipurpose center located in Dona Ana county;

VV. three hundred thousand dollars ($300,000) to remove asbestos, renovate and equip a building for use as a domestic violence shelter to be operated by an existing domestic violence program in Las Cruces located in Dona Ana county;

WW. sixty thousand dollars ($60,000) to equip the East Mesa recreation center in Las Cruces located in Dona Ana county;

XX. three hundred thousand dollars ($300,000) to renovate and restore an historic old school for use as the Mesilla Park recreation center in Las Cruces located in Dona Ana county;

YY. eighty-five thousand ollars ($85,000) to renovate and make repairs and improvements to the Dona Ana community center located in Dona Ana county;

ZZ. thirty-five thousand dollars ($35,000) to construct sidewalks and bicycle, jogging and walking paths in Carlsbad located in Eddy county, contingent upon the city contributing an equal amount of matching funds from sources other than state funds;

AAA. seventy-five thousand dollars ($75,000) to construct a horse and roping arena in Carlsbad located in Eddy county, contingent upon the city of Carlsbad contributing an equal amount of matching funds from sources other than state funds;

BBB. one hundred thousand dollars ($100,000) to construct a heating and cooling system in the youth center in Carlsbad located in Eddy county;

CCC. five hundred thousand dollars ($500,000) to plan, design, construct and equip a community center in Bayard located in Grant county;

DDD. forty thousand dollars ($40,000) to purchase an ambulance for the city of Santa Rosa located in Guadalupe county;

EEE. one hundred thousand dollars ($100,000) to purchase x-ray equipment for the Guadalupe county hospital located in Guadalupe county;

FFF. seventy-five thousand dollars ($75,000) to purchase a garbage truck for the town of Tatum located in Lea county, contingent upon the town of Tatum and Lea county together contributing twenty-five thousand dollars ($25,000) in matching funds;

GGG. two hundred thousand dollars ($200,000) to plan, design, construct, renovate or acquire a health clinic to provide health care services in south Hobbs located in Lea county;

HHH. one hundred eighty thousand dollars ($180,000) to purchase a fire truck for the city of Jal located in Lea county;

III. seventy-five thousand dollars ($75,000) to remodel and repair the Eunice health clinic located in Lea county, contingent upon the city of Eunice contributing twenty-five thousand dollars ($25,000) in matching funds for the project;

JJJ. two hundred thousand dollars ($200,000) to renovate and improve the building housing an alcoholism treatment program and its water and sewer systems and parking area in Embudo in Rio Arriba county;

KKK. two hundred thousand dollars ($200,000) to expand, renovate or provide furnishings for the Roosevelt county community services center in Portales located in Roosevelt county;

LLL. three hundred fifty thousand dollars ($350,000) to remodel and expand the Aztec police department building located in San Juan county;

MMM. two hundred thirty-five thousand dollars ($235,000) to reconstruct the Gallinas riverwalk and Montezuma skating pond dam structure for the city of Las Vegas located in San Miguel county;

NNN. twenty-five thousand dollars ($25,000) to plan and design a community center in San Jose located in San Miguel county;

OOO. five hundred thousand dollars ($500,000) to fund a cooperative project of the Bernalillo school district, the town of Bernalillo and Sandoval county to remodel and renovate a building for use as a multipurpose community center located in Sandoval county;

PPP. one hundred seventy-five thousand dollars ($175,000) to renovate and expand the fire department in Questa located in Taos county;

QQQ. fifty thousand dollars ($50,000) to renovate and make improvements to the dental and medical clinic in Penasco located in Taos county;

RRR. one hundred fifty thousand dollars ($150,000) to repair and renovate the municipal police building in the town of Tatum located in Lea county;

SSS. one hundred fifty thousand dollars ($150,000) to expand a recreational and health facility and Dennis Chavez community center in Albuquerque located in Bernalillo county;

TTT. four hundred thousand dollars ($400,000) to plan, design and construct the gym expansion of the south San Jose community center located in Bernalillo county;

UUU. forty-five thousand dollars ($45,000) to expand and make improvements to the Placitas community center located in Dona Ana county;

VVV. seventy thousand dollars ($70,000) to acquire and renovate a building for a community center located in Taos county;

WWW. four hundred thousand dollars ($400,000) to design, engineer, construct and furnish a multipurpose center at Isleta Pueblo located in Bernalillo county;

XXX. seventy-five thousand dollars ($75,000) to continue the renovation of the John Marshall nutrition building in Bernalillo county;

YYY. seventy-five thousand dollars ($75,000) to design, construct and equip an addition to Cibola general hospital in Grants in Cibola county;

ZZZ. fifty thousand dollars ($50,000) for county sheriff's vehicles in Taos county;

AAAA. fifty thousand dollars ($50,000) to purchase unitized play equipment for physically challenged children for Roswell parks in Chaves county;

BBBB. one hundred seventy-five thousand dollars ($175,000) to develop a consolidated emergency communications center in Aztec to serve Aztec, Bloomfield and Farmington in San Juan county;

CCCC. two hundred thousand dollars ($200,000) to design, construct and equip a multipurpose center, including an indoor swimming pool, in Alamogordo in Otero county;

DDDD. one hundred thousand dollars ($100,000) to acquire and develop land for La Casa de Buena Salud primary health care clinic located in Roosevelt county; and

EEEE. forty thousand dollars ($40,000) for the purchase of an ambulance for Cimarron in Colfax county.

Section 8

Section 8. SEVERANCE TAX BONDS--DEPARTMENT OF ENVIRONMENT--PURPOSES.-- Pursuant to the provisions of Section 1 of this act, upon certification by the department of environment that the need exists for the issuance of the bonds, the following amounts are appropriated to the department of environment for the following purposes:

A. two hundred thousand dollars ($200,000) to construct a water storage tank in Springer located in Colfax county;

B. one hundred twenty-five thousand dollars ($125,000) to acquire rights of way for the sewer and water system in the town of Bernalillo located in Sandoval county;

C. one hundred thousand dollars ($100,000) to improve the Garfield water system in Dona Ana county;

D. two hundred thousand dollars ($200,000) to acquire land and to plan and design the city wastewater treatment system in Moriarty located in Torrance county;

E. one hundred forty-five thousand dollars ($145,000) to improve the water and sewer system in Wagon Mound located in Mora county;

F. four hundred fifty thousand dollars ($450,000) to construct a water storage tank, water line extensions and other improvements in the town of Mesilla located in Dona Ana county;

G. two hundred fifty thousand dollars ($250,000) to renovate, repair, upgrade, equip and construct additions to the Truth or Consequences wastewater treatment plant located in Sierra county;

H. fifty thousand dollars ($50,000) to construct a sewer trunk line in the El Prado water and sanitation district located in Taos county;

I. thirty-nine thousand six hundred dollars ($39,600) to extend water and sewer utilities to the Valle del Sol elderly housing project in the city of Sunland Park located in Dona Ana county;

J. five hundred thousand dollars ($500,000) to construct additions to and renovate the wastewater
treatment facility in the city of Socorro located in Socorro county;

K. eighty-five thousand two hundred sixty dollars ($85,260) to replace, extend and renovate water lines and make other city of Artesia water system improvements for the West View subdivision located in Eddy county;

L. fifty thousand dollars ($50,000) to install a water line under county road 75 in Truchas located in Rio Arriba county;

M. sixty thousand dollars ($60,000) to purchase two compactor transfer boxes at Tesuque pueblo located in Santa Fe county. The certification and issuance of bonds is contingent upon Santa Fe county providing construction to accommodate the transfer boxes;

N. sixty thousand dollars ($60,000) to improve the water and sewer system of the Velarde mutual domestic water and sewer association located in Rio Arriba county;

O. one hundred ten thousand dollars ($110,000) to improve the water and sewer system in Eagle Nest located in Colfax county;

P. two hundred fifty thousand dollars ($250,000) to plan, design and construct a new water well and transmission lines and make other necessary improvements to complete phase two of the Los Lunas water system project located in Valencia county;

Q. one hundred thousand dollars ($100,000) to engineer, develop, construct, equip or install a second water well, storage tank, booster station and chlorination facility in Bosque Farms located in Valencia county;

R. one hundred fifty thousand dollars ($150,000) to construct the Dona Ana wastewater project located in Dona Ana county;

S. two hundred fifty thousand dollars ($250,000) to rehabilitate the existing water well and system of the village of Milan in Cibola county, including the Golden Acres transmission line connection, updating the system to current codes and extending the water line from Ralph Card road to New Mexico highway 605;

T. one hundred fifty thousand dollars ($150,000) to make improvements to the Taos water system located in Taos county;

U. one hundred thousand dollars ($100,000) to improve and install water lines on Maple, Pine, Oak, Freeman or other streets in the Morningside addition near Artesia in Eddy county;

V. one hundred twenty-one thousand dollars ($121,000) to provide for sewer lines and sewer hookups to north valley indigent residents located in Bernalillo county;

W. one hundred sixty-nine thousand dollars ($169,000) to extend the city sewer system, including extension of sewer lines and sewer hookups, to the Alameda community center located in Bernalillo county;

X. ninety thousand dollars ($90,000) to engineer, design, construct and acquire easements and rights of way related to the construction of water lines and related facilities for La Mesa mutual domestic community water association water system located in Dona Ana county;

Y. two hundred fifty thousand dollars ($250,000) to extend water lines within the limits of the village of Tularosa located in Otero county;

Z. seventy-five thousand dollars ($75,000) to improve the water system in the village of Roy located in Harding county;

AA. seventy-five thousand dollars ($75,000) to plan, design and construct a new sewer system in the village of Mosquero located in Harding county;

BB. seventy-two thousand dollars ($72,000) to renovate the sewer system in the village of Glorieta, including the purchase of materials, labor and construction of a liftstation, located in Santa Fe county;

CC. ninety-five thousand dollars ($95,000) for the purpose of making sewer line improvements and paying related expenses for theMora mutual domestic water and sewerage works association located in Mora county;

DD. one hundred thousand dollars ($100,000) to construct a water storage system and purchase water rights for the city of Lordsburg located in Hidalgo county;

EE. five hundred thousand dollars ($500,000) to improve the wastewater treatment plant in Grants in Cibola county;

FF. two hundred seventy-five thousand dollars ($275,000) to construct a water storage tank, water line extensions and other improvements to the water system in the town of Mesilla located in Dona Ana county; and

GG. one million dollars ($1,000,000) to construct sewer line extensions in the Kinneybrick area of the south valley of Bernalillo county. The certification and issuance of bonds is contingent upon Bernalillo county providing matching funds of six hundred thousand dollars ($600,000) from other than state sources.

