

CHAPTER 1

CHAPTER 1, LAWS 2003, FIRST SPECIAL SESSION

AN ACT

RELATING TO SEX OFFENDERS; CREATING A SEX OFFENDER MANAGEMENT BOARD WITHIN THE NEW MEXICO SENTENCING COMMISSION; PROVIDING DUTIES; REVISING THE ELEMENTS OF THE CRIME OF KIDNAPPING; PROVIDING INCREASED PENALTIES FOR CRIMINAL SEXUAL PENETRATION IN THE SECOND OR THIRD DEGREE WHEN THE VICTIM IS A CHILD THIRTEEN TO EIGHTEEN YEARS OF AGE; CREATING A NEW OFFENSE KNOWN AS CRIMINAL SEXUAL CONTACT OF A MINOR IN THE SECOND DEGREE; PROVIDING INCREASED PENALTIES FOR CRIMINAL SEXUAL CONTACT OF A MINOR IN THE THIRD DEGREE; PROVIDING MINIMUM, MANDATORY PENALTIES; PROVIDING THAT A SEX OFFENDER MAY BE PLACED ON PROBATION FOR A PERIOD OF UP TO TWENTY YEARS; ESTABLISHING FACTORS FOR THE DISTRICT COURT TO CONSIDER WHEN DETERMINING THE DURATION, TERMS AND CONDITIONS OF PROBATION; PROVIDING THAT A SEX OFFENDER MAY BE PLACED ON PAROLE FOR A PERIOD OF UP TO TWENTY YEARS; ESTABLISHING FACTORS FOR THE PAROLE BOARD TO CONSIDER WHEN DETERMINING THE DURATION, TERMS AND CONDITIONS OF PAROLE; PROVIDING CONFORMING AMENDMENTS TO EXISTING LAWS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of Chapter 9, Article 3 NMSA 1978 is enacted to read:

"SEX OFFENDER MANAGEMENT BOARD--CREATION--MEMBERSHIP--DUTIES.--

A. There is created within the New Mexico sentencing commission the "sex offender management board". Members of the sex offender management board who are not members of the New Mexico sentencing commission, whose membership is set forth in Section 9-3-10 NMSA 1978, shall not be voting members of the New Mexico sentencing commission.

B. The sex offender management board shall be composed of the following members:

(1) the attorney general;

(2) a district attorney appointed by the district attorneys association of New Mexico;

(3) the chief public defender;

(4) a district court judge appointed by the district court judge's association of New Mexico;

(5) the secretary of corrections;

(6) the secretary of health;

(7) the secretary of children, youth and families;

(8) one public member appointed by the governor who is a board member of a New Mexico victims organization;

(9) two representatives appointed by the governor who are mental health professionals licensed to practice in New Mexico. One of the mental health professionals shall be a member of the association for the treatment of sexual abusers and one shall be a juvenile sex offender treatment specialist;

(10) a representative appointed by the governor from the adult probation and parole division of the corrections department who has expertise in the supervision of sex offenders;

(11) a representative appointed by the governor from the law enforcement community who has expertise regarding sex offender community notification, registration, tracking and monitoring;

(12) a representative appointed by the governor who is affiliated with a civil liberties organization; and

(13) a representative appointed by the governor who is affiliated with a faith-based organization.

C. The sex offender management board shall report its findings and recommendations to the New Mexico sentencing commission on a quarterly basis. The New Mexico sentencing commission shall vote to approve, disapprove or revise the recommendations of the board.

D. The sex offender management board shall:

(1) hold meetings at times and for periods as the board deems necessary to accomplish its objectives, but shall meet at least eight times a year;

(2) develop and prescribe a standard procedure for the identification and evaluation of convicted sex offenders. The procedure shall include

behavior management, monitoring, treatment and program compliance for sex offenders. The board shall develop and recommend measures of success;

(3) develop and recommend guidelines and standards for the treatment of sex offenders that can be utilized by offenders who are placed on probation, incarcerated with the corrections department, placed on parole or placed in a community corrections program. The guidelines and standards shall include a monitoring process and a plan for developing treatment programs for sex offenders, including determining the duration, terms and conditions of probation and parole for sex offenders;

(4) create a risk assessment-screening tool and program to assist sentencing of sex offenders, including determining the duration, terms and conditions of probation and parole for sex offenders;

(5) develop guidelines and standards for monitoring sex offenders who are undergoing evaluation or treatment, including behavioral monitoring;

(6) develop criteria for measuring a sex offender's progress in treatment programs. The parole board shall use the criteria approved by the New Mexico sentencing commission to determine whether a sex offender may appropriately be discharged from parole;

(7) develop a standardized procedure for the identification and evaluation of juvenile sex offenders. The procedure shall include behavior management, monitoring, treatment and program compliance for juvenile sex offenders. The board shall develop and implement measures of success;

(8) develop and recommend guidelines and standards for the treatment of juvenile sex offenders who are placed on probation, committed to a state agency, placed on parole or placed in a community corrections program;

(9) research and analyze safety issues raised when sex offenders live in a community;

(10) study and consider the viability and legality of a civil commitment program for sex offenders;

(11) research and determine the feasibility and legality of implementing indeterminate sentencing for sex offenders;

(12) study the use of clinical polygraph testing as a means to evaluate sex offenders;

(13) evaluate sex offender treatment programs administered by state agencies and recommend changes, if needed, in those treatment programs; and

(14) review the provisions of the Sex Offender Notification and Registration Act and recommend changes, if needed, to that act.

E. The members of the sex offender management board shall be paid pursuant to the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance."

Section 2. Section 30-4-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 4-1, as amended) is amended to read:

"30-4-1. KIDNAPPING.--

A. Kidnapping is the unlawful taking, restraining, transporting or confining of a person, by force, intimidation or deception, with intent:

- (1) that the victim be held for ransom;
- (2) that the victim be held as a hostage or shield and confined against his will;
- (3) that the victim be held to service against the victim's will; or
- (4) to inflict death, physical injury or a sexual offense on the victim.

B. Whoever commits kidnapping is guilty of a first degree felony, except that he is guilty of a second degree felony when he voluntarily frees the victim in a safe place and does not inflict physical injury or a sexual offense upon the victim."

Section 3. 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 eighteen 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) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;

(3) by the use of force or coercion that results in personal injury to the victim;

(4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;

(5) in the commission of any other felony; or

(6) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual penetration in the second degree, is guilty of a second degree felony. Whoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

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. Whoever commits criminal sexual penetration in the third degree when the victim is a child who is thirteen to eighteen years of age is guilty of a third degree felony for a sexual offense against a child.

F. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration:

(1) 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 the child and not the spouse of that child; or

(2) perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual penetration in the fourth degree is guilty of a fourth degree felony."

Section 4. Section 30-9-13 NMSA 1978 (being Laws 1975, Chapter 109, Section 4, as amended) is amended to read:

"30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR.--

A. Criminal sexual contact of a minor is the unlawful and intentional touching of or applying force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one's intimate parts. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

B. Criminal sexual contact of a minor in the second degree consists of all criminal sexual contact of the unclothed intimate parts of a minor perpetrated:

(1) on a child under thirteen years of age; or

(2) on a child thirteen to eighteen years of age when:

(a) the perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit;

(b) the perpetrator uses force or coercion that results in personal injury to the child;

(c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or

(d) the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the second degree is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

C. Criminal sexual contact of a minor in the third degree consists of all criminal sexual contact of a minor perpetrated:

(1) on a child under thirteen years of age; or

(2) on a child thirteen to eighteen years of age when:

(a) the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;

(b) the perpetrator uses force or coercion which results in personal injury to the child;

(c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or

(d) the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the third degree is guilty of a third degree felony for a sexual offense against a child.

D. Criminal sexual contact of a minor in the fourth degree consists of all criminal sexual contact:

(1) not defined in Subsection C of this section, of a child thirteen to eighteen years of age perpetrated with force or coercion; or

(2) of a minor perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony."

Section 5. Section 31-18-15 NMSA 1978 (being Laws 1977, Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS DEDUCTIONS.--

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

- (1) for a first degree felony, eighteen years imprisonment;
- (2) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;
- (3) for a second degree felony for a sexual offense against a child, fifteen years imprisonment;
- (4) for a second degree felony, nine years imprisonment;
- (5) for a third degree felony resulting in the death of a human being, six years imprisonment;
- (6) for a third degree felony for a sexual offense against a child, six years imprisonment;
- (7) for a third degree felony, three years imprisonment; or
- (8) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted and sentenced pursuant to Subsection A of this section, unless the court alters the 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 and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

(1) for a first degree felony, fifteen thousand dollars (\$15,000);

(2) for a second degree felony resulting in the death of a human being, twelve thousand five hundred dollars (\$12,500);

(3) for a second degree felony for a sexual offense against a child, twelve thousand five hundred dollars (\$12,500);

(4) for a second degree felony, ten thousand dollars (\$10,000);

(5) for a third degree felony resulting in the death of a human being, five thousand dollars (\$5,000);

(6) for a third degree felony for a sexual offense against a child, five thousand dollars (\$5,000); or

(7) for a third or fourth degree felony, five thousand dollars (\$5,000).

F. When the court imposes a sentence of imprisonment for a felony offense, the court shall indicate whether or not the offense is a serious violent offense, as defined in Section 33-2-34 NMSA 1978. The court shall inform an offender that the offender's sentence of imprisonment is subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform an offender that the offender's sentence is subject to those provisions or if the court provides the offender with erroneous information regarding those provisions, the failure to inform or the error shall not provide a basis for a writ of habeas corpus.