Section 9

Section 9. SEVERANCE TAX BONDS--DEPARTMENT OF HEALTH--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of health that the need exists for the issuance of the bonds, the following amounts are appropriated to the department of health for the following purposes:

A. two hundred fifty thousand dollars ($250,000) to purchase patient beds and other furniture for Fort Bayard medical center located in Grant county; and

B. two hundred seventy-two thousand dollars ($272,000) to purchase scientific laboratory equipment to provide services throughout the state.

Section 10

Section 10. SEVERANCE TAX BONDS--TOURISM DEPARTMENT--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the tourism department that the need exists for the issuance of the bonds, one hundred twenty-five thousand dollars ($125,000) is appropriated to the tourism department to construct a visitors center at the national solar observatory at Sacramento peak located in Otero county.

Section 11

Section 11. SEVERANCE TAX BONDS--ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the energy, minerals and natural resources department that the need exists for the issuance of the bonds, the following amounts are appropriated to the energy, minerals and natural resources department for the following purposes:

A. one million dollars ($1,000,000) to renovate and restore park facilities throughout the state;

B. twenty thousand dollars ($20,000) to build baseball fields in Edgewood located in Santa Fe county. The certification and issuance of bonds is contingent upon the Moriarty public school district contributing matching funds in the amount of five thousand dollars ($5,000);

C. twenty-five thousand dollars ($25,000) to construct, repair, furnish and equip community centers and recreational fields located in Taos county;

D. one hundred thousand dollars ($100,000) for the purpose of completing phase four of the construction at the Sugarite Canyon state park located in Colfax county;

E. four hundred fifty thousand dollars ($450,000) to upgrade and renovate restroom facilities in state parks and recreational areas;

F. fifty thousand dollars ($50,000) to renovate Harrison baseball park in the south valley in Albuquerque located in Bernalillo county;

G. two hundred thousand dollars ($200,000) to make improvements to the Mariposa basin soccer fields and little league fields in Taylor Ranch in Bernalillo county;

H. eighty thousand dollars ($80,000) to make improvements at Alamosa park in Bernalillo county;

I. fifty thousand dollars ($50,000) to prepare a little league baseball field for a regional tournament in Espanola in Rio Arriba county;

J. sixty thousand dollars ($60,000) to acquire land and equipment for the completion of a community park in Del Cerro estates located in Dona Ana county;

K. twenty-one thousand dollars ($21,000) to purchase a passenger van for the parks and recreation program of the city of Rio Rancho located in Sandoval county;

L. twenty-seven thousand dollars ($27,000) to purchase a fifteen-passenger van for the recreation department of the city of Grants located in Cibola county;

M. fifty-eight thousand dollars ($58,000) to construct public restrooms and landscape the grounds of the Alameda park zoo in Alamogordo located in Otero county;

N. fifty-eight thousand dollars ($58,000) to make improvements to the Atrisco little league field and buildings located in Bernalillo county;

O. eighty thousand dollars ($80,000) to make improvements to the West Mesa little league field and buildings complex located in Bernalillo county;

P. two hundred fifty thousand dollars ($250,000) to make improvements to the Altamont little league field located in Bernalillo county; and

Q. thirty thousand dollars ($30,000) to improve the Westgate little league baseball field complex and parking lot located in Bernalillo county.

Section 12

Section 12. SEVERANCE TAX BONDS--BOARD OF REGENTS OF EASTERN NEW MEXICO UNIVERSITY--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of eastern New Mexico university that the need exists for the issuance of the bonds, the following amounts are appropriated to the board of regents of eastern New Mexico university for the following purposes:

A. one hundred six thousand three hundred dollars ($106,300) to make academic library acquisitions for the Portales campus located in Roosevelt county; and

B. thirteen thousand two hundred fifty dollars ($13,250) to make academic library acquisitions at the Roswell campus located in Chaves county.

Section 13

Section 13. SEVERANCE TAX BONDS--GENERAL SERVICES DEPARTMENT--PURPOSES.-- Pursuant to the provisions of Section 1 of this act, upon certification by the general services department that the need exists for the issuance of the bonds, the

following amounts are appropriated to the general services department for the following purposes:

A. one hundred twenty-five thousand dollars ($125,000) to construct a radio communication site and install a radio tower to provide communication services for law enforcement, transportation and medical systems located in Catron county;

B. one hundred thousand dollars ($100,000) to complete phase two of the replacement of state police dispatch radio consoles to be used throughout the state; and

C. fifty thousand dollars ($50,000) to provide for asbestos abatement for state buildings throughout the state.

Section 14

Section 14. SEVERANCE TAX BONDS--PROPERTY CONTROL DIVISION OF GENERAL SERVICES DEPARTMENT--PURPOSES.

--Pursuant to the provisions of Section 1 of this act, upon certification by the property control division of the general services department that the need exists for the issuance of the bonds, the following amounts are appropriated to the property control division of the general services department for the following purposes:

A. eight hundred fifty thousand dollars ($850,000) to plan, design and construct a new facility at La Familia medical center located in Santa Fe county;

B. thirty-one thousand dollars ($31,000) to acquire land, to plan, design, construct and equip a primary health care facility in Abiquiu located in Rio Arriba county;

C. one hundred thousand dollars ($100,000) to acquire a building and land for a primary health care facility located in Chaves county;

D. five hundred seven thousand nine hundred dollars ($507,900) to plan, design and construct a secure treatment cottage at the Las Vegas medical center located in San Miguel county;

E. one hundred thirty-six thousand four hundred dollars ($136,400) to plan and design a facility to house the administration and provide a controlled visitor center at the New Mexico boys' school located in Colfax county;

F. sixty-seven thousand four hundred dollars ($67,400) to plan and design a multipurpose recreation center at the Sequoyah treatment center located in Bernalillo county;

G. three hundred thousand three hundred dollars ($300,300) to remove and replace the roof to the RDN building at the Los Lunas medical center located in Valencia county;

H. one hundred five thousand five hundred dollars ($105,500) to remove and replace the roof to the dietary building at the Los Lunas medical center located in Valencia county;

I. eight hundred thirty-four thousand two hundred dollars ($834,200) to replace locking devices and locks at the penitentiary of New Mexico located in Santa Fe county;

J. seventy-six thousand six hundred dollars ($76,600) to repair thirteen different roofs at the western New Mexico correctional facility located in Cibola county;

K. one million five hundred thousand dollars ($1,500,000) to remove and replace the north and south roofs at the penitentiary of New Mexico located in Santa Fe county;

L. five hundred sixteen thousand dollars ($516,000) to repair the education building at the New Mexico boys' school at Springer located in Colfax county;

M. four hundred forty-six thousand five hundred dollars ($446,500) to replace the steam condensation lines in building 300 of the New Mexico rehabilitation center located in Chaves county;

N. two million five hundred thousand dollars ($2,500,000) to renovate the corrections industries complex at the penitentiary of New Mexico located in Santa Fe county;

O. four million seven hundred thousand dollars ($4,700,000) to improve the mechanical systems in the main unit of the penitentiary of New Mexico located in Santa Fe county;

P. seven hundred eighteen thousand five hundred dollars ($718,500) to renovate the Los Lunas
medical center located in Valencia county in order to comply with the Americans with Disabilities Act of 1990;

Q. one hundred thirty-two thousand one hundred dollars ($132,100) to renovate the electrical system of building 300 of the New Mexico rehabilitation center located in Chaves county;

R. four hundred sixteen thousand three hundred dollars ($416,300) to construct and provide access to a dining and activities area at the New Mexico veterans' center located in Sierra county;

S. three hundred ninety-one thousand six hundred dollars ($391,600) to remodel Sierra cottage at Fort Stanton hospital located in Lincoln county;

T. two hundred forty-four thousand dollars ($244,000) to remove a roof and install a new roof on the medical annex of the New Mexico rehabilitation center located in Chaves county;

U. two hundred thousand dollars ($200,000) to test, remove and conduct remedial work and engineering services to underground storage tanks located throughout the state;

V. one hundred thousand dollars ($100,000) to plan and design an alcohol rehabilitation center to serve all Indian pueblos located in Sandoval county. The certification and issuance of bonds is contingent upon an equal or greater amount f funds being appropriated from non-state sources for construction of the building that is to be in a central location acceptable to all the Indian pueblos;

W. three hundred fifty thousand dollars ($350,000) to replace a building for an existing private, nonprofit health care facility serving low-income patients in the north valley of Albuquerque located in Bernalillo county;

X. eight hundred sixty thousand dollars ($860,000) to remodel the national guard complex on Cerrillos road located in Santa Fe county, for moving and other expenses of any state agency that will occupy space in this complex. The certification and issuance of bonds is contingent upon the property control division of the general services department entering into a lease agreement with the state armory board for the occupancy *and purchase* of the facilities located at the national guard complex on Cerrillos road. This appropriation shall be credited toward the future purchase of the state armory board complex;

Y. six hundred thousand dollars ($600,000) to complete phase one of the renovation of the Bataan memorial building located in Santa Fe county; and

Z. four hundred thousand dollars ($400,000) for the purpose of planning, designing and constructing a state police headquarters in Hobbs located in Lea county.

Section 15

Section 15. SEVERANCE TAX BONDS--STATE HIGHWAY AND TRANSPORTATION DEPARTMENT--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the state highway and transportation department that the need exists for the issuance of the bonds, the following amounts are appropriated to the state highway and transportation department for the following purposes:

A. three hundred thousand dollars ($300,000) to improve and pave approximately four miles of collector and residential roadways within the Meadow Vista area of Sunland Park located in Dona Ana county;

B. one hundred twenty-five thousand dollars ($125,000) to improve storm drainage within the city of Hobbs located in Lea county. The certification and issuance of bonds is contingent upon the city of Hobbs providing matching funds of twenty-six thousand three hundred dollars ($26,300);

C. one hundred nineteen thousand dollars ($119,000) to make improvements to the Artesia municipal airport located in Eddy county;

D. forty-three thousand dollars ($43,000) to install street lights on the Rio Grande river bridge on state highway 309, on state highway 47 between state highway 309 and Golf Course road and on state highway 304 between state highway 47 and Golf Course road located in Valencia county;

E. seventy-five thousand dollars ($75,000) to construct a culvert in the Brown road drainage structure located in Chaves county;

F. one hundred thousand dollars ($100,000) to purchase materials to improve three miles of county road 56 in La Cienega located in Santa Fe county. The certification and issuance of bonds is contingent upon Santa Fe county providing the labor and any additional money needed to complete the project;

G. one hundred thousand dollars ($100,000) to purchase the materials needed to improve two miles of county road 58, also known as Seton Village road located in Santa Fe county. The certification and issuance of bonds is contingent upon Santa Fe county providing the labor and any additional money needed to complete the project;

H. one hundred thousand dollars ($100,000) to purchase the materials needed to improve two miles of county road 67, also known as old Santa Fe trail, located in Santa Fe county. The certification and issuance of bonds is contingent upon Santa Fe county providing the labor and any additional money needed to complete the project;

I. forty-six thousand dollars ($46,000) to purchase the materials needed to pave and improve one-half mile of county road 69 located in Santa Fe county. The certification and issuance of bonds is contingent upon Santa Fe county providing the labor and any additional money needed to complete the project;

J. sixty-five thousand dollars ($65,000) to improve street drainage on Impala drive in Belen located in Valencia county;

K. one hundred thousand dollars ($100,000) to improve streets in the city of Eunice located in Lea
county. The certification and issuance of bonds is contingent upon the city of Eunice providing matching funds of one hundred thousand dollars ($100,000);

L. ninety-one thousand six hundred twenty dollars ($91,620) to construct and improve county roads 30 and 34 for school bus route projects located in Luna county. The certification and issuance of bonds is contingent upon Luna county contributing matching funds in the amount of ten thousand one hundred seventy-nine dollars ($10,179);

M. fifty thousand dollars ($50,000) to conduct engineering and pave one mile of county road 75 in Truchas located in Rio Arriba county;

N. one hundred twenty-five thousand dollars ($125,000) to complete construction of the Park street extension in Gallup located in McKinley county;

O. one hundred thousand dollars ($100,000) to make improvements to seven and one-half miles of Torreon Mission road, also known as Sandoval county road 11-24, located in Sandoval county;

P. four hundred twenty-five thousand dollars ($425,000) to renovate and repave streets in the airport addition, including Walker avenue, Wright avenue and Mescalero street in the city of Alamogordo located in Otero county;

Q. one hundred thousand dollars ($100,000) to complete the county line road project in Chaparral located in Dona Ana county;

R. one hundred thousand dollars ($100,000) to repave the streets in Adobe Acres located in Bernalillo county;

S. one hundred thousand dollars ($100,000) to plan, design, engineer, acquire the rights of way and construct a pedestrian overpass, in compliance with the federal Americans with Disabilities Act of 1990, on Isleta boulevard located in Bernalillo county;

T. one hundred seventy-six thousand dollars ($176,000) for road improvements, including the design and construction of roads in the Sunstar addition located in the south valley area of Albuquerque located in Bernalillo county;

U. one hundred fifty thousand dollars ($150,000) to complete a paving project in Silver City located in Grant county;

V. one hundred thousand dollars ($100,000) to construct a new crosswind runway at Santa Rosa municipal airport located in Guadalupe county;

W. one hundred thousand dollars ($100,000) to construct a frontage road in Lea county contingent upon an equal amount of matching funds from Lea county;

X. one hundred thousand dollars ($100,000) for emergency street repairs to residential areas in Lovington in Lea county contingent upon matching funds from the city of Lovington in the amount of twenty thousand dollars ($20,000);

Y. two hundred thousand dollars ($200,000) to pave streets in Columbus located in Luna county;

Z. one hundred fifty thousand dollars ($150,000) to plan, design, provide drainage analysis, construct, replace and improve sidewalks, crosswalks and drainage and irrigation facilities and improve, construct, install, wire and renovate pedestrian and street lighting for phases 2 and 3 of the Mainstreet redevelopment plan for the village of Ruidoso located in Lincoln county;

AA. twenty thousand dollars ($20,000) to construct a drainage structure and pave five and one-half miles of road 484 located in San Miguel county;

BB. forty thousand dollars ($40,000) to pave and construct drainage improvements to county road 50 from state highway 587 three-quarters of a mile to La Cienega located in Santa Fe county;

CC. forty thousand dollars ($40,000) to pave Camino Rio in the city of Santa Fe located in Santa Fe
county;

DD. three hundred thousand dollars ($300,000) to improve county road 72 located in Santa Fe county;

EE. eighty thousand dollars ($80,000) to pave one mile of Lexco road located in Torrance county;

FF. twenty-five thousand dollars ($25,000) to acquire and install E911 county road signs in Torrance county;

GG. one hundred ninety thousand dollars ($190,000) to purchase the materials for engineering and paving Dunn street in Las Cruces located in Dona Ana county;

HH. one hundred fifteen thousand dollars ($115,000) to replace the water line on state highway 28 located in Dona Ana county contingent upon the town of Mesilla contributing an equal amount;

II. two hundred fifty thousand dollars ($250,000) to pave streets in Tularosa located in Otero county;

JJ. two hundred eighty-seven thousand dollars ($287,000) to improve and rehabilitate Washington avenue in Alamogordo located in Otero county;

KK. ten thousand dollars ($10,000) to acquire and install route 66 signs along the old U.S. highway 66 in Bernalillo county to identify it as a scenic and historic byway traversing the state from the Arizona border to the Texas border;

LL. three hundred thousand dollars ($300,000) for emergency street repairs in Portales located in Roosevelt county;

MM. one hundred thousand dollars ($100,000) to construct a storm drainage system along Jackson Hole road in the village of Angel Fire located in Colfax county; and

NN. fifty thousand dollars ($50,000) to design and build new curbs and drivepads and asphalt or pave Gallegos lane, Verenda Baja, Verenda Alta and Alto lane in Santa Fe in Santa Fe county.

Section 16

Section 16. SEVERANCE TAX BONDS--NEW MEXICO OFFICE OF INDIAN AFFAIRS--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the New Mexico office of Indian affairs that the need exists for the issuance of the bonds, the following amounts are appropriated to the New Mexico office of Indian affairs for the following purposes:

A. seventy-five thousand dollars ($75,000) to acquire, transport, install, renovate or construct a veterans center at Santo Domingo pueblo located in Sandoval county;

B. one hundred twenty-five thousand dollars ($125,000) to plan and design the Ramah Navajo early childhood education facility located in Cibola county;

C. eighty-nine thousand dollars ($89,000) to purchase, install and set up a portable building to house the Ramah Navajo early childhood education facility located in Cibola county;

D. one hundred thousand dollars ($100,000) to prepare a site and construct drainage, infrastructure and access for the Laguna Pueblo headstart facility located in Cibola county;

E. one hundred thousand dollars ($100,000) to redesign, reconstruct, refurbish and equip the Navajo community park and its recreational and sports facilities in the community of Navajo located in McKinley county;

F. fifty thousand dollars ($50,000) to further develop the intertribal American bison project for Taos pueblo located in Taos county;

G. two hundred fifty thousand dollars ($250,000) to plan, design and construct a senior citizens and multipurpose center at Nenahnezad chapter located in San Juan county. The certification and issuance of bonds is contingent upon the Navajo nation providing a match of thirty-seven thousand five hundred dollars ($37,500) for architecture and engineering services for the facility;

H. one hundred fifty housand dollars ($150,000) to renovate, construct, landscape and equip the Navajo community recreation center located in McKinley county;

I. one hundred thousand dollars ($100,000) to plan and design a regional juvenile detention and multipurpose facility in Gallup to serve McKinley, Cibola and San Juan counties in keeping with House Memorials 58 and 22 as passed by the first and second sessions of the fortieth legislature. The certification and issuance of bonds is contingent upon matching funds being provided by the communities benefitting from this facility;

J. eighty-five thousand dollars ($85,000) to purchase, deliver and install portable classroom buildings for DWI education at the Zuni pueblo located in McKinley county;

K. four hundred eighty thousand dollars ($480,000) for the purpose of designing, engineering, constructing and equipping an elderly group home in Two Grey Hills located in San Juan county;

L. one hundred twenty-five thousand dollars ($125,000) for the purpose of completing construction and equipping the Sheep Springs chapter senior citizens center located in San Juan county;

M. fifty thousand dollars ($50,000) for the purpose of renovating and improving the Te Tsu Geh Oweenge elementary school in Tesuque Pueblo located in Santa Fe county, contingent upon an equal amount of matching funds from the bureau of Indian affairs being dedicated to the project;

N. one hundred ninety-nine thousand dollars ($199,000) for the purpose of making certain improvements to the Indian pueblo cultural center located in Bernalillo county, contingent upon an equal amount of
matching donations from private and federal sources;

O. one hundred thousand dollars ($100,000) for the purpose of providing archaeological clearances, environmental assessments, right-of-way clearances, planning, designing and constructing a community water line at White Horse lake located in McKinley county;

P. fifty thousand dollars ($50,000) for the purpose of archaeological clearances, environmental assessments, rights of way, planning, designing and constructing a power line in Pueblo Pintado located in McKinley county contingent upon the Navajo Nation council providing an equal match for the project;

Q. one hundred thousand dollars ($100,000) for completing construction on fifteen homes in the Bread Springs community in McKinley county, contingent upon the Navajo Nation council contributing one hundred thousand dollars ($100,000) towards the project in matching funds;

R. one hundred thousand dollars ($100,000) to purchase equipment and a network of library services for the communities of Smith Lake, Baca, Littlewater, Counselor, Ojo Encino and Cassmero Lake and other communities in McKinley and San Juan counties;

S. one hundred thousand dollars ($100,000) for outdoor recreation facilities for the communities of Smith Lake, Baca, Littlewater, Counselor, Ojo Encino and Cassmero Lake and others in McKinley and San Juan counties;

T. fifty thousand dollars ($50,000) to purchase a van for the community for Mariano Lake in McKinley county;

U. fifty thousand dollars ($50,000) for the purpose of archaeological clearances, environmental assessments, rights of way, planning, designing and constructing a power line at Whitehorse lake in McKinley county, contingent upon the Navajo Nation council providing an equal match for the project; and

V. one hundred thousand dollars ($100,000) to plan, design, acquire land for and construct the Native American cultural museum to be located in Grants located in Cibola county.