G. No later than October 31 of each year, the New Mexico sentencing commission shall provide a written report to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender. The report shall specify the average reduction in the sentence of

imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year pursuant to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections department shall allow the commission access to documents used by the department to determine earned meritorious deductions for prisoners."

Section 6. Section 31-20-5 NMSA 1978 (being Laws 1963, Chapter 303, Section 29-17, as amended) is amended to read:

"31-20-5. PLACING DEFENDANT ON PROBATION.--

A. When a person has been convicted of a crime for which a sentence of imprisonment is authorized and when the magistrate, metropolitan or district court has deferred or suspended sentence, it shall order the defendant to be placed on probation for all or some portion of the period of deferment or suspension if the defendant is in need of supervision, guidance or direction that is feasible for the corrections department to furnish. Except for sex offenders as provided in Section 31-20-5.2 NMSA 1978, the total period of probation for district court shall not exceed five years and the total period of probation for the magistrate or metropolitan courts shall be no longer than the maximum allowable incarceration time for the offense or as otherwise provided by law.

B. If a defendant is required to serve a period of probation subsequent to a period of incarceration:

(1) the period of probation shall be served subsequent to any required period of parole, with the time served on parole credited as time served on the period of probation and the conditions of probation imposed by the court deemed as additional conditions of parole; and

(2) in the event that the defendant violates any condition of that parole, the parole board shall cause him to be brought before it pursuant to the provisions of Section 31-21-14 NMSA 1978 and may make any disposition authorized pursuant to that section and, if parole is revoked, the period of parole served in the custody of a correctional facility shall not be credited as time served on probation."

Section 7. A new section, Section 31-20-5.2 NMSA 1978, is enacted to read:

"31-20-5.2. SEX OFFENDERS--PERIOD OF PROBATION--TERMS AND CONDITIONS OF PROBATION.--

A. When a district court defers imposition of a sentence for a sex offender, or suspends all or any portion of a sentence for a sex offender, the district court shall include a provision in the judgment and sentence that specifically requires the sex

offender to serve an indeterminate period of supervised probation for a period of not less than five years and not in excess of twenty years. A sex offender's period of supervised probation may be for a period of less than twenty years if, at a review hearing provided for in Subsection B of this section, the state is unable to prove that the sex offender should remain on probation. Prior to placing a sex offender on probation, the district court shall conduct a hearing to determine the terms and conditions of supervised probation for the sex offender. The district court may consider any relevant factors, including:

(1) the nature and circumstances of the offense for which the sex offender was convicted or adjudicated;

(2) the nature and circumstances of a prior sex offense committed by the sex offender;

(3) rehabilitation efforts engaged in by the sex offender, including participation in treatment programs while incarcerated or elsewhere;

(4) the danger to the community posed by the sex offender; and

(5) a risk and needs assessment regarding the sex offender, developed by the sex offender management board of the New Mexico sentencing commission or another appropriate entity, to be used by appropriate district court personnel.

B. A district court shall review the terms and conditions of a sex offender's supervised probation at two and one-half year intervals. When a sex offender has served the initial five years of supervised probation, the district court shall also review the duration of the sex offender's supervised probation at two and one-half year intervals. When a sex offender has served the initial five years of supervised probation, at each review hearing the state shall bear the burden of proving to a reasonable certainty that the sex offender should remain on probation.

C. The district court may order a sex offender placed on probation to abide by reasonable terms and conditions of probation, including:

(1) being subject to intensive supervision by a probation officer of the corrections department;

(2) participating in an outpatient or inpatient sex offender treatment program;

(3) a probationary agreement by the sex offender not to use alcohol or drugs;

(4) a probationary agreement by the sex offender not to have contact with certain persons or classes of persons; and

(5) being subject to alcohol testing, drug testing or polygraph examinations used to determine if the sex offender is in compliance with the terms and conditions of his probation.

D. The district court shall notify the sex offender's counsel of record of an upcoming probation hearing for a sex offender, and the sex offender's counsel of record shall represent the sex offender at the probation hearing. When a sex offender's counsel of record provides the court with good cause that the counsel of record should not represent the sex offender at the probation hearing and the sex offender is subsequently unable to obtain counsel, the district court shall notify the chief public defender of the upcoming probation hearing and the chief public defender shall make representation available to the sex offender at that hearing.

E. If the district court finds that a sex offender has violated the terms and conditions of his probation, the district court may revoke his probation or may order additional terms and conditions of probation.

F. As used in this section, "sex offender" means a person who is convicted of, pleads guilty to or pleads nolo contendere to any one of the following offenses:

(1) kidnapping, as provided in Section 30-4-1 NMSA 1978, when committed with intent to inflict a sexual offense upon the victim;

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

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

(4) sexual exploitation of children in the second degree, as provided in Section 30-6A-3 NMSA 1978; or

(5) sexual exploitation of children by prostitution in the first or second degree, as provided in Section 30-6A-4 NMSA 1978."

Section 8. Section 31-21-10 NMSA 1978 (being Laws 1980, Chapter 28, Section 1, as amended) is amended to read:

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

A. An inmate of an institution who was sentenced to life imprisonment as the result of the commission of a capital felony, who was convicted of three violent felonies and sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978 or

who was convicted of two violent sexual offenses and sentenced pursuant to Subsection A of Section 31-18-25 NMSA 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a parole hearing after he has served thirty years of his sentence. Before ordering the parole of an inmate sentenced to life imprisonment, the board shall:

(1) interview the inmate at the institution where he is committed;

(2) consider all pertinent information concerning the inmate,

including:

(a) the circumstances of the offense;

(b) mitigating and aggravating circumstances;

(c) whether a deadly weapon was used in the commission of the offense;

(d) whether the inmate is a habitual offender;

(e) the reports filed under Section 31-21-9 NMSA 1978; and

(f) the reports of such physical and mental examinations as have been made while in an institution;

(3) make a finding that a parole is in the best interest of society and the inmate; and

(4) make a finding that the inmate is able and willing to fulfill the obligations of a law-abiding citizen.

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

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

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

During the period of parole, the person shall be under the guidance and supervision of the board.

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

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

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

(1) to pay the actual costs of his parole services to the adult probation and parole division of the corrections department for deposit to the corrections department intensive supervision fund not exceeding one thousand twenty dollars (\$1,020) annually to be paid in monthly installments of not less than fifteen dollars (\$15.00) and not more than eighty-five dollars (\$85.00), subject to modification by the adult probation and parole division on the basis of changed financial circumstances; and

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

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

Section 9. A new section of the Probation and Parole Act, Section 31-21-10.1 NMSA 1978, is enacted to read:

"31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND CONDITIONS OF PAROLE.--

A. If the district court sentences a sex offender to a term of incarceration in a facility designated by the corrections department, the district court shall include a provision in the judgment and sentence that specifically requires the sex offender to serve an indeterminate period of supervised parole for a period of not less than five years and not in excess of twenty years. A sex offender's period of supervised parole may be for a period of less than twenty years if, at a review hearing provided for in Subsection B of this section, the state is unable to prove that the sex offender should remain on parole. Prior to placing a sex offender on parole, the board shall conduct a hearing to determine the terms and conditions of supervised parole for the sex offender. The board may consider any relevant factors, including:

(1) the nature and circumstances of the offense for which the sex offender was incarcerated;

(2) the nature and circumstances of a prior sex offense committed by the sex offender;

(3) rehabilitation efforts engaged in by the sex offender, including participation in treatment programs while incarcerated or elsewhere;

(4) the danger to the community posed by the sex offender; and

(5) a risk and needs assessment regarding the sex offender, developed by the sex offender management board of the New Mexico sentencing commission or another appropriate entity, to be used by appropriate parole board personnel.

B. The board shall review the terms and conditions of a sex offender's supervised parole at two and one-half year intervals. When a sex offender has served the initial five years of supervised parole, the board shall also review the duration of the sex offender's supervised parole at two and one-half year intervals. When a sex offender has served the initial five years of supervised parole, at each review hearing the state shall bear the burden of proving to a reasonable certainty that the sex offender should remain on parole.

C. The board may order a sex offender released on parole to abide by reasonable terms and conditions of parole, including:

(1) being subject to intensive supervision by a parole officer of the corrections department;

(2) participating in an outpatient or inpatient sex offender treatment program;

(3) a parole agreement by the sex offender not to use alcohol or drugs;

(4) a parole agreement by the sex offender not to have contact with certain persons or classes of persons; and

(5) being subject to alcohol testing, drug testing or polygraph examinations used to determine if the sex offender is in compliance with the terms and conditions of his parole.

D. The board shall notify the chief public defender of an upcoming parole hearing for a sex offender, and the chief public defender shall make representation available to the sex offender at the parole hearing.

E. If the board finds that a sex offender has violated the terms and conditions of his parole, the board may revoke his parole or may order additional terms and conditions of parole.

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

G. As used in this section, "sex offender" means a person who is convicted of, pleads guilty to or pleads nolo contendere to any one of the following offenses:

(1) kidnapping, as provided in Section 30-4-1 NMSA 1978, when committed with intent to inflict a sexual offense upon the victim;

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

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

(4) sexual exploitation of children in the second degree, as provided in Section 30-6A-3 NMSA 1978; or

(5) sexual exploitation of children by prostitution in the first or second degree, as provided in Section 30-6A-4 NMSA 1978."