Section 17

Section 17. SEVERANCE TAX BONDS--INTERSTATE STREAM COMMISSION--PURPOSES.-- Pursuant to the provisions of Section 1 of this act, upon certification by the interstate stream commission that the need exists for the issuance of the bonds, the following amounts are appropriated to the interstate stream commission for the following purposes:

A. two million dollars ($2,000,000) to acquire water rights within the Pecos river basin that will most effectively aid the state in complying with the Pecos River Compact and the United States supreme court's amended decree in Texas v. New Mexico, 484 U.S. 388 (1988), for the cost of appraisals and other costs incidental to the acquisition; and

B. one hundred thousand dollars ($100,000) to design, engineer and construct the Little Puerco dam project within Gallup located in McKinley county.

Section 18

Section 18. SEVERANCE TAX BONDS--GOVERNING BOARD OF LUNA VOCATIONAL- TECHNICAL INSTITUTE--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the governing board of the Luna vocational-technical institute that the need exists for the issuance of the bonds, the following amounts are appropriated to the governing board of the Luna vocational-technical institute for the following purposes at the institute located in San Miguel county:

A. four hundred twenty-five thousand dollars ($425,000) to construct phase two of a center for instructional programs; and

B. thirteen thousand two hundred fifty dollars ($13,250) to make academic library acquisitions.

Section 19

Section 19. SEVERANCE TAX BONDS--BOARD OF REGENTS OF NEW MEXICO HIGHLANDS UNIVERSITY--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of New Mexico highlands university that the need exists for the issuance of the bonds, the following amounts are appropriated to the board of regents of New Mexico highlands university for the following purposes:

A. four hundred thousand dollars ($400,000) to renovate the teacher education center on the campus located in San Miguel county; and

B. eighty-six thousand dollars ($86,000) to make academic library acquisitions located in San Miguel county.

Section 20

Section 20. SEVERANCE TAX BONDS--COMMUNITY COLLEGE BOARD OF NEW MEXICO JUNIOR COLLEGE--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the community college board of New Mexico junior college that the need exists for the issuance of the bonds, the following amounts are appropriated to the community college board of New Mexico junior college for the following purposes:

A. thirteen thousand two hundred fifty dollars ($13,250) to make academic library acquisitions for the junior college located in Lea county; and

B. two hundred twenty-five thousand dollars ($225,000) to plan, design, construct and equip a regional transportation training center at New Mexico junior college in Hobbs located in Lea county.

Section 21

Section 21. SEVERANCE TAX BONDS--BOARD OF REGENTS OF NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of the New Mexico institute of mining and technology that the need exists for the issuance of the bonds, one hundred seventeen thousand four hundred dollars ($117,400) is appropriated to the board of regents of the New Mexico institute of mining and technology to make academic library acquisitions for the school located in Socorro county.

Section 22

Section 22. SEVERANCE TAX BONDS--BOARD OF REGENTS OF NEW MEXICO STATE UNIVERSITY--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of New Mexico state university that the need exists for the issuance of the bonds, the following amounts are appropriated to the board of regents of New Mexico state university for the following purposes:

A. two million five hundred thousand dollars ($2,500,000) to remodel the chemistry building located in Dona Ana county;

B. fifty thousand dollars ($50,000) to microfilm the historical archives of the archdiocese of Durango, Mexico by the Rio Grande historical collections of the New Mexico state university library located in Dona Ana county;

C. three hundred sixty-four thousand three hundred fifty dollars ($364,350) to make academic library acquisitions at the main branch located in Dona Ana county;

D. thirteen thousand two hundred fifty dollars ($13,250) to make academic library acquisitions at the Alamogordo branch located in Otero county;

E. thirteen thousand two hundred fifty dollars ($13,250) to make academic library acquisitions at the Carlsbad branch located in Eddy county;

F. thirteen thousand two hundred fifty dollars ($13,250) to make academic library acquisitions at the Dona Ana branch located in Dona Ana county;

G. eight thousand eight hundred fifty dollars ($8,850) to make academic library acquisitions at the Grants branch located in Cibola county;

H. one hundred thousand dollars ($100,000) to upgrade students' computer hardware and software at the main campus located in Dona Ana county;

I. three hundred thousand dollars ($300,000) to purchase equipment for the athletic department and make improvements to athletic facilities at the main campus in Dona Ana county; and

J. one hundred thousand dollars ($100,000) for the design and construction of a classroom, office and student services addition at the Dona Ana branch in Dona Ana county.

Section 23

Section 23. SEVERANCE TAX BONDS--BOARD OF REGENTS OF NORTHERN NEW MEXICO STATE SCHOOL--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of northern New Mexico state school that the need exists for the issuance of the bonds, thirteen thousand two hundred fifty dollars ($13,250) is appropriated to the board of regents of northern New Mexico state school to make academic library acquisitions for the school located in Rio Arriba county.

Section 24

Section 24. SEVERANCE TAX BONDS--DEPARTMENT OF PUBLIC SAFETY--PURPOSES.-- Pursuant to the provisions of Section 1 of this act, upon certification by the department of public safety that the need exists for the issuance of the bonds, the following amounts are appropriated to the department of public safety for the following purposes:

A. eight thousand six hundred dollars ($8,600) to purchase equipment and provide training regarding domestic violence for law enforcement officers in Chaves county; and

B. twenty thousand dollars ($20,000) to purchase six vehicles for the sheriff's department in Torrance county.

Section 25

Section 25. SEVERANCE TAX BONDS--PUBLIC SCHOOL CAPITAL IMPROVEMENTS FUND--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the state department of public education that the need exists for the issuance of the bonds, six million dollars ($6,000,000) is appropriated to the public school capital improvements fund to carry out the provisions of the Public School Capital Improvements Act. This appropriation shall not revert.

Section 26

Section 26. SEVERANCE TAX BONDS--STATE DEPARTMENT OF PUBLIC EDUCATION-- PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the state department of public education that the need exists for the issuance of the bonds, the following amounts are appropriated to the state department of public education for the following purposes:

A. seventy-five thousand dollars ($75,000) to buy furniture, supplies and materials for the Hatch public schol library located in Dona Ana county;

B. seventy-five thousand dollars ($75,000) to make roof repairs, renovate and improve facilities of the Penasco independent school district located in Taos county in order to comply with the federal Americans with Disabilities Act of 1990;

C. one hundred thousand dollars ($100,000) to acquire by purchase or lease-purchase computer equipment to be distributed statewide to elementary schools to establish a computer-based language arts program for kindergarten and grade one to develop reading and writing skills in children. The department, with the approval of the state board, is authorized to take such steps as are necessary to ensure the availability of computer equipment to all elementary schools wishing to participate in the program;

D. one hundred fifty thousand dollars ($150,000) to plan, design and construct a new lower elementary school building in Hatch located in Dona Ana county;

E. two hundred fifty thousand dollars ($250,000) to continue construction of Mountain View middle school in the Jemez Valley public school district located in Sandoval county;

F. two hundred twenty-five thousand dollars ($225,000) to plan, design, construct and equip a three-classroom shop building at Los Lunas middle school located in Valencia county;

G. one hundred twenty-five thousand dollars ($125,000) to construct sidewalks at the Adobe Acres elementary school in Albuquerque located in Bernalillo county;

H. seven hundred fifty-seven thousand dollars ($757,000) to construct a building to house a statewide education program for job placement for drop-out and at-risk youth located in Santa Fe county;

I. forty-five thousand dollars ($45,000) to repair the Amstead school in the Clayton school district located in Union county;

J. one hundred fifty thousand dollars ($150,000) to construct and renovate school buildings in the Grady school district located in Curry county;

K. sixty thousand dollars ($60,000) to purchase a tractor and other equipment for the Clovis high school located in Curry county;

L. one hundred twenty-five thousand dollars ($125,000) to plan, design and construct an indoor fitness center at the Clovis high school located in Curry county;

M. two hundred twenty-five thousand dollars ($225,000) to construct additions to the Enchanted Hills elementary school in Rio Rancho located in Sandoval county;

N. four hundred thousand dollars ($400,000) to plan, design, prepare the site, engineer, construct, furnish and equip a new elementary school in Las Cruces public schools located in Dona Ana county;

O. one hundred twenty-five thousand dollars ($125,000) to prepare architectural designs, prepare the ground, construct and equip a cafeteria in the village of Reserve for the independent school district number 1 located in Catron county;

P. one hundred thousand dollars ($100,000) to purchase reference materials, library books and a management and technology system for Chaparral middle school library located in Dona Ana county;

Q. five hundred forty-seven thousand eight hundred fifty-eight dollars ($547,858) to plan, design, prepare the site for and begin construction on a new high school in the west Las Vegas school district located in San Miguel county;

R. thirty thousand dollars ($30,000) to landscape, pave walkways, improve the track, bleachers and playground of Atrisco elementary school located in Bernalillo county;

S. one hundred thirty-five thousand dollars ($135,000) to landscape and control erosion of the multipurpose field at Truman middle school located in Bernalillo county;

T. one hundred seventy-five thousand dollars ($175,000) to design, construct and equip additional classrooms at Cuba high school located in Sandoval county;

U. one hundred fifty thousand dollars ($150,000) to construct classrooms, make building improvements or purchase equipment at the Fairview elementary school located in Rio Arriba county;

V. fifty thousand dollars ($50,000) to renovate public school buildings in the Questa school district in Taos county in order to comply with the federal Americans with Disabilities Act of 1990;

W. two hundred sixty-five thousand dollars ($265,000) to plan, design and construct certain improvements at the Pojoaque elementary school located in Santa Fe county;

X. twenty-five thousand dollars ($25,000) to plan, design and make improvements to the Pojoaque valley schools' little league fields located in Santa Fe county;

Y. two hundred thousand dollars ($200,000) to plan, design and construct certain improvements to the Pojoaque high school multipurpose educational and recreational facility located in Santa Fe county;

Z. fifty thousand dollars ($50,000) to complete construction of the Belen school district alternative fuel bus compound facility located in Valencia county;

AA. fifty thousand dollars ($50,000) to roof the courtyard of the Sierra Vista elementary school in Albuquerque located in Bernalillo county;

BB. fifty thousand dollars ($50,000) to provide for playground equipment and landscaping at Griegos elementary school and Cochiti elementary school in the Albuquerque school district located in Bernalillo county;

CC. forty-five thousand eighty-four dollars ($45,084) to landscape and construct a multicultural activity area at Carroll elementary school in the town of Bernalillo in Sandoval county;

DD. thirty-eight thousand five hundred dollars ($38,500) to build an alternative high school classroom for adult education in House in Quay county;

EE. sixty thousand dollars ($60,000) to purchase computers and additional instructional material at West Mesa high school in Bernalillo county;

FF. twenty-five thousand dollars ($25,000) for landscaping and improving the outdoor track at West Mesa high school in Bernalillo county;

GG. two hundred thousand dollars ($200,000) to expand and construct additions to Sunset elementary school in the Roswell independent school district in Chaves county;

HH. forty-five thousand dollars ($45,000) to resurface and pave the parking lot at the Pecos independent school district elementary school in Pecos in San Miguel county;

II. two hundred fifty thousand dollars ($250,000) to plan, design and construct classroom additions to La Merced elementary school in Belen in Valencia county;

JJ. twenty thousand dollars ($20,000) to purchase and install playground equipment at Valle Vista elementary school in Bernalillo county;

KK. thirty thousand dollars ($30,000) to purchase computers and other instructional materials for John Adams middle school in Bernalillo county;

LL. sixty thousand dollars ($60,000) to construct or make improvements to a track at La Cueva high school in Bernalillo county;

MM. one hundred eighty thousand dollars ($180,000) to design and construct a track at Portales high school in Portales in Roosevelt county;

NN. one hundred thousand dollars ($100,000) for the purpose of landscaping and paving and purchasing and installing playground equipment and to make other needed improvements at Carlos Rey elementary school located in Bernalillo county;

OO. twenty thousand dollars ($20,000) for repairs to school buildings in the Mesa Vista consolidated school district in Taos in Taos county;

PP. twenty thousand dollars ($20,000) to purchase portable buildings and a van, install portable buildings on site and renovate and repair buildings to comply with the federal Americans with Disabilities Act of 1990 for the Mesa Vista head start program in Taos county;

QQ. thirty thousand dollars ($30,000) to conduct a study on the feasibility of constructing a pool at or near West Mesa high school in Bernalillo county;

RR. twenty thousand dollars ($20,000) for improvements at Alamosa elementary school in Bernalillo county;

SS. thirty thousand dollars ($30,000) for improvements at Rio Grande high school in Bernalillo county; and

TT. thirty thousand dollars ($30,000) to construct a track at Valley high school in Bernalillo county.

Section 27

Section 27. SEVERANCE TAX BONDS--OFFICE OF STATE ENGINEER--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the office of state engineer that the need exists for the issuance of the bonds, one hundred thousand dollars ($100,000) is appropriated to the office of state engineer to rehabilitate the Yellowman irrigation siphon in the San Juan main irrigation canal near Nenahnezad located in San Juan county. The certification and issuance of bonds is contingent upon

an equal amount of money being dedicated to completion of the Yellowman siphon project by sources other than the state.

Section 28

Section 28. SEVERANCE TAX BONDS--COMMUNITY COLLEGE BOARD OF SANTA FE COMMUNITY COLLEGE--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the community college board of Santa Fe community college that the need exists for the issuance of the bonds, thirteen thousand two hundred fifty dollars ($13,250) is appropriated to the community college board of Santa Fe to make academic library acquisitions for the community college located in Santa Fe county.

Section 29

Section 29. SEVERANCE TAX BONDS--COMMUNITY COLLEGE BOARD OF SAN JUAN COLLEGE--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the community college board of San Juan college that the need exists for the issuance of the bonds, twenty-two thousand one hundred dollars ($22,100) is appropriated to the community college board of San Juan college to make academic library acquisitions for the college located in San Juan county.

Section 30

Section 30. SEVERANCE TAX BONDS--GOVERNING BOARD OF TUCUMCARI AREA VOCATIONAL SCHOOL--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the governing board of the Tucumcari area vocational school that the need exists for the issuance of the bonds, the following amounts are appropriated to the Tucumcari area vocational school for the following purposes in Quay county:

A. eight thousand eight hundred fifty dollars ($8,850) to make academic library acquisitions for the school; and

B. one hundred twenty-five thousand dollars ($125,000) to complete a fine arts bronze foundry and farrier science building at the school.

Section 31

Section 31. SEVERANCE TAX BONDS--TAXATION AND REVENUE DEPARTMENT-- PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the taxation and revenue department that the need exists for the issuance of the bonds, the following amounts are appropriated to the taxation and revenue department for the following purposes:

A. one hundred sixty-eight thousand dollars ($168,000) to purchase postal processing equipment located in Santa Fe county; and

B. three hundred ten thousand dollars ($310,000) to replace automatic mail inserter equipment located in Santa Fe county.

Section 32

Section 32. SEVERANCE TAX BONDS--BOARD OF REGENTS OF UNIVERSITY OF NEW MEXICO--PURPOSES.

--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of the university of New Mexico that the need exists for the issuance of the bonds, the following amounts are appropriated to the board of regents of the university of New Mexico for the following purposes:

A. five hundred twenty-six thousand two hundred dollars ($526,200) to make academic library acquisitions for the main campus located in Bernalillo county;

B. thirteen thousand two hundred fifty dollars ($13,250) to make academic library acquisitions for the Gallup branch located in McKinley county;

C. eight thousand eight hundred fifty dollars ($8,850) to make academic library acquisitions for the Los Alamos branch located in Los Alamos county;

D. thirteen thousand two hundred fifty dollars ($13,250) to make academic library acquisitions for the Valencia branch located in Valencia county;

E. three hundred thousand dollars ($300,000) to expand the library and learning resource center and to provide space for classrooms, the bookstore and faculty offices at the Los Alamos branch located in Los Alamos county;

F. five hundred seventy thousand dollars ($570,000) to plan, construct and equip a building to house an assembly hall, classrooms and science and computer laboratories at the Gallup branch located in McKinley county;

G. two hundred thousand dollars ($200,000) to upgrade students' computer hardware and software in Bernalillo county;

H. six hundred thousand dollars ($600,000) to purchase hospital equipment for the university of New Mexico medical center in Bernalillo county;

I. one hundred fifty thousand dollars ($150,000) to resurface the track at the south campus athletic complex in Bernalillo county; and

J. three hundred thousand dollars ($300,000) to complete phase two of the expansion of the stadium at the south campus athletic complex in Bernalillo county.

Section 33

Section 33. SEVERANCE TAX BONDS--WASTEWATER FACILITY CONSTRUCTION LOAN FUND--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of environment that the need exists for the issuance of the bonds, two million dollars ($2,000,000) is appropriated to the wastewater facility construction loan fund to carry out the provisions of the Wastewater Facility Construction Loan Act. This appropriation shall not revert.

Section 34

Section 34. SEVERANCE TAX BONDS--BOARD OF REGENTS OF WESTERN NEW MEXICO UNIVERSITY--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of western New Mexico university that the need exists for the issuance of the bonds, the following amounts are appropriated to the board of regents of western New Mexico university for the following purposes:

A. four hundred thousand dollars ($400,000) to plan, design and renovate the Watts classroom building located in Grant county; and

B. sixty-five thousand seven hundred dollars ($65,700) to make academic library acquisitions for the university located in Grant county.

Section 35

Section 35. SEVERANCE TAX BONDS--STATE ARMORY BOARD--PURPOSES.--Pursuant to the provisions of Section 1 of this act, upon certification by the state armory board that the need exists for the issuance of the bonds, the following amounts are appropriated to the state armory board for the following purposes:

A. one million five hundred thousand dollars ($1,500,000) to construct a new hawk missile battalion armory training site located in Sandoval county; and

B. six hundred forty thousand dollars ($640,000) to plan and design a new state armory headquarters building and emergency operations center located in Santa Fe county. Balances remaining from this appropriation shall be used for site preparation and construction of the state armory headquarters building. The certification and issuance of bonds is contingent upon the property control division of the general services department entering into a lease agreement with the state armory board for the occupancy *and purchase* of the facilities located at the national guard complex on Cerrillos road. This appropriation shall be credited toward the future purchase of the state armory board complex.

Section 36

Section 36. SEVERANCE TAX BONDS--CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION--PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the Cumbres and Toltec scenic railroad commission that the need exists for the issuance of the bonds, twenty-five thousand dollars ($25,000) is appropriated to the Cumbres and Toltec scenic railroad commission to remove and replace the roofs of the roundhouse complexes and deteriorated brick at the facility located in Rio Arriba county.

Section 37

Section 37. SEVERANCE TAX BONDS--PUBLIC SCHOOL CAPITAL OUTLAY FUND-- PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the public school capital outlay council that the need exists for the issuance of the bonds, eight million dollars ($8,000,000) is appropriated to the public school capital outlay fund to carry out the provisions of the Public School Capital Outlay Act. This appropriation shall not revert.