Section 10. Section 29-11A-3 NMSA 1978 (being Laws 1995, Chapter 106, Section 3, as amended) is amended to read:

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

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

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

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

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

(4) is a resident of another state and who has been convicted of a sex offense pursuant to state, federal or military law, but who is:

(a) employed full time or part time in New Mexico for a period of time exceeding fourteen days or for an aggregate period of time exceeding thirty days during any calendar year; or

(b) enrolled on a full-time or part-time basis in a private or public school in New Mexico, including a secondary school, a trade school, a professional institution or an institution of higher education; and

B. "sex offense" means:

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

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

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

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

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

(6) kidnapping, as provided in Section 30-4-1 NMSA 1978 when the victim is less than eighteen years of age and the offender is not a parent of the victim;

(7) false imprisonment, as provided in Section 30-4-3 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;

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

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

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

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

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

B. The county sheriff shall forward registration information obtained from sex offenders to the department of public safety. The initial registration information and any new registration information subsequently obtained from a sex offender shall be forwarded by the county sheriff no later than ten working days after the information is obtained from a sex offender. If the department of public safety receives information regarding a sex offender from a governmental entity other than a county sheriff, the department shall send that information to the sheriff for the county in which the sex offender resides.

C. The department of public safety shall maintain a central registry of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act. The department shall participate in the national sex offender registry administered by the United States department of justice. The department shall send conviction information and fingerprints for all sex offenders registered in New Mexico to the national sex offender registry administered by the United States department of justice and to the federal bureau of investigation.

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

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

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

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

(4) kidnapping, as provided in Section 30-4-1 NMSA 1978 when the victim is less than eighteen years of age and the offender is not a parent of the victim; or

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

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

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

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

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

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

(5) false imprisonment, as provided in Section 30-4-3 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;

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

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

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

Section 12. Section 29-11A-5.1 NMSA 1978 (being Laws 1999, Chapter 19, Section 8, as amended) is amended to read:

"29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY NOTIFICATION--INTERNET WEB SITE.--

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

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

(2) criminal sexual contact of a minor in the second, third or fourth degree, as provided in

Section 30-9-13 NMSA 1978;

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

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

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

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

(1) sheriff for the county in which the sex offenders reside;

(2) chief law enforcement officer for the municipality in which the sex offenders reside;

(3) district attorney for the judicial district in which the sex offenders reside; or

(4) secretary of public safety.

C. Upon receiving a request for registration information regarding sex offenders described in Subsection A of this section, the county sheriff, chief municipal law enforcement officer, district attorney or secretary of public safety shall provide that registration information, with the exception of a sex offender's social security number, within a reasonable period of time, and no later than seven days after receiving the request.

D. Within seven days of receiving registration information from a sex offender described in Subsection A of this section, the county sheriff shall contact every licensed daycare center, elementary school, middle school and high school within a one-mile radius of the sex offender's residence and provide them with the sex offender's registration information, with the exception of the sex offender's social security number.

E. The department of public safety may establish and manage an internet web site that provides the public with registration information regarding sex offenders described in Subsection A of this section. The registration information provided to the public pursuant to this subsection shall not include a sex offender's social security number or a sex offender's place of employment, unless the sex offender's employment requires him to have direct contact with children."

Section 13. Section 33-2-34 NMSA 1978 (being Laws 1999, Chapter 238, Section 1) is amended to read:

"33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS DEDUCTIONS.--

A. To earn meritorious deductions, a prisoner confined in a correctional facility designated by the corrections department must be an active participant in programs recommended for the prisoner by the classification committee and approved by the warden. Meritorious deductions shall not exceed the following amounts:

(1) for a prisoner confined for committing a serious violent offense, up to a maximum of four days per month of time served;

(2) for a prisoner confined for committing a nonviolent offense, up to a maximum of thirty days per month of time served;

(3) for a prisoner confined following revocation of parole for the alleged commission of a new felony offense or for absconding from parole, up to a maximum of four days per month of time served during the parole term following revocation; and

(4) for a prisoner confined following revocation of parole for a reason other than the alleged commission of a new felony offense or absconding from

parole, up to a maximum of eight days per month of time served during the parole term following revocation.

B. A prisoner may earn meritorious deductions upon recommendation by the classification committee, based upon the prisoner's active participation in approved programs and the quality of the prisoner's participation in those approved programs. A prisoner may not earn meritorious deductions unless the recommendation of the classification committee is approved by the warden.

C. If a prisoner's active participation in approved programs is interrupted by a lockdown at a correctional facility, he may continue to be awarded meritorious deductions at the rate he was earning meritorious deductions prior to the lockdown, unless the warden determines that the prisoner's conduct contributed to the initiation or continuance of the lockdown.

D. A prisoner confined in a correctional facility designated by the corrections department is eligible for lump-sum meritorious deductions as follows:

(1) for successfully completing an approved vocational, substance abuse or mental health program, one month; except when the prisoner has a demonstrable physical, mental health or developmental disability that prevents the prisoner from successfully earning a general education diploma, in which case the prisoner shall be awarded three months;

(2) for earning a general education diploma, three months;

(3) for earning an associate's degree, four months;

(4) for earning a bachelor's degree, five months;

(5) for earning a graduate qualification, five months; and

(6) for engaging in a heroic act of saving life or property, engaging in extraordinary conduct for the benefit of the state or the public that is at great expense, risk or effort on behalf of the inmate, or engaging in extraordinary conduct far in excess of normal program assignments that demonstrates the prisoner's commitment to rehabilitate himself. The classification committee and the warden may recommend the number of days to be awarded in each case based upon the particular merits, but any award shall be determined by the director of the adult institutions division of the corrections department.

E. Lump-sum meritorious deductions, provided in Paragraphs (1) through (6) of Subsection D of this section, may be awarded in addition to the meritorious deductions provided in Subsections A and B of this section. Lump-sum meritorious deductions shall not exceed one year per award and shall not exceed a total of one year

for all lump-sum meritorious deductions awarded in any consecutive twelve-month period.

F. A prisoner is not eligible to earn meritorious deductions if the prisoner:

(1) disobeys an order to perform labor, pursuant to Section 33-8-4 NMSA 1978;

(2) is in disciplinary segregation;

(3) is within the first sixty days of receipt by the corrections department; or

(4) is not an active participant in programs recommended and approved for him by the classification committee.

G. The provisions of this section shall not be interpreted as providing eligibility to earn meritorious deductions from a sentence of life imprisonment or a sentence of death.

H. The corrections department shall promulgate rules to implement the provisions of this section, and the rules shall be matters of public record. A concise summary of the rules shall be provided to each prisoner, and each prisoner shall receive a quarterly statement of the meritorious deductions earned.

I. A New Mexico prisoner confined in a federal or out-of-state correctional facility is eligible to earn meritorious deductions for active participation in programs on the basis of the prisoner's conduct and program reports furnished by that facility to the corrections department. All decisions regarding the award and forfeiture of meritorious deductions at such facility are subject to final approval by the director of the adult institutions division of the corrections department or the director's designee.

J. In order to be eligible for meritorious deductions, a prisoner confined in a federal or out-of-state correctional facility designated by the corrections department must actively participate in programs that are available. If a federal or out-of-state correctional facility does not have programs available for a prisoner, the prisoner may be awarded meritorious deductions at the rate the prisoner could have earned meritorious deductions if the prisoner had actively participated in programs.

K. A prisoner confined in a correctional facility in New Mexico that is operated by a private company, pursuant to a contract with the corrections department, is eligible to earn meritorious deductions in the same manner as a prisoner confined in state-run correctional facilities. All decisions regarding the award or forfeiture of meritorious deductions at such facilities are subject to final approval by the director of the adult institutions division of the corrections department or the director's designee.

L. As used in this section:

(1) "active participant" means a prisoner who has begun, and is regularly engaged in, approved programs;

(2) "program" means work, vocational, educational, substance abuse and mental health programs, approved by the classification committee, that contribute to a prisoner's self-betterment through the development of personal and occupational skills. "Program" does not include recreational activities;

(3) "nonviolent offense" means any offense other than a serious violent offense; and

(4) "serious violent offense" means:

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

(b) voluntary manslaughter, as provided in Section 30-2-3
NMSA 1978;

(c) third degree aggravated battery, as provided in Section
30-3-5 NMSA 1978;

(d) first degree kidnapping, as provided in Section 30-4-1
NMSA 1978;

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

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

(g) first and second degree robbery, as provided in Section
30-16-2 NMSA 1978;

(h) second degree aggravated arson, as provided in Section
30-17-6 NMSA 1978;

(i) shooting at a dwelling or occupied building, as provided in
Section 30-3-8 NMSA 1978;

(j) shooting at or from a motor vehicle, as provided in Section
30-3-8 NMSA 1978;

(k) aggravated battery upon a peace officer, as provided in Section 30-22-25 NMSA 1978;

(l) assault with intent to commit a violent felony upon a peace officer, as provided in Section 30-22-23 NMSA 1978;

(m) aggravated assault upon a peace officer, as provided in Section 30-22-22 NMSA 1978; and

(n) any of the following offenses, when the nature of the offense and the resulting harm are such that the court judges the crime to be a serious violent offense for the purpose of this section: 1) involuntary manslaughter, as provided in Section 30-2-3 NMSA 1978; 2) fourth degree aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3) third degree assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978; 4) third and fourth degree aggravated stalking, as provided in Section 30-3A-3.1 NMSA 1978; 5) second degree kidnapping, as provided in Section 30-4-1 NMSA 1978; 6) second degree abandonment of a child, as provided in Section 30-6-1 NMSA 1978; 7) first, second and third degree abuse of a child, as provided in Section 30-6-1 NMSA 1978; 8) third degree dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978; 9) third and fourth degree criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; 10) fourth degree criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978; 11) third degree robbery, as provided in Section 30-16-2 NMSA 1978; 12) third degree homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978; and 13) battery upon a peace officer, as provided in Section 30-22-24 NMSA 1978."

Section 14. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILLS 2, 3, 4, 5 AND 8, AS AMENDED

CHAPTER 2

CHAPTER 2, LAWS 2003, FIRST SPECIAL SESSION

AN ACT

RELATING TO LEGISLATIVE EXPENDITURES; MAKING APPROPRIATIONS FROM LEGISLATIVE CASH BALANCES FOR NECESSARY EXPENSES OF THE SPECIAL SESSION; DECLARING AN EMERGENCY.

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

Section 1. SPECIAL SESSION--APPROPRIATION.--

A. The following amounts are appropriated from the legislative council service cash balances for expenditure in fiscal year 2004 for the following expenses of the first special session of the forty-sixth legislature:

(1) for the expense of the house of representatives, three hundred three thousand three hundred dollars (\$303,300) to be disbursed on vouchers signed by the speaker and the chief clerk of the house of representatives;

(2) for the expense of the senate, three hundred two thousand eight hundred dollars (\$302,800) to be disbursed on vouchers signed by the chairman of the committees' committee and the chief clerk of the senate; and

(3) for the expense of the legislative council service, the joint billroom and the legislative switchboard, seventy-six thousand dollars (\$76,000) to be disbursed on vouchers signed by the director of the legislative council service or his authorized representative.

B. Following adjournment of the first special session of the forty-sixth legislature, expenditures authorized in this section shall be disbursed on vouchers signed by the director of the legislative council service or his authorized representative.

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

HOUSE BILL 1, WITH EMERGENCY CLAUSE

SIGNED NOVEMBER 5, 2003

CHAPTER 3

CHAPTER 3, LAWS 2003, FIRST SPECIAL SESSION WITH LINE ITEM VETOES

AN ACT

RELATING TO PUBLIC FINANCES; PROVIDING FOR TRANSPORTATION SPENDING TO ENHANCE ECONOMIC DEVELOPMENT; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO ISSUE BONDS; APPROVING CERTAIN TRANSPORTATION PROJECTS; REVISING AND ADJUSTING CERTAIN TAXES; REQUIRING WEIGHT DISTANCE TAX IDENTIFICATION PERMITS; CREATING AND IMPOSING FEES; CREATING A FUND; INCREASING CERTAIN FEES; INCREASING VEHICLE REGISTRATION FEES; CHANGING DISTRIBUTIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS.

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

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 Supplier Tax Act and the Alternative Fuel 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 local governments road fund pursuant to Section 7-1-6.39 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 of the local governments road fund pursuant to Section 7-1-6.28 NMSA 1978; and

(8) the amount distributed to a qualified tribe pursuant to a gasoline tax sharing agreement entered into between the secretary of transportation and the qualified tribe pursuant to the provisions of Section 67-3-8.1 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, interest and penalties from the Weight Distance Tax Act."

Section 2. Section 7-1-6.39 NMSA 1978 (being Laws 1995, Chapter 6, Section 9) is amended to read:

"7-1-6.39. DISTRIBUTION OF SPECIAL FUEL EXCISE TAX TO LOCAL GOVERNMENTS ROAD FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the local governments road fund in an amount equal to nine and fifty-two 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 3. Section 7-15A-2 NMSA 1978 (being Laws 1988, Chapter 73, Section 29) is amended to read:

"7-15A-2. DEFINITIONS.--As used in the Weight Distance Tax Act:

A. "bus" means a motor vehicle designed and used for the transportation of a person and a motor vehicle, other than a taxicab, designed and used for the transportation of a person for compensation;

B. "declared gross weight" means the declared gross weight for purposes of the Motor Transportation Act;

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

D. "gross vehicle weight" means the weight of a vehicle without load, plus the weight of a load upon the vehicle;

E. "motor vehicle" means a vehicle that is self-propelled and a vehicle that is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails;

F. "person" means:

(1) an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; and

(2) to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department or instrumentality of the federal, state or other governmental unit;

G. "registrant" means a person who has registered the vehicle pursuant to the laws of this state or another state;

H. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

I. "tax" means the weight distance tax imposed by the Weight Distance Tax Act;

J. "vehicle" means a device in, upon or by which a person or property is or may be transported or drawn upon a highway, including a frame, chassis or body of a vehicle or motor vehicle, except a device moved by human power or used exclusively upon stationary rails or tracks; and

K. "weight distance tax identification permit" means an administrative certificate that is issued by the department and that identifies a specific vehicle as subject to the tax imposed pursuant to the Weight Distance Tax Act."

Section 4. Section 7-15A-6 NMSA 1978 (being Laws 1988, Chapter 73, Section 33) is amended to read:

"7-15A-6. TAX RATE FOR MOTOR VEHICLES OTHER THAN BUSES--
REDUCTION OF RATE FOR ONE-WAY HAULS.--

A. For on-highway operations of motor vehicles other than buses, the weight distance tax shall be computed in accordance with the following schedule:

Declared Gross Weight (Gross Vehicle Weight)	Tax Rate (Mills per Mile)
26,000 to 28,000	11.01
28,001 to 30,000	11.88
30,001 to 32,000	12.77
32,001 to 34,000	13.64

34,001 to 36,000	14.52
36,001 to 38,000	15.39
38,001 to 40,000	16.73
40,001 to 42,000	18.05
42,001 to 44,000	19.36
44,001 to 46,000	20.69
46,001 to 48,000	20.01
48,001 to 50,000	23.33
50,001 to 52,000	24.65
52,001 to 54,000	25.96
54,001 to 56,000	27.29
56,001 to 58,000	28.62
58,001 to 60,000	29.93
60,001 to 62,000	31.24
62,001 to 64,000	32.58
64,001 to 66,000	33.90
66,001 to 68,000	35.21
68,001 to 70,000	36.52
70,001 to 72,000	37.86
72,001 to 74,000	39.26
74,001 to 76,000	40.71
76,001 to 78,000	42.21
78,001 and over	43.78.

B. All motor vehicles for which the tax is computed under Subsection A of this section shall pay a tax that is two-thirds of the tax computed under Subsection A of this section if:

(1) the motor vehicle is customarily used for one-way haul;

(2) forty-five percent or more of the mileage traveled by the motor vehicle for a registration year is mileage that is traveled empty of all load; and

(3) the registrant, owner or operator of the vehicle attempting to qualify under this subsection has made a sworn application to the department to be classified under this subsection for a registration year and has given whatever information is required by the department to determine the eligibility of the vehicle to be classified under this subsection and the vehicle has been so classified."

Section 5. Section 7-15A-7 NMSA 1978 (being Laws 1988, Chapter 73, Section 34) is amended to read:

"7-15A-7. TAX RATE FOR BUSES.--For all buses, the weight distance tax shall be computed in accordance with the following schedule:

Declared Gross Weight (Gross Vehicle Weight)	Tax Rate (Mills per Mile)
26,000 to 28,000	11.01
28,001 to 30,000	11.88
30,001 to 32,000	12.77
32,001 to 34,000	13.64
34,001 to 36,000	14.52
36,001 to 38,000	15.39
38,001 to 40,000	16.73
40,001 to 42,000	18.05
42,001 to 44,000	19.36
44,001 to 46,000	20.69
46,001 to 48,000	22.01

48,001 to 50,000	23.33
50,001 to 52,000	24.65
52,001 to 54,000	25.96
54,001 and over	27.29."

Section 6. A new section of the Weight Distance Tax Act is enacted to read:

"WEIGHT DISTANCE TAX IDENTIFICATION PERMITS--SUSPENSION AND RENEWAL.--

A. An operator of a motor vehicle registered in this state and subject to the weight distance tax shall display a weight distance tax identification permit issued for that vehicle to an enforcement officer of the department of public safety upon demand of that employee and when the vehicle passes through a port of entry.

B. The department may suspend or decline to renew a weight distance tax identification permit for a motor vehicle if the owner or operator of the vehicle does not comply with the provisions of the Weight Distance Tax Act."

Section 7. A new section of the Weight Distance Tax Act is enacted to read:

"WEIGHT DISTANCE TAX IDENTIFICATION PERMIT ADMINISTRATIVE FEE.-

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A. A person that obtains a weight distance tax identification permit shall pay an administrative fee to the department for the reasonable and necessary expense that the department incurs for processing and issuing a weight distance tax identification permit. The fee shall be paid in addition to a weight distance tax, special fuel excise tax and other use fee imposed for the use of public highways of this state. The department shall determine the amount of the fee pursuant to regulation. The fee shall not exceed ten dollars (\$10.00).

B. The department shall deposit to the weight distance tax identification permit administration fund all proceeds from administrative fees collected by the department pursuant to this section."

Section 8. A new section of the Weight Distance Tax Act is enacted to read:

"WEIGHT DISTANCE TAX IDENTIFICATION PERMIT ADMINISTRATION FUND.--The "weight distance tax identification permit administration fund" is created in the state treasury. The purpose of the fund is to provide an account from which the department may pay the costs of issuing and administering weight distance tax identification permits. The fund shall consist of administrative fees collected pursuant to the Weight Distance Tax Act. Money in the fund shall be appropriated to the department to pay for the cost of issuing and administering weight distance tax identification permits. Disbursements from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the secretary or the secretary's authorized representative. Money in the fund shall not revert to the general fund at the end of a fiscal year."