Section 38

Section 38. SEVERANCE TAX BONDS--ECONOMIC DEVELOPMENT DEPARTMENT-- PURPOSE.--Pursuant to the provisions of Section 1 of this act, upon certification by the economic development department that the need exists for the issuance of the bonds, twenty thousand dollars ($20,000) is appropriated to the economic development department for the purpose of contracting for the building and rehabilitation of houses for indigent families in Taos county.

Section 39

Section 39. EMPLOYMENT SECURITY DEPARTMENT FUND--APPROPRIATION--PURPOSE.

--Ninety-three thousand four hundred dollars ($93,400) is appropriated from the employment security department fund to the capital program fund for expenditure by the property control division of the general services department in the eighty-first through eighty-third fiscal years to renovate and repair the Farmington office of the labor department located in San Juan county. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the employment security department fund.

Section 40

Section 40. STATE ROAD FUND--APPROPRIATIONS--PURPOSES.--

A. The following amounts are appropriated from the state road fund to the state highway and transportation department for expenditure in the eighty-first through eighty-third fiscal years for the following purposes:

(1) two hundred ninety thousand dollars ($290,000) to construct a facility or remodel a building to house an uninterruptable power source for the department's computer systems located in Santa Fe county;

(2) one hundred fifty-five thousand four hundred dollars ($155,400) to renovate and remodel certain district two buildings located in Chaves county in order to comply with the federal Americans with Disabilities Act of 1990;

(3) fifty-three thousand dollars ($53,000) to replace the laboratory air conditioning of the Las Vegas district office located in San Miguel county;

(4) one hundred fifty-six thousand nine hundred dollars ($156,900) to enlarge the Milan service center and install a building for warehouse storage at the central laboratory located in Cibola county;

(5) three hundred fifty thousand seven hundred dollars ($350,700) to construct a five-bay patrol building in Eagle Nest located in Colfax county;

(6) one hundred eighty-four thousand five hundred dollars ($184,500) to install an elevator and complete other renovation in the Santa Fe district office located in Santa Fe county in order to comply with the federal Americans with Disabilities Act of 1990;

(7) one hundred thirty-two thousand one hundred dollars ($132,100) to install an elevator in the Las Vegas district office located in San Miguel county in order to comply with the federal Americans with Disabilities Act of 1990;

(8) ninety-three thousand eight hundred dollars ($93,800) to install an elevator at the SB-1 building at the general office located in Santa Fe county in order to comply with the federal Americans with Disabilities Act of 1990;

(9) one hundred twenty-six thousand four hundred dollars ($126,400) to remove and replace the roof on the Albuquerque district office and make certain renovations in order to comply with the federal Americans with Disabilities Act of 1990;

(10) forty thousand four hundred dollars ($40,400) to construct a storage shed for the district four complex located in San Miguel county;

(11) eight hundred thirty-one thousand dollars ($831,000) to plan, design and construct an office and laboratory building for the Las Cruces district office located in Dona Ana county;

(12) one hundred fifty-one thousand two hundred dollars ($151,200) to construct a storage building for the Deming district office located in Luna county; and

(13) five hundred eighty-nine thousand five hundred dollars ($589,500) to consolidate and upgrade the heating, ventilation and air conditioning systems and to construct a building to house the systems for the Santa Fe district office located in Santa Fe county.

B. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the state road fund.

Section 41

Section 41. STATE LANDS MAINTENANCE FUND--APPROPRIATIONS--PURPOSES.-- A. The following amounts are appropriated from the state lands maintenance fund to the state land office for expenditure in the eighty-first through eighty-third fiscal years for the following purposes:

(1) fifty-seven thousand eight hundred dollars ($57,800) to complete asbestos abatement, including removal and replacement of the roof of the state land office building located in Santa Fe county; and

(2) fifty-four thousand dollars ($54,000) to renovate the state land office building located in Santa Fe county in order to comply with the federal Americans with Disabilities Act of 1990.

B. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the state lands maintenance fund.

Section 42

Section 42. MINER'S TRUST FUND--APPROPRIATION--PURPOSE.--Six million dollars ($6,000,000) is appropriated from the miner's trust fund to the miner's Colfax medical center located in Colfax county for expenditure in the eighty-first through eighty-third fiscal years for the purpose of renovating the miner's Colfax medical long-term care facility. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall not revert.

Section 43

Section 43. GENERAL FUND--APPROPRIATION--PURPOSE.--Six hundred thousand dollars ($600,000) is appropriated from balances remaining from the project completing the national guard armories from the general fund to the board of regents of the university of New Mexico for expenditure in the eighty-first and eighty-second fiscal years for the purpose of planning, designing, constructing and equipping the expansion

of the university of New Mexico stadium located in Bernalillo county. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Section 44

Section 44. GENERAL FUND--APPROPRIATION--PURPOSE.--Thirty thousand nine hundred dollars ($30,900) is appropriated from the general fund to the state armory board for expenditure in the eighty-frst and eighty-second fiscal years for the purpose of constructing a new hawk missile battalion armory training site located in Sandoval county. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Section 45

Section 45. CAPITAL PROJECTS FUND--DEPARTMENT OF ENVIRONMENT--APPROPRIATION.--Two hundred twenty thousand dollars ($220,000) is appropriated from the capital projects fund to the department of environment for expenditure in the eighty-second through eighty-fourth fiscal years to provide for the first phase of a sewage collection and transmission system for the Dona Ana area in Dona Ana county. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the capital projects fund.

Section 46

Section 46. CAPITAL PROJECTS FUND--BOARD OF REGENTS OF UNIVERSITY OF NEW MEXICO--APPROPRIATION.--Two hundred fifty thousand dollars ($250,000) is appropriated from the capital projects fund to the board of regents of the university of New Mexico for expenditure in the eighty-first through eighty-fourth fiscal years for the purpose of planning, designing, constructing and equipping the expansion of the university of New Mexico stadium located in Bernalillo county. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the capital projects fund.

Section 47

Section 47. CAPITAL PROJECTS FUND--APPROPRIATION.--hree hundred ten thousand dollars ($310,000) is appropriated from the capital projects fund to the office of cultural affairs for expenditure in the eighty-first through eighty-third fiscal years to plan, design, construct or equip the Hispanic cultural center in Albuquerque in Bernalillo county. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the capital projects fund.

Section 48

Section 48. IRRIGATION WORKS CONSTRUCTION FUND--APPROPRIATION.--Thirty-five thousand dollars ($35,000) is appropriated from the irrigation works construction fund to the state engineer for expenditure in the eighty-first through eighty-third fiscal years for the purpose of making irrigation works improvements in the Acequia Madre Ojo del Gallo irrigation district in San Rafael in Cibola county. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the irrigation works construction fund.

Section 49

Section 49. SEVERANCE TAX BONDS--COMMISSION ON HIGHER EDUCATION-- CONTINUING THE AUTHORIZATION.--Notwithstanding the provisions of Subsection R of Section 12 of Chapter 132 of Laws 1990, the authorization provided in Subsection H of Section 12 of Chapter 132 of Laws 1990 to plan, design, acquire land and construct or renovate an off-campus instructional facility in Taos, located in Taos county is not void but is authorized through the eighty-fourth fiscal year. If the commission on higher education has not certified to the state board of finance the need for the issuance of the bonds by the end of the eighty-fourth fiscal year, the authorization for the issuance of the bonds for that project is void. Any unexpended or unencumbered balance remaining six months after completion of the project shall revert to the severance tax bonding fund.

Section 50

Section 50. CAPITAL PROJECTS FUND--EXTENDING PERIOD FOR EXPENDITURE OF FUND.--The period for expenditure of the appropriation in Paragraph (6) of Subsection C of Section 2 of Chapter 6, (1st S.S.) of Laws 1990 for acquiring the land and buildings located on the grounds of the old Albuquerque high school is extended through the eighty-fourth fiscal year.

Section 51

Section 51. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--CHANGE IN PURPOSE--APPROPRIATION.--

A. The proceeds from the sale of severance tax bonds appropriated to the property control division of the general services department, pursuant to Subsection KK of Section 18 of Chapter 113 of Laws 1992 shall not be expended for its original purpose but is reauthorized and appropriated to the local government division of the department of finance and administration in the following amounts for the following purposes:

(1) one hundred thousand dollars ($100,000) for renovation and repair of Amistad, a children in need of supervision facility in Albuquerque located in Bernalillo county; and

(2) one hundred thousand dollars ($100,000) for renovation and repairs for Casa Noreste, a state-owned children in need of supervision facility in Albuquerque located in Bernalillo county.

B. Any unexpended or unencumbered balance remaining six months after completion of the project shall revert to the severance tax bonding fund.

Section 52

Section 52. SEVERANCE TAX BONDS--BOARD OF REGENTS OF UNIVERSITY OF NEW MEXICO--CHANGE IN PURPOSE.--Contingent upon the city of Albuquerque not approving the performing arts center before November 1, 1993, Laws 1992, Chapter 113, Section 36 is amended to read:

"Section 36. SEVERANCE TAX BONDS--CHANGE IN PURPOSE--EXTENDED PERIOD FOR EXPENDITURE OF FUNDS.--One million dollars ($1,000,000) from the proceeds of the sale of the severance tax bonds appropriated to the office of cultural affairs pursuant to Paragraph (4) of Subsection E of Section 1 of Chapter 3 of Laws 1988 (2nd S.S.) shall not be expended by that agency but is reauthorized and appropriated to the board of regents of the university of New Mexico for expenditure in the eightieth and eighty-first fiscal years to plan, design, construct and equip a day-treatment facility at the children's psychiatric hospital in Bernalillo county. The period for expenditure of the appropriation of the remaining two million dollars ($2,000,000) is extended
through the eighty-third fiscal year and is reauthorized and appropriated to the board of regents of the university of New Mexico for expenditure to plan, design, remodel and refurnish the fine arts complex at the university of New Mexico in Bernalillo county. Any unexpended or unencumbered balance remaining six months after completion of the project shall revert to the severance tax bonding fund."