Section 9. Section 7-16A-3 NMSA 1978 (being Laws 1992, Chapter 51, Section 3, as amended) 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 twenty-one cents (\$.21) 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 10. Section 66-3-3.1 NMSA 1978 (being Laws 1992, Chapter 106, Section 7, as amended) is amended to read:

"66-3-3.1. TAX IDENTIFICATION CARD.--The department shall implement a system for identifying motor carriers subject to the weight distance tax and special fuel user permit requirements, including an identifying number for each motor carrier covered by the system. Annually, the department shall issue one or more original tax identification cards sufficient for the number of vehicles specified by each motor carrier who applies for a tax identification card; provided that the motor carrier continues to be subject to and in compliance with the weight distance tax and special fuel user permit requirements. The tax identification card shall contain the department's identifying number for the motor carrier and other information that the department deems necessary."

Section 11. Section 66-6-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 336, as amended) is amended to read:

"66-6-1. MOTORCYCLES--REGISTRATION FEES.--

A. For the registration of motorcycles, the department shall collect the following fees for a twelve-month registration period:

(1) for a motorcycle having not more than two wheels in contact with the ground, fifteen dollars (\$15.00); and

(2) for a motorcycle having three wheels in contact with the ground or having a sidecar, fifteen dollars (\$15.00).

B. In addition to other fees required by this section, the department shall collect for each motorcycle an annual tire recycling fee of one dollar (\$1.00) for a twelve-month registration period."

Section 12. Section 66-6-2 NMSA 1978 (being Laws 1978, Chapter 35, Section 337, as amended) is amended to read:

"66-6-2. PASSENGER VEHICLES--REGISTRATION FEES.--For the registration of motor vehicles other than motorcycles, trucks, buses and tractors, the division shall collect the following fees for each twelve-month registration period:

A. for a vehicle whose gross factory shipping weight is not more than two thousand pounds, twenty-seven dollars (\$27.00); provided, however, that after five years of registration, calculated from the date when the vehicle was first registered in this or another state, the fee is twenty-one dollars (\$21.00);

B. for a vehicle whose gross factory shipping weight is more than two thousand but not more than three thousand pounds, thirty-nine dollars (\$39.00); provided, however, that after five years of registration, calculated from the date when the vehicle was first registered in this or another state, the fee is thirty-one dollars (\$31.00);

C. for a vehicle whose gross factory shipping weight is more than three thousand pounds, fifty-six dollars (\$56.00); provided, however, that after five years of registration, calculated from the date when the vehicle was first registered in this or another state, the fee is forty-five dollars (\$45.00); and

D. for a vehicle registered pursuant to the provisions of this section, a tire recycling fee of one dollar fifty cents (\$1.50)."

Section 13. Section 66-6-3 NMSA 1978 (being Laws 1978, Chapter 35, Section 338, as amended) is amended to read:

"66-6-3. TRAILERS--REGISTRATION FEES.--

A. For the registration of freight trailers and utility trailers, the following fees shall be collected:

(1) for the permanent registration or reregistration of freight trailers, thirteen dollars (\$13.00);

(2) for the annual registration of each utility trailer not permanently registered, seven dollars (\$7.00) plus one dollar (\$1.00) for each one hundred pounds or major fraction thereof of actual empty weight over five hundred pounds actual empty weight; except that in the case of travel trailers, actual empty weight shall be one-half of the gross factory shipping weight or, if gross factory shipping weight is not available, then actual empty weight shall be one-half of actual gross vehicle weight; and

(3) for the permanent registration of utility trailers not used in commerce that have a gross vehicle weight of less than six thousand one pounds, thirty-three dollars (\$33.00) plus seven dollars (\$7.00) for each one hundred pounds or major fraction thereof of actual empty weight over five hundred pounds actual empty weight; except that in the case of travel trailers, actual empty weight shall be one-half of the gross factory shipping weight or, if gross factory shipping weight is not available, then actual empty weight shall be one-half of actual gross vehicle weight and for the reregistration of such utility trailers upon their sale or transfer, seven dollars (\$7.00).

B. At the option of the owner of a fleet of fifty or more utility trailers wishing to register them in New Mexico, the division shall issue a registration and registration plate for each trailer in the fleet, the registration and registration plate to expire on the last day of the final month of a five-year period. Registrations and registration plates shall be issued for five years only if the owner of the trailers meets the following requirements:

(1) application is made on forms prescribed by the division and payment of the proper fee is made;

(2) upon the option of the director, presentation is made at the time of registration of a surety bond, certificate of deposit or of other financial security; and

(3) payment is made by the fleet owner of all registration fees due each year prior to the expiration date. If such fees are not paid, all registrations and registration plates in the fleet shall be canceled."

Section 14. Section 66-6-4 NMSA 1978 (being Laws 1978, Chapter 35, Section 339, as amended) is amended to read:

"66-6-4. REGISTRATION FEES--TRUCKS, TRUCK TRACTORS, ROAD TRACTORS AND BUSES.--

A. Within their respective jurisdictions, the motor vehicle division and the motor transportation division of the department of public safety shall charge registration fees for trucks, truck tractors, road tractors and buses, except as otherwise provided by law, according to the schedule of Subsection B of this section.

B. Declared Gross Weight Fee

001 to 4,000	\$40
4,001 to 6,000	55
6,001 to 8,000	69
8,001 to 10,000	84
10,001 to 12,000	99
12,001 to 14,000	113
14,001 to 16,000	128
16,001 to 18,000	143
18,001 to 20,000	157
20,001 to 22,000	172
22,001 to 24,000	187
24,001 to 26,000	201
26,001 to 48,000	118
48,001 and over	172.

C. All trucks whose declared gross weight or whose gross vehicle weight is less than twenty-six thousand pounds, after five years of registration, calculated from the date when the vehicle was first registered in this or another state, shall be charged registration fees at eighty percent of the rate set out in Subsection B of this section.

D. All trucks with a gross vehicle weight of more than twenty-six thousand pounds and all truck tractors and road tractors used to tow freight trailers shall be registered on the basis of combination gross vehicle weight.

E. All trucks with a gross vehicle weight of twenty-six thousand pounds or less shall be registered on the basis of gross vehicle weight. A trailer, semitrailer or pole

trailer towed by a truck of such gross vehicle weight shall be classified as a utility trailer for registration purposes unless otherwise provided by law.

F. All farm vehicles having a declared gross weight of more than six thousand pounds shall be charged registration fees of two-thirds of the rate of the respective fees provided in this section and shall be issued distinctive registration plates. "Farm vehicle" means a vehicle owned by a person whose principal occupation is farming or ranching and which vehicle is used principally in the transportation of farm and ranch products to market and farm and ranch supplies and livestock from the place of purchase to farms and ranches in this state; provided that the vehicle is not used for hire.

G. In addition to other registration fees imposed by this section, beginning July 1, 1994, there is imposed at the time of registration an annual tire recycling fee of one dollar fifty cents (\$1.50) on each vehicle subject to a registration fee pursuant to this section, except for vehicles with a declared gross weight of greater than twenty-six thousand pounds upon which registration fees are imposed by Subsection B of this section.

H. Three percent of registration fees of trucks having from twenty-six thousand one pounds to forty-eight thousand pounds declared gross vehicle weight is to be transferred to the tire recycling fund pursuant to the provisions of Section 66-6-23 NMSA 1978.

I. Three and seventy-five hundredths percent of registration fees of trucks in excess of forty-eight thousand pounds declared gross vehicle weight is to be transferred to the tire recycling fund pursuant to the provisions of Section 66-6-23 NMSA 1978."

Section 15. Section 66-6-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 340, as amended) is amended to read:

"66-6-5. BUS REGISTRATION FEES.--All buses shall pay the registration fees provided in Section 66-6-4 NMSA 1978, except for school buses and buses operated by religious or nonprofit charitable organizations for the express purpose of the organization for which the annual registration fee is seven dollars (\$7.00). In addition to other registration fees imposed by this section, beginning July 1, 1994, there is imposed at the time of registration an annual tire recycling fee of fifty cents (\$.50) per wheel that is in contact with the ground on each vehicle subject to a registration fee pursuant to this section."

Section 16. Section 66-6-8 NMSA 1978 (being Laws 1978, Chapter 35, Section 343, as amended) is amended to read:

"66-6-8. BUS REGISTRATION--AGRICULTURAL LABOR FEES.--

A. A bus that has a normal seating capacity of forty passengers or less and that is used exclusively for the transportation of agricultural laborers may be registered upon payment to the division of a fee of thirty-three dollars (\$33.00).

B. In addition to the registration fee imposed by this section, there is imposed at the time of registration an annual tire recycling fee of fifty cents (\$.50) per wheel that is in contact with the ground on each vehicle subject to a registration fee pursuant to this section.

C. Application for registration of a bus pursuant to this section shall be made in the form prescribed by the division and shall be accompanied by an affidavit that the bus will be used exclusively for the transportation of agricultural laborers. Upon registration, the bus is exempt from tariff-filing requirements of the public regulation commission."

Section 17. Section 66-6-9 NMSA 1978 (being Laws 1978, Chapter 35, Section 344) is amended to read:

"66-6-9. FEE FOR FERTILIZER TRAILERS.--In lieu of the registration fee provided for in Section 66-6-3 NMSA 1978, the division shall collect a registration fee of seven dollars (\$7.00) for each trailer used on the highways of this state by any commercial fertilizer company solely for the delivery or distribution of liquid fertilizer to a farmer; provided the trailer has an empty weight not in excess of three thousand five hundred pounds."

Section 18. Section 66-6-10 NMSA 1978 (being Laws 1978, Chapter 35, Section 345, as amended) is amended to read:

"66-6-10. REGISTRATION FEES FOR MANUFACTURED HOMES AND TRAVEL TRAILERS--DIVISION TO NOTIFY COUNTY ASSESSOR OF MANUFACTURED HOME REGISTRATION.--

A. For the registration of each manufactured home, the division shall collect a fee of seven dollars (\$7.00).

B. The division shall compile and transmit to each county assessor each year a list of the manufactured homes that are registered with the division showing the assessor's county as the principal location of the manufactured home. The listing shall include all data pertinent to and necessary for the county assessor to value the manufactured homes in accordance with valuation rules promulgated by the property tax division pursuant to Section 7-36-26 NMSA 1978. The listing required by this subsection shall be transmitted no later than thirty days following the close of the annual registration process and shall be supplemented no less often than every thirty days to provide information to the appropriate county assessors on registrations occurring throughout the year.

C. At the time a person registers a manufactured home and pays the fee required by this section, the person shall be notified in writing by the division that the information required by Subsection B of this section will be furnished to the county assessor of the county of the principal location of the manufactured home and that the manufactured home is subject to property taxation under the Property Tax Code."

Section 19. Section 66-6-12 NMSA 1978 (being Laws 1978, Chapter 35, Section 347) is amended to read:

"66-6-12. FEES FOR SCHOOL BUSES.--

A. Registration fees for school buses used solely for the purpose of transportation of school children and other school activities shall be seven dollars (\$7.00) a year.

B. The application for registration of a school bus shall be accompanied by the certificate of the director of transportation of the public education department stating that the vehicle is used solely and exclusively as a school bus. A passenger car shall not be considered a school bus for the purposes of this section."

Section 20. Section 66-6-23.1 NMSA 1978 (being Laws 1999, Chapter 49, Section 8) is amended to read:

"66-6-23.1. FORMULAIC DISTRIBUTION.--

A. The balance from Section 66-6-23 NMSA 1978 shall be transferred or distributed by the state treasurer on or before the last day of the month next after its receipt, as follows:

(1) seventy-four and sixty-five hundredths percent shall be distributed to the state road fund;

(2) seven and six-tenths percent shall be transferred to each county in the proportion, determined by the department in accordance with Subsection B of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties;

(3) seven and six-tenths percent shall be transferred to the counties, with each county receiving an amount equal to the proportion, determined by the secretary of transportation in accordance with Subsection D of this section, that the mileage of public roads maintained by the county is to the total mileage of public roads maintained by all counties of the state. Amounts distributed to each county in accordance with this paragraph shall be credited to the respective county road fund and be used for the improvement and maintenance of the public roads in the county and to pay for the acquisition of rights of way and material pits. For this purpose, the board of

county commissioners of each of the respective counties shall certify by April 1 of each year to the secretary of 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 department of transportation, the boards of county commissioners of the various counties may use or designate any of the funds provided in this paragraph for a federal aid program;

(4) four and six-hundredths percent shall be allocated among the counties in the proportion, determined by the department in accordance with Subsection B of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the sum of net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, determined for the incorporated municipality is to the sum of net taxable value plus assessed value determined for all incorporated municipalities within the county. Amounts transferred to incorporated municipalities pursuant to the provisions of this paragraph shall be used for the construction, maintenance and repair of streets within the municipality and for payment of paving assessments against property owned by federal, county or municipal governments. In a county in which there are no incorporated municipalities, the amount allocated pursuant to this paragraph shall be transferred to the county government road fund and used in accordance with the provisions of Paragraph (3) of this subsection; and

(5) six and nine-hundredths percent shall be allocated among the counties in the proportion, determined by the department of finance and administration in accordance with Subsection C of this section, that the registration fees for vehicles in that county are to the total registration fees for vehicles in all counties. The amount allocated to each county shall be transferred to the county and incorporated municipalities within the county in the proportion, determined by the department of finance and administration in accordance with Subsection B of this section, that the computed taxes due for the county and each incorporated municipality within the county bear to the total computed taxes due for the county and incorporated municipalities within the county. For the purposes of this paragraph, the term "computed taxes due" for a jurisdiction means the sum of the net taxable value, as that term is defined in the Property Tax Code, plus the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and in the Oil and Gas Production Equipment Ad Valorem Tax Act, for that jurisdiction multiplied by an average of the rates for residential and nonresidential property imposed for that jurisdiction pursuant to Subsection B of Section 7-37-7 NMSA 1978.

B. To carry out the provisions of this section, during the month of June of each year:

(1) the department shall determine and certify to the department of finance and administration the proportions that the department is required to determine pursuant to Subsection A of this section using information for the preceding calendar year on the number of vehicles registered in each county based on the address of the owner or place where the vehicle is principally located, the registration fees for the vehicles registered in each county, the total number of vehicles registered in the state and the total registration fees for all vehicles registered in the state; and

(2) the department of finance and administration shall determine the proportions that the department of finance and administration is required to determine pursuant to this subsection based upon the net taxable value, as that term is defined in the Property Tax Code, and the assessed value, as that term is used in the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act, for the preceding tax year and the tax rates imposed pursuant to Subsection B of Section 7-37-7 NMSA 1978 in the preceding September.

C. By June 30 of each year, the department of finance and administration shall determine the appropriate percentage of money to be transferred to each county and municipality for each purpose in accordance with Subsection A of this section based upon the proportions determined by or certified to the department of finance and administration. The percentages determined shall be used to compute the amounts to be transferred to the counties and municipalities during the succeeding fiscal year.

D. The board of county commissioners of each of the respective counties shall, by April 1 of every year, certify reports to the secretary of transportation of the total mileage of public roads maintained by each county as of April 1 of every year; provided that in their reports, the boards of county commissioners shall identify each of the public roads maintained by them by name, route and location. By July 1 of every year, the secretary of transportation shall verify the reports of the counties and revise, if necessary, the total mileage of public roads maintained by each county. The mileage verified by the secretary of transportation shall be the official mileage of public roads maintained by each county. Distribution of amounts to a county for road purposes shall be made in accordance with this section.

E. If a county has not made the required mileage certification pursuant to Section 67-3-28.3 NMSA 1978 by April 1 of any year, the secretary of transportation shall estimate the mileage maintained by those counties for the purpose of making distribution to all counties, and the amount calculated to be distributed each month to those counties not certifying mileage shall be reduced by one-third each month for that fiscal year, and that amount not distributed to those counties shall be distributed equally to all counties that have certified mileages."

Section 21. Section 66-7-413 NMSA 1978 (being Laws 1978, Chapter 35, Section 484, as amended by Laws 2003, Chapter 141, Section 4 and by Laws 2003, Chapter 142, Section 23 and by Laws

2003, Chapter 359, Section 42 and also by Laws 2003, Chapter 361, Section 1) is amended to read:

"66-7-413. PERMITS FOR EXCESSIVE SIZE AND WEIGHT--SPECIAL NOTIFICATION REQUIRED ON MOVEMENT OF MANUFACTURED HOMES.--

A. The department of public safety and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 on a highway under the jurisdiction of the state transportation commission or local authorities. Except for the movement of manufactured homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route to be traversed, the type of load to be transported and any other restrictions or conditions deemed necessary by the body granting the permit. In every other case, the permit shall be issued for a single trip and may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection to any peace officer. It is a misdemeanor for a person to violate a condition or term of the special permit.

B. The department of public safety shall charge and collect, when the movement consists of a 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 department of public safety shall promulgate rules in accordance with the State Rules Act pertaining to safety practices, liability insurance and equipment for escort vehicles provided by the motor carrier himself and for escort vehicles provided by a private business in this state.

(1) The department of public safety shall provide the escort personnel with a copy of applicable rules and shall inspect the escort vehicles for the safety equipment required by the rules. If the escort vehicles and personnel meet the requirements set forth in the rules, the department of public safety shall issue the special permit, but shall not charge an escort fee. If the motor carrier provides its own escort vehicles and personnel, the department of public safety shall require that the motor carrier have a warrant issued by the public regulation commission.

(2) The movement of vehicles upon the highways of this state requiring a special permit and required to use an escort of the type noted in Paragraph (1) of this subsection is subject to department of public safety authority and inspection at all times.

(3) The department of transportation shall conduct engineering investigations and engineering inspections to determine which four-lane highways are safe for the operation or movement of manufactured homes without an escort. After making that determination, the department of transportation shall hold public hearings in the area of the state affected by the determination, after which it may adopt rules designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If a portion of such a four-lane highway lies within the boundaries of a municipality, the department of transportation, after obtaining the approval of the municipal governing body, shall include such portions in its rules.

D. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the department of public safety for a period not to exceed one year for a fee of two hundred fifty dollars (\$250). The 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 distance traveled by the vehicle or combination of vehicles is within a one hundred twenty-five mile radius of the origin of the trip. Utility service vehicles, operating with special permits pursuant to this subsection, shall be exempt from prohibitions or restrictions relating to hours or days of operation or restrictions on movement because of poor weather conditions.

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 by the department of public safety for a single vehicle for a fee of twenty-five dollars (\$25.00) plus the product of two and one-half cents (\$.025) for each two thousand pounds in excess of eighty-six thousand four hundred pounds or major fraction thereof multiplied by the number of miles to be traveled by the vehicle or combination of vehicles on the highways of this state. ~~[The department of public safety shall issue a special permit within twenty-four hours of the department's receipt of a completed application for the special permit.]~~

F. If a vehicle for which a permit is issued pursuant to this section is a manufactured home, the department of public safety or local highway authority issuing the permit shall furnish the following information to the property tax division of the taxation and revenue department, which shall forward the information:

(1) to the county assessor of a county from which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to if within the same county, the name of the owner of the manufactured home and the identification and registration numbers of the manufactured home;

(2) to the county assessor of any county in this state to which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to, the name of the owner of the manufactured home and the registration and identification numbers of the manufactured home; and

(3) to the owner of a manufactured home having a destination in this state, notification that the information required in Paragraphs (1) and (2) of this subsection is being given to the respective county assessors and that manufactured homes are subject to property taxation.