Section 53

Section 53. GENERAL FUND--EXPANDING THE PURPOSE--APPROPRIATION.--Section 1 of Chapter 259 of Laws 1991 is amended to read:

"Section 1. GENERAL FUND--BALANCE--CHANGE IN PURPOSE--APPROPRIATION.--One thousand seven hundred fifty-six dollars ($1,756) from the appropriation from the general fund to the state agency on aging, pursuant to Paragraph (1) of Subsection N of Section 2 of Chapter 3 of Laws 1988 (2nd S.S.), shall not be expended by that agency but is appropriated to the department of environment for expenditure in the seventy-ninth through eighty-second fiscal years for the purpose of designing and constructing water production facilities and acquiring land, easements, rights of way, water rights and other improvements needed to complete phase two of the water project in the Anthony water and sanitation district located in Dona Ana county. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund."

Section 54

Section 54. GENERAL FUND--EXPANDING THE PURPOSE--APPROPRIATION.--Section 2 of Chapter 259 of Laws 1991 is amended to read:

"Section 2. GENERAL FUND--BALANCE--CHANGE IN PURPOSE--APPROPRIATION.--One thousand seven hundred forty-nine dollars ($1,749) from the appropriation from the general fund to the state agency on aging, pursuant to Paragraph (2) of Subsection N of Section 2 of Chapter 3 of Laws 1988 (2nd S.S.), shall not be expended by that agency but is appropriated to the department of environment for expenditure in the seventy-ninth through eighty-second fiscal years for the purpose of designing and constructing water production facilities and acquiring land, easements, rights of way, water rights and other improvements needed to complete phase two of the water project in the Anthony water and sanitation district located in Dona Ana county. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund."

Section 55

Section 55. CAPITAL PROJECTS FUND--EXPANDING THE PURPOSE--APPROPRIATION.-- Section 3 of Chapter 259 of Laws 1991 is amended to read:

"Section 3. CAPITAL PROJECTS FUND--BALANCE--CHANGE IN PURPOSE--APPROPRIATION.-- Thirty thousand dollars ($30,000) from the appropriation from the capital projects fund to the department of game and fish, pursuant to Subsection J of Section 2 of Chapter 315 of Laws 1989, shall not be expended by that agency but is appropriated to the department of environment for expenditure in the seventy-ninth through eighty-second fiscal years for the purpose of designing and constructing water production facilities and acquiring land, easements, rights of way, water rights and other improvements needed to complete phase two of the water project in the Anthony water and sanitation district located in Dona Ana county. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the capital projects fund."

Section 56

Section 56. GENERAL FUND--CHANGING THE PURPOSE--APPROPRIATION.--Section 20 of Chapter 259 of Laws 1991 is amended to read:

"Section 20. GENERAL FUND--BALANCE--CHANGE IN PURPOSE--APPROPRIATION.--Thirty-three thousand six hundred twenty-four dollars ($33,624) or the unexpended balance from the appropriation from the general fund to the state highway and transportation department, pursuant to Paragraph (9) of Subsection P of Section 2 of Chapter 3 of Laws 1988 (2nd S.S.), shall not be expended by that agency but is appropriated to the local government division of the department of finance and

administration for expenditure in the seventy-ninth through eighty-second fiscal years for the purpose of constructing Jefferson Street sidewalks and completing a beautification project of the street medians between Thornton street and Cannon air force base on Grand street in Clovis located in Curry county. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund."

Section 57

Section 57. CAPITAL PROJECTS FUND--CHANGE OF PURPOSE--APPROPRIATION.-- Twenty-three thousand dollars ($23,000) from the appropriation from the capital projects fund to the state agency on aging pursuant to Paragraph (2) of Subsection Q of Section 2 of Chapter 6 of Laws 1990 (1st S.S.) shall not be expended for its original purpose but is appropriated to the state agency on aging for expenditure in the eighty-first through eighty-third fiscal years for the purpose of planning, designing, constructing and equipping Los Abuelos senior citizens center in Portales in Roosevelt county. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the capital projects fund.

Section 58

Section 58. GENERAL FUND--CHANGE OF PURPOSE--APPROPRIATION.--Thirty-five thousand dollars ($35,000) from the appropriation from the general fund to the state agency on aging pursuant to Paragraph (1) of Subsection A of Section 23 of Chapter 259 of Laws 1991 shall not be expended for its original purpose but is appropriated to the state agency on aging for expenditure in the eighty-first and eighty-second fiscal years for the purpose of planning, designing, constructing and equipping Los Abuelos senior citizens center in Portales in Roosevelt county. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Section 59

Section 59. CAPITAL PROJECTS FUND--APPROPRIATION--EXTENDING PERIOD FOR EXPENDITURE OF FUNDS.--The period for expenditure of the appropriation in Paragraph (3) of Subsection F of Section 2 of Chapter 315 of Laws 1989 for renovation of a school building in Las Cruces for use as a youth center is extended through the eighty-third fiscal year. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the capital projects fund.

Section 60

Section 60. SEVERANCE TAX BONDS--DEPARTMENT OF FINANCE AND ADMINISTRATION--CHANGE IN PURPOSE--APPROPRIATION.--

A. Twenty thousand dollars ($20,000) of the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration authorized in Subsection O of Section 5 of Chapter 113 of Laws 1992 shall not be expended for that purpose but shall be used and is authorized and appropriated for the purpose of designng, constructing and equipping a community center on the west side of Las Cruces in Dona Ana county. Any unexpended or unencumbered balance remaining six months after the completion of the project shall revert to the severance tax bonding fund.

B. Seventy-five thousand dollars ($75,000) of the proceeds from the sale of severance tax bonds appropriated to the local government division of the department of finance and administration authorized in Section HHHH of Section 5 of Chapter 113 of Laws 1992 shall not be used for that purpose but shall be used and is authorized and appropriated for the purpose of designing, constructing and equipping a community center on the west side of Las Cruces in Dona Ana county. Any unexpended or unencumbered balance remaining six months after the completion of the project shall revert to the severance tax bonding fund.

Section 61

Section 61. SEVERANCE TAX BONDS--STATE HIGHWAY AND TRANSPORTATION DEPARTMENT--CHANGE IN PURPOSE--APPROPRIATION.--

A. Two hundred fifty thousand dollars ($250,000) from the appropriation from the proceeds from the sale of the severance tax bonds appropriated to the state highway department authorized in Paragraph (2) of Subsection R of Section 1 of Chapter 115 of Laws 1986 shall not be expended for its original purpose, but is appropriated to the state highway and transportation department in the following amounts for the following purposes:

(1) seventy thousand dollars ($70,000) to improve and pave county road 84 located in Santa Fe county;

(2) one hundred twenty thousand dollars ($120,000) to improve and pave county road 72, also known as Tano road, located in Santa Fe county; and

(3) sixty thousand dollars ($60,000) to improve and pave county road 77 located in Rio Arriba county.

B. Any unexpended or unencumbered balance remaining six months after completion of the project shall revert to the severance tax bonding fund.

Section 62

Section 62. SEVERANCE TAX BONDS--STATE HIGHWAY AND TRANSPORTATION DEPARTMENT--CHANGE IN PURPOSE--APPROPRIATION.--

Two hundred thousand dollars ($200,000) from the appropriation from the proceeds from the sale of the severance tax bonds appropriated to the state highway and transportation department authorized in Paragraph (7) of Subsection H of Section 1 of Chapter 3 of Laws 1988 (SS) shall not be expended for its original purpose, but is appropriated to the state highway and transportation department for the purpose of acquiring restrictive air space easements within the accident potential zones surrounding Cannon air force base located in Curry county. Any unexpended or unencumbered balance remaining six months after completion of the project shall revert to the severance tax bonding fund.

Section 63

Section 63. SEVERANCE TAX BONDS--STATE ARMORY BOARD--CHANGE IN PURPOSE-- APPROPRIATION.--

A. Two hundred seventy-seven thousand eight hundred dollars ($277,800) of the proceeds from the sale of severance tax bonds appropriated to the state armory board authorized in Subsection A of Section 5 of Chapter 261 of Laws 1991 shall not be expended for its original purpose, but is appropriated to the state armory board to construct a new hawk missile battalion armory training site located in Sandoval county.

B. Two hundred sixty-seven thousand six hundred dollars ($267,600) of the proceeds from the sale of severance tax bonds appropriated to the state armory board authorized in Subsection B of Section 5 of Chapter 261 of Laws 1991 shall not be expended for its original purpose, but is appropriated to the state armory board to construct a new hawk missile battalion armory training site located in Sandoval county.

C. Any unexpended or unencumbered balance remaining six months after completion of the project shall revert to the severance tax bonding fund.

Section 64

Section 64. SEVERANCE TAX BONDS--DEPARTMENT OF ENVIRONMENT--CHANGE IN PURPOSE--APPROPRIATION.--One hundred thousand dollars ($100,000) of the proceeds from the sale of severance tax bonds appropriated to the environmental improvement division of the health and environment department pursuant to Paragraph (4) of Subsection E of Section 12 of Chapter 132 of Laws 1990 shall not be spent for the purpose under that paragraph, but is appropriated to the department of environment for the purpose of creating and implementing a water and sewer system master plan for Belen in Valencia county. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the severance tax bonding fund.

Section 65

Section 65. SEVERANCE TAX BONDS--ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT--CHANGE IN PURPOSE--APPROPRIATION.--One hundred thousand dollars ($100,000) of the proceeds from the sale of severance tax bonds appropriated to the environmental improvement division of the health and environment department pursuant to Paragraph (4) of Subsection E of Section 12 of Chapter 132 of Laws 1990 shall not be spent for the purpose under that paragraph, but is appropriated to the energy, minerals and natural resources department for the purpose of developing a recreational area, including a park, in Belen. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the severance tax bonding fund.