G. Except as provided in Subsection H of this section, if the movement of a manufactured home originates in this state, a permit shall not be issued pursuant to Subsection F of this section until the owner of the manufactured home or the authorized agent of the owner obtains and presents to the department of public safety proof that a certificate has been issued by the county assessor or treasurer of the county in which the manufactured home movement originates showing that either:

(1) all property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid, except for manufactured homes located on an Indian reservation; or

(2) liability for property taxes on the manufactured home does not exist for the current tax year or a past tax year, except for manufactured homes located on an Indian reservation.

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 the dealer's inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or the dealer's authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of Subsection G of this section whether the destination is the business location of a dealer or some other destination.

I. A permit shall not be issued pursuant to this section for movement of a manufactured home whose width exceeds eighteen feet with no more than a six-inch roof overhang on the left side or twelve inches on the right side in addition to the eighteen-foot width of the manufactured home. Manufactured homes exceeding the limitations of this section shall only be moved on dollies placed on the front and the rear of the structure.

J. The secretary of public safety may by rule provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes. The cost of a permit shall not be less than twenty-five dollars (\$25.00).

K. The secretary of public safety may provide by rule for dealers of implements of husbandry to self-issue permits for the movement of certain sizes of implements of husbandry from the lot or business location of the dealer over specific routes with specific escort requirements, if necessary, to a destination designated by an owner-purchaser or for purposes of a working demonstration on the property of a

proposed owner-purchaser. The department of public safety shall charge a fee for each self-issued permit not to exceed fifteen dollars (\$15.00).

L. A private motor carrier requesting an oversize or overweight permit shall provide proof of insurance in at least the following amounts:

(1) bodily injury liability, providing:

(a) fifty thousand dollars (\$50,000) for each person; and

(b) one hundred thousand dollars (\$100,000) for each accident; and

(2) property damage liability, providing twenty-five thousand dollars (\$25,000) for each accident.

M. A motor carrier requesting an oversize permit shall produce a copy of a warrant or a single state registration receipt as evidence that the motor carrier maintains the insurance minimums prescribed by the public regulation commission.

N. The department of public safety may provide by rule the time periods during which a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 may be operated or moved by a motor carrier on a highway under the jurisdiction of the state transportation commission or local authorities.

O. Revenue from fees for special permits authorizing vehicles and loads of excessive size or weight to operate or move upon a highway under the jurisdiction of the state transportation commission or local authorities shall be collected for the department of transportation and transferred to the state road fund."

Section 22. Section 66-7-413.4 NMSA 1978 (being Laws 2001, Chapter 20, Section 2) is amended to read:

"66-7-413.4. PERMITS FOR EXCESSIVE WEIGHT.--

A. In addition to the authority granted in Section 66-7-413 NMSA 1978, the motor transportation division of the department of public safety may issue special permits authorizing an increase of up to twenty-five percent in axle weight for liquid hauling tank vehicles whenever the liquid hauling tank vehicles would have to haul less than a full tank under the maximum weights authorized in Section 66-7-409 and 66-7-410 NMSA 1978. A special permit under this section may be issued for a single trip or for a year. The fee for the permits shall be thirty-five dollars (\$35.00) for a single-trip permit and one hundred twenty dollars (\$120) for an annual permit. Revenue from the permit fee shall be used to build, maintain, repair or reconstruct the highways and

bridges of this state. Revenue from the permit shall be collected for the department of transportation and transferred to the state road fund.

B. The special permits authorized by this section shall not be valid for transportation of excessive weights on the interstate system as currently defined in federal law or as that system may be defined in the future. A special permit issued pursuant to this section shall not be valid for gross vehicle weights in excess of eighty-six thousand four hundred pounds or for a combination vehicle.

C. If the federal highway administration of the United States department of transportation gives official notice that money will be withheld or that this section violates the grandfather provision of 23 USCA 127, the secretary may withdraw all special permits and discontinue issuance of all special permits authorized in this section until such time that final determination is made. If the final determination allows the state to issue the special permits without sanction of funds or weight tables, the secretary shall reissue the special permits previously withdrawn and make the special permits available pursuant to this section."

Section 23. Section 67-3-59.2 NMSA 1978 (being Laws 1999 (1st S.S.), Chapter 9, Section 3) is amended to read:

"67-3-59.2. HIGHWAY INFRASTRUCTURE FUND CREATED--PURPOSE.--

A. The "highway infrastructure fund" is created in the state treasury and shall be administered by the department. The fund shall consist of money from various fees and taxes distributed to the fund. Earnings on investment of the fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall not revert and shall remain in the fund for the purposes authorized in this section.

B. Money in the fund shall be used solely for acquisition of rights of way or planning, design, engineering, construction or improvement of state highway projects authorized pursuant to the provisions of Laws 1998, Chapter 84, Subsections C through H of Section 1 of Chapter 85 of Laws 1998 and Sections 27 and 28 of this 2003 act and is appropriated to the department for expenditure for those purposes.

C. The taxes and fees required by law to be distributed to the highway infrastructure fund may be pledged for the payment of state highway bonds issued pursuant to Sections 67-3-59.1 and 67-3-59.3 NMSA 1978 and Section 26 of this 2003 act for the highway projects authorized in the laws specified in Subsection B of this section."

Section 24. A new section of Chapter 67, Article 3 NMSA 1978, Section 67-3-59.3 NMSA 1978, is enacted to read:

"67-3-59.3. STATE TRANSPORTATION PROJECT BONDS--ISSUANCE--
PROCEDURES-- APPROVAL.--

A. In order to provide funds to finance state transportation projects, the New Mexico finance authority, when directed by the state transportation commission, is authorized, subject to the limitations of this section and Section 26 of this 2003 act, to issue bonds from time to time, payable from:

(1) federal funds not otherwise obligated that are paid into the state road fund;

(2) proceeds of the collection of taxes and fees that are required to be paid into the state road fund and not otherwise pledged exclusively to the payment of outstanding bonds and debentures; and

(3) taxes and fees required by law to be paid into the highway infrastructure fund.

B. The New Mexico finance authority, when directed by the state transportation commission, may issue bonds to refund other bonds issued by or at the direction of the state transportation commission pursuant to this section or Section 67-3-59.1 NMSA 1978 by exchange or current or advance refunding.

C. In consultation with the state transportation commission, the New Mexico finance authority shall determine all terms, covenants and conditions of the bonds; provided that the project design life of a project meets or exceeds the life of the bond issued for that project, and each series of bonds shall be sold, executed and delivered in accordance with the provisions of the New Mexico Finance Authority Act. The New Mexico finance authority may enter into interest rate exchange agreements, interest rate swap contracts, insurance agreements, remarketing agreements and any other agreements deemed necessary in connection with the issuance of the bonds[~~without obtaining the approval of such agreements by any agency or board of the state, notwithstanding the provisions of any other law of the state.~~

D. Proceeds of the bonds and amounts on deposit in the state road fund and the highway infrastructure fund may be used to pay expenses incurred in the preparation, administration, issuance and sale of the bonds and, together with the earnings on the proceeds of the bonds, may be used to pay rebate, penalty, interest and other obligations relating to the bonds and the proceeds of the bonds under the Internal Revenue Code of 1986, as amended.

E. This section is full authority for the issuance and sale of the bonds, and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bond for value.

F. The bonds shall be legal investments for a person or board charged with the investment of public funds and may be accepted as security for a deposit of public money and, with the interest thereon, are exempt from taxation by the state and a political subdivision or agency of the state.

G. Any law authorizing the imposition or distribution of taxes or fees paid into the state road fund or the highway infrastructure fund or that affects those taxes and fees shall not be amended or repealed or otherwise directly or indirectly modified so as to impair outstanding bonds secured by a pledge of revenues from those taxes and fees paid into the state road fund or the highway infrastructure fund, unless the bonds have been discharged in full or provisions have been made for a full discharge. In addition, while any bonds issued by the New Mexico finance authority pursuant to the provisions of this section remain outstanding, the powers or duties of the state transportation commission or the authority shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holder of such bonds.

H. In contracting for state transportation projects to be paid in whole or in part with proceeds of bonds authorized by this section, the department shall require that any sand, gravel, caliche or similar material needed for the project shall, if practicable, be mined from state lands. Each contract shall provide that the contractor notify the commissioner of public lands of the need for the material and that, through lease or purchase, the material shall be mined from state lands if:

(1) the material needed is available from state lands in the vicinity of the project;

(2) the commissioner determines that the lease or purchase is in the best interest of the state land trust beneficiaries; and

(3) the cost to the contractor for the material, including the costs of transportation, is competitive with other available material from nonstate lands.

I. Bonds issued pursuant to this section shall be paid solely from federal funds not otherwise obligated and taxes and fees deposited into the state road fund and the highway infrastructure fund and shall not constitute a general obligation of the state.

J. For purposes of this section, "state transportation project bonds" includes only those bonds issued pursuant to this section and excludes transportation bonds as defined in Section 67-3-72 NMSA 1978."