Section 66

Section 66. SEVERANCE TAX BONDS--CHANGE IN PURPOSE--APPROPRIATION.--In lieu of the purpose for which severance tax bond proceeds were appropriated to the local government division of the department of finance and administration pursuant to Subsection AAAA of Section 5 of Chapter 113 of Laws 1992, that fifty thousand dollars ($50,000) shall not be spent for that purpose, but is appropriated for the purpose of renovating and making improvements to the dental and medical clinic in Penasco in Taos county.

Section 67

Section 67. SEVERANCE TAX BONDS--STATE HIGHWAY AND TRANSPORTATION DEPARTMENT--EXPANDED PURPOSE--APPROPRIATION.--The purpose for which severance tax bond proceeds were authorized and appropriated to the state highway and transportation department pursuant to Subsection BB of Section ll of Chapter 113 of Laws 1992 is expanded to include the construction of a sanitary sewer line with connections on Siringo lane in conjunction with the paving of Siringo lane in Santa Fe county.

Section 68

Section 68. SEVERANCE TAX BONDS AND GENERAL OBLIGATION BONDS--TRANSFER OF APPROPRIATIONS TO THE LOCAL GOVERNMENT DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION--APPROPRIATIONS.--The following appropriations are transferred to the local government division of the department of finance and administration and appropriated to that department for the following purposes:

A. the two hundred fifty thousand dollar ($250,000) appropriation of severance tax bond proceeds to the property control division of the general services department pursuant to Subsection MM of Section 18 of Chapter 113 of Laws 1992 to construct a health center in Roosevelt county; and

B. the four hundred seventy-five thousand dollar ($475,000) appropriation of general obligation bond proceeds to the department of health pursuant to Paragraph (2) of Subsection E of Section 11 of Chapter 103 of Laws 1992 to plan, design and construct a primary health care clinic in Portales in Roosevelt county.

Section 69

Section 69. REAUTHORIZATION OF SEVERANCE TAX BONDS--CHANGE IN PURPOSE--APPROPRIATION.--Six hundred thousand one hundred thirty-eight dollars ($600,138) of the severance tax bonds authorized and appropriated to the water quality control commission for wastewater facility construction pursuant to Subsection W of Section 1 of Chapter 115 of Laws 1986 shall not be expended for its original purpose, but is reauthorized and appropriated to the department of environment for expenditure in the eighty-first through eighty-third fiscal years for the purpose of constructing a recreational facility associated with the wastewater treatment facility in Grants in Cibola county. Any unexpended or unencumbered balance remaining six months after completion of the project shall revert to the severance tax bonding fund.

Section 70

Section 70. SEVERANCE TAX BONDS--STATE ENGINEER--CHANGE IN PURPOSE--APPROPRIATION.--

A. One million dollars ($1,000,000) from the appropriation from the proceeds from the sale of the severance tax bonds appropriated to the state engineer authorized in Subsection C of Section 5 of Chapter 6 of Laws 1990 (1st S.S.) shall not be expended for its original purpose but is appropriated to the interstate stream commission for the purpose of acquiring water rights within the Pecos River Basin to aid the state in complying with the Pecos River Compact and the United States supreme court's amended decree in Texas v. New Mexico, 485 U.S. 388 (1988). Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the severance tax bonding fund.

B. One million dollars ($1,000,000) from the appropriation from the proceeds from the sale of the severance tax bonds appropriated to the state engineer authorized in Subsection C of Section 5 of Chapter 6 of Laws 1990 (1st S.S.) shall not be expended for its original purpose but is appropriated to the public school capital improvements fund to carry out the provisions of the Public School Capital Improvements Act. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the severance tax bonding fund.

Section 71

Section 71. EXPENDITURE OF SEVERANCE TAX BOND PROCEEDS--AGREEMENT.--No agreement shall be entered into *by the department of finance and administration* for the expenditure of funds appropriated pursuant to Subsection Q of

Section 5 of Chapter 113 of Laws 1992 or for the expenditure of money appropriated pursuant to Subsection I of Section 4 of this act for the construction of a monument and appropriate buildings honoring Don Juan de Onate prior to the secretary of finance and administration *approving that agreement based upon a* finding that, in the secretary's discretion, satisfactory agreements have been entered into by the county for the construction *and operation* of the monument and buildings.

Section 72

Section 72. ART IN PUBLIC PLACES.--Pursuant to Section 13-4A-4 NMSA 1978 and where applicable, the appropriations authorized in this act include one percent for the art in public places fund.

Section 73

Section 73. NEW MEXICO FINANCE AUTHORITY REVENUE BONDS--PURPOSE-- APPROPRIATION.--

A. The New Mexico finance authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act in an amount not to exceed three million five hundred thousand dollars ($3,500,000) for the purpose of planning, designing, constructing, equipping and furnishing a state office building for the workers' compensation administration that complies with the federal Americans with Disabilities Act of 1990.

B. The first forty cents ($.40) of the workers' compensation assessments imposed pursuant to Section 52-5-19 NMSA 1978 that is distributed to the New Mexico finance authority is appropriated to the authority to be pledged irrevocably for the payment of the principal, interest, any premium and expenses related to the issuance and sale of the bonds authorized pursuant to this section.

C. The revenues distributed to the New Mexico finance authority shall be deposited in a special bond fund or account of the authority. At the end of each calendar quarter, any money remaining in the special bond fund or account, after all current obligations for the bonds and any sinking fund are fully met, shall be transferred by the authority to the state treasurer for deposit in the workers' compensation administration fund. Upon payment of all principal and interest and any other expenses or obligations related to the issuance of the bonds, the New Mexico finance authority shall certify to the taxation and revenue department that all obligations for the bonds issued pursuant to this section have been fully discharged and direct the department to cease payments of workers' compensation assessment fee revenue to the authority.

D. The legislature shall not repeal, amend or otherwise modify any law that affects or impairs any revenue bonds of the New Mexico finance authority secured by a pledge of revenues from the workers' compensation assessments assessed pursuant to Section 52-5-19 NMSA 1978.

Section 74

Section 74. Section 7-1-6.29 NMSA 1978 (being Laws 1989, Chapter 325, Section 3) is amended to read:

"7-1-6.29. MONEY IN WORKERS' COMPNSATION COLLECTIONS SUSPENSE FUND--DISTRIBUTION.--

A. After the necessary disbursements from the workers' compensation collections suspense fund have been made, money remaining in the suspense fund as of the last day of the month, less any deduction for administrative costs determined and made by the department pursuant to Section 52-5-19 NMSA 1978, less any distribution made pursuant to Subsection B of this section and less any amount determined by the department to be retained in the suspense fund for the purpose of making refunds, shall be distributed to the workers' compensation administration fund.

B. Upon certification by the New Mexico finance authority that a project is sufficiently developed to warrant the issuance of bonds by the authority, the department shall distribute the first forty cents ($.40) of each workers' compensation assessment imposed pursuant to Section 52-5-19 NMSA 1978 to the New Mexico finance authority. Upon certification by the authority, the department shall cease distribution to the authority."

Section 75

Section 75. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HB 18

SENATE JOINT RESOLUTION 16

AUTHORIZING AND DIRECTING THE GENERAL SERVICES DEPARTMENT TO TAKE CERTAIN ACTIONS IN CONNECTION WITH STATE-OWNED PROPERTY LOCATED IN BERNALILLO COUNTY TO ENABLE THE WIDENING OF EDITH BOULEVARD.

WHEREAS, the county of Bernalillo is conducting a public works project involving the widening of Edith boulevard north of the city of Albuquerque; and

WHEREAS, in connection with this project there is a demonstrated need to acquire the use of the below-described state-owned real property for the purpose of construction of a water-retention pond:

a part of the real property formerly used as a state girls home consisting of a parcel of an area of 10.6525 acres, designated as "Parcel C", filed on 9/23/74 in Vol.

C10, Folio 39 and shown on Sheet No. 12 of the project plans prepared by Boyle Engineering Corporation entitled "Pond #1 Widening of Edith Boulevard Right of Way Map"; and

WHEREAS, the county of Bernalillo does not have sufficient funds for this project to purchase the property needed from the state;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that in accordance with the provisions of Section 13-6-2 NMSA 1978, the general services department be authorized to:

A. lease the property above-described to the county of Bernalillo until that county is able to negotiate an acceptable exchange for or purchase of the property with the department so that title may be transferred to the county, provided the lease authorized shall not exceed a term of five years;

B. permit the county of Bernalillo under the terms of the lease of the property to construct a water-retention pond on the property; and

C. sell, lease or exchange the property subject to approval of the state board of finance following the enactment of this joint resolution. SJR 16

SENATE JOINT RESOLUTION 21

APPROVING THE CESSION OF CONCURRENT LEGISLATIVE JURISDICTION TO THE UNITED STATES OVER CERTAIN UNITS OF THE NATIONAL PARK SYSTEM IN NEW MEXICO.

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

Section 1

Section 1. Pursuant to the provisions of Section 19-2-2 NMSA 1978, approval is granted to the cession of concurrent legislative jurisdiction to the United States in accordance with a like cession of concurrent legislative jurisdiction by the United States to the state of New Mexico for land now owned, controlled, leased or administered by the United States within the boundaries of the following units of the national park system in New Mexico:

A. El Malpais national monument; and

B. Pecos national historical park.

Specific legal descriptions of the park boundaries are to be provided by the national park service by September 1, 1993.

Section 2

Section 2. As used in Section 1 of this resolution, "concurrent legislative jurisdiction" means the vesting in the state and the United States of all the rights accorded a sovereign with the broad qualification that such authority is held concurrently over matters including, but not limited to, criminal laws, public powers and tax laws and that it is the parallel right of both the state and the federal government to legislate with respect to such land and persons present or residing on it, subject only to the United States and state constitutional complaints.

Section 3

Section 3. It is recognized that additional tracts may be added or deleted to El Malpais national monument due to land exchanges with the pueblo of Acoma, as authorized in public law 100-255. The tracts of land are located adjacent to the east side of El Malpais national monument. Upon any such modifications to the boundary, a letter to that effect with adequate legal descriptions will be provided to the governor to assure that concurrent jurisdiction is acquired by the United States. SJR 21