Section 25. Section 67-3-65.1 NMSA 1978 (being Laws 1983, Chapter 211, Section 40) is amended to read:

"67-3-65.1. STATE ROAD FUND DISTRIBUTION.--The amounts distributed to the state road fund pursuant to Sections

7-1-6.10, 66-6-23 and 66-6-23.1 NMSA 1978 shall be used for maintenance, construction and improvement of state transportation projects and to meet federal allotments under the federal-aid road laws, but sufficient money from the state road fund shall be set aside each year by the state treasurer to pay the principal and interest due each year on state transportation revenue bonds issued to anticipate the collection of this revenue."

Section 26. STATE TRANSPORTATION PROJECT BONDS-- AUTHORIZATION AND APPROPRIATION-PRIORITIES-- CRITERIA-- REPORTS.--

A. It is the intent of the legislature to authorize the New Mexico finance authority to issue state transportation bonds for projects specified in Sections 27 and 28 of this 2003 act in the total aggregate principal amount of one billion five hundred eighty-five million dollars (\$1,585,000,000) in annual increments of three hundred fifty million dollars (\$350,000,000) [~~as appropriated by the legislature each year~~], beginning with the appropriation for 2003 provided for in Subsection B of this section.

B. After the effective date of this act, the state transportation commission may authorize the New Mexico finance authority to issue and sell state transportation bonds [~~in an amount not to exceed three hundred fifty million dollars (\$350,000,000) for the 2003 annual increment~~]. The proceeds of the bonds are appropriated to the department of transportation for projects listed in Sections 27 and 28 of this 2003 act.

C. [~~For the 2004 and subsequent annual appropriation requests,~~] the department of transportation shall provide to the legislature and the governor a report on transportation priorities and progress. The report shall include:

(1) justification of priority ranking of projects [~~for which the department is seeking authorization and appropriation~~], including the following for each highway project enumerated in Sections 27 and 28 of this 2003 act:

(a) traffic counts and accident rates and the expected improvements to traffic flow, health and safety;

(b) the ranking of the pavement and substructure conditions;

(c) an assessment of economic development impacts; and

(d) other information deemed significant by the department;

(2) the expected life of the proposed improvement;

(3) sufficiency of revenue to pay the principal and interest of all outstanding and proposed bonds based on a five- and twenty-year financial forecast for

the state road fund and the effect of the bond program on the department's construction and maintenance program;

(4) status report of ongoing major construction;

(5) the relationship between the requested projects and the statewide transportation improvement program; and

(6) any other information requested by the legislature or the executive.

D. The department of transportation shall provide quarterly progress reports to the department of finance and administration and the legislative finance committee.

E. The department of transportation shall adopt and enforce rules with the goal that no less than seventy percent of the work force of an exclusively state-funded project authorized in Sections 27 and 28 of this 2003 act shall be residents of New Mexico.

Section 27. AUTHORIZED TRANSPORTATION PROJECTS.--

A. The department of transportation may use the net proceeds of state transportation project bonds issued by the New Mexico finance authority pursuant to Section 67-3-59.3 NMSA 1978 and Section 26 of this 2003 act for the following transportation projects:

(1) for the reconstruction of the interchange at the intersection of Coors boulevard and interstate 40 in Albuquerque for which the department of transportation may use a design and build delivery system, notwithstanding the provisions of Subsection A of Section 13-1-119.1 NMSA 1978;

(2) for the reconstruction and improvement of the Interstate 25 corridor from Belen to Santa Fe to accommodate public transportation elements including commuter rail;

(3) for the reconstruction and improvement of United States highway 54 from Tularosa to Santa Rosa;

(4) for the reconstruction and improvement of United States highway 64/87 from Raton to Clayton;

(5) for the reconstruction and improvement of United States highway 491 from Tohatchi to Shiprock;

(6) for the reconstruction and improvement of United States highway 491 from Shiprock to the Colorado state line;

(7) for the reconstruction and improvement of United States highway 62/180 from the Texas state line to Carlsbad;

(8) for the reconstruction and improvement of various sections of interstate 40 from Newkirk to Tucumcari;

(9) for the reconstruction and improvement of various sections of interstate 40 between Gallup and the Arizona state line;

(10) for the reconstruction and improvement of various sections of interstate 40 between Thoreau and Grants;

(11) for the reconstruction and improvement of interstate 40 in Albuquerque from Carlisle boulevard to Juan Tabo boulevard;

(12) for the reconstruction and improvement of interstate 40 east of Albuquerque from Carnuel to Sedillo;

(13) for the reconstruction and improvement of interstate 40 in Albuquerque from Central avenue to Coors boulevard;

(14) for the reconstruction and improvement of interstate 40 at various locations from the Pueblo of Laguna to Mesita;

(15) for the reconstruction and improvement of interstate 40 from Canoncito to Rio Puerco;

(16) for the reconstruction and improvement of interstate 40 in Moriarty from the west interchange to the east interchange;

(17) for the reconstruction and improvement of interstate 10 from Lordsburg to the junction of state highway 146;

(18) for the reconstruction and improvement to accommodate public transportation elements of interstate 10 from the Texas state line to Las Cruces;

(19) for the reconstruction and improvement of United States highway 84/285 from Pojoaque to Espanola;

(20) for the reconstruction and improvement of state highway 45 in Albuquerque from the junction above interstate 25 north to Central avenue;

(21) for the reconstruction and improvement of state highway 128 from state highway 31 to the Texas state line;

(22) for the reconstruction and improvement of state highway 11 from Columbus to Deming;

(23) for the reconstruction and improvement of United States highway 60 from Abo to Willard;

(24) for the reconstruction and improvement of United States highway 56 from Springer east to Abbott;

(25) for the reconstruction and improvement of United States highway 380 west of Tatum east to the Texas state line;

(26) for the reconstruction and improvement of various sections of United States highway 380 from Capitan to Hondo;

(27) for the reconstruction and improvement of various sections of United States highway 64 from the San Juan-Rio Arriba county line to the junction of United States highway 84;

(28) for the reconstruction and improvement of state highway 8 from Eunice to United States highway 62;

(29) for the reconstruction and improvement of United States highway 285 from Encino to Clines Corners;

(30) for the reconstruction and improvement of various sections of United States highway 84 from interstate 25 south to Dilia;

(31) for the reconstruction and improvement of various sections of state highway 26 between Deming and Hatch;

(32) for the reconstruction and improvement of state highway 83 from Lovington to the junction of state highway 132;

(33) for the reconstruction and improvement of state highway 209 from NM 268 to Grady;

(34) for the reconstruction and improvement of United States highway 84 from Fort Sumner to Santa Rosa;

(35) for the reconstruction and improvement of various sections of United States highway 62/180 from the Texas state line to the Lea-Eddy county line;

(36) for the reconstruction and improvement of United States highway 285 from Clines Corners to Lamy;

(37) for the reconstruction and improvement of United States highway 180 from Deming to Bayard; and

(38) for improvements to the physical facilities of the department of transportation.

B. The New Mexico finance authority may issue and sell state transportation project bonds for the state transportation projects authorized in this section when directed by the state transportation commission and when the commission certifies a need for issuance of the bonds for the projects.

C. Any unexpended or unencumbered balance after the completion of the projects authorized in this section shall revert to the state road fund.

D. For purposes of this section, "construction", "reconstruction", "rehabilitation" and "improvement" include planning, designing, engineering, constructing and acquiring rights of way.

Section 28. AUTHORIZED TRANSPORTATION PROJECTS-- MATCHING FUNDS.--

A. The department of transportation may use the net proceeds of state transportation project bonds issued by the New Mexico finance authority pursuant to Section 67-3-59.3 NMSA 1978 and Section 26 of this 2003 act for the following transportation projects subject to the provisions of Subsection B of this section:

(1) for the Rio Bravo boulevard extension and interchange construction to access Mesa del Sol in Albuquerque and Bernalillo county; and

(2) for the reconstruction of an interchange at interstate 40 and West Central avenue in Albuquerque and Bernalillo county.

B. ~~[In accordance with an applicable annual legislative appropriation,]~~ the New Mexico finance authority may issue and sell state transportation project bonds for six million dollars (\$6,000,000) per project specified in Subsection A of this section for the state transportation projects authorized in this section if:

(1) directed by the state transportation commission;

(2) the state transportation commission certifies a need for issuance of the bonds for the projects; and

(3) prior to issuing bonds, the political subdivision benefiting from the project deposits local matching funds with the state transportation commission for the authorized project [~~in an amount that, when added to the net proceeds of the bonds, would be adequate to complete the project~~].

C. The amount of the local match for projects authorized by this section shall be determined by a sliding scale based on the political subdivision's financial capacity to pay a portion of the project from local resources pursuant to rules promulgated by the state transportation commission.

Section 29. TEMPORARY PROVISION--OUTSTANDING STATE HIGHWAY REVENUE BONDS.--

A. Nothing in this act shall be deemed to impair state highway revenue bonds previously issued by the state transportation commission and outstanding on the effective date of this act.

B. If required by the terms, covenants and provisions of state highway revenue bonds previously issued by the state transportation commission and outstanding on the effective date of this act, additional bonds issued by the state transportation commission or the New Mexico finance authority when directed by the state transportation commission pursuant to this act shall contain any required terms, covenants and provisions required to avoid impairment of the previously issued bonds.

Section 30. REPEAL.--Section 7-15A-10 NMSA 1978 (being Laws 1988, Chapter 24, Section 9, as amended) is repealed.

Section 31. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 10, 21, 22 and 30 of this act is July 1, 2004.

B. The effective date of Sections 11 through 20 of this act is March 1, 2004.

HOUSE TAXATION AND REVENUE COMMITTEE

SUBSTITUTE FOR HOUSE BILL 15