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HOUSE BILL 1055

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Danice Picraux

AN ACT

RELATING TO DISABILITIES; MAKING TECHNICAL CHANGES TO STATUTORY LANGUAGE TO REFLECT CURRENT USE OF TERMS ABOUT PERSONS WITH DISABILITIES; CHANGING FUNDING LANGUAGE FOR THE DISABILITY FUND; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1995.

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

Section 1. Section 3-1-5 NMSA 1978 (being Laws 1985, Chapter 208, Section 2, as amended) is amended to read:

"3-1-5. PETITIONS--EXAMINATIONS OF SIGNATURES--PURGING-- JUDICIAL REVIEW.--

A. All petitions, filing of petitions, verification of petitions and all other acts to be performed by petitioners, public officers or employees, regarding only those petitions [which] that trigger a municipal special or regular election as

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1 authorized in the Municipal Code or otherwise authorized by
2 law, shall comply with the terms of this section, except as
3 otherwise expressly provided by law.

4 B. Each page or group of pages of a petition shall
5 be accepted for filing by a municipal clerk, a county clerk, a
6 governing body or a board of county commissioners only if:

7 (1) the municipal clerk has approved the form
8 of petitions to be filed with the municipality prior to
9 circulation of the petition; or

10 (2) the county clerk has approved the form of
11 petitions to be filed with the county prior to circulation of
12 the petition; and

13 (3) each page of the petition to be filed
14 contains the approval or facsimile approval of the municipal or
15 county clerk and the petition heading and penalty statement are
16 legible when submitted for filing.

17 C. The municipal or county clerk shall approve a
18 petition as to form if the proposed petition form contains:

19 (1) a heading that complies with a particular
20 form of heading required by law; or

21 (2) a heading that clearly conveys the purpose
22 for signing the petition if no particular form of heading is
23 required by law;

24 (3) a place for the person signing the
25 petition to write the date ~~[his]~~ and the person's name

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1 (printed), [~~his~~] address and [~~his~~] signature, unless other
2 requirements are mandated by law and then the petition shall
3 comply with those requirements; and

4 (4) a statement that any person knowingly
5 providing or causing to be provided any false information on a
6 petition, forging a signature or signing a petition when that
7 person knows [~~he~~] that person is not a qualified elector in the
8 municipality is guilty of a fourth degree felony.

9 D. The requirements of Subsection B of this section
10 shall be deemed complied with if an original form of petition
11 is submitted to a municipal or county clerk for approval prior
12 to circulation and after approval by the clerk that original
13 form is reproduced by photocopying or other similar means so
14 that the form and clerk's approval are unchanged from the
15 original and are legible on each page of the petition to be
16 filed.

17 E. A petition filed with a municipal clerk, a
18 county clerk, a governing body or a board of county
19 commissioners shall include all individual pages of a petition
20 complying with the provisions of this section, regardless of
21 whether the pages are filed singly or in a group. Pages
22 complying with the provisions of this section may be filed at
23 different times so long as filing is within the time period
24 allowed by law for the filing of the particular petition to be
25 filed. If no time period is established by law, petition

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1 signatures may not span a period of time greater than sixty
2 days from the date of the earliest signature on the petition,
3 and the petition shall be filed within sixty-five days from the
4 date of the earliest signature on the petition.

5 F. Upon approval of a proposed petition as to form,
6 the municipal clerk shall notify the county clerk of the
7 approval, and the county clerk shall furnish a current voter
8 registration list of qualified electors entitled to vote in
9 municipal elections to the municipal clerk within fourteen days
10 of the notification.

11 G. When a petition is filed with a municipal clerk,
12 a county clerk, a governing body or a board of county
13 commissioners, the governing body or board of county
14 commissioners shall either certify the petition as valid or
15 order an examination of the petition and the names, addresses
16 and signatures on the petition.

17 H. When an examination of the petition and the
18 names, addresses and signatures on the petition is ordered, the
19 municipal clerk, county clerk, governing body or board of
20 county commissioners shall:

21 (1) resolve issues of residency and major
22 infractions in accordance with the rules set forth in the
23 Municipal Election Code;

24 (2) determine the minimum number of valid
25 names, addresses and signatures, as mandated by law, that must

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1 be contained in the particular petition filed in order for it
2 to be declared a valid petition;

3 (3) examine the petition and the names,
4 addresses and signatures on the petition, purge from the
5 petition the signature of any person who is not shown as a
6 qualified elector of the municipality on the list of registered
7 voters provided by the county clerk, purge any signature
8 [~~which~~] that is a forgery or [~~which~~] that is illegible, purge
9 any signature that appears more than once or [~~which~~] that
10 cannot be matched to the name, address and signature as shown
11 on the voter registration lists and the original affidavit of
12 registration, purge the signature of any person who has not
13 signed within the time limits set by law and purge the
14 signature of any person who does not meet the qualifications
15 for signing the petition as prescribed by law; and

16 (4) certify, no later than ten days after the
17 petition is filed or after the expiration of the period within
18 which the petition can be filed as prescribed by law, whichever
19 occurs last, whether the petition contains the minimum number
20 of valid names, addresses and signatures as mandated by law.

21 I. Nothing in this section shall preclude a
22 [~~handicapped~~] person with a disability or an illiterate person
23 from causing another person to sign a petition on [~~the~~
24 ~~handicapped~~] a person with a disability's or an illiterate
25 person's behalf, so long as the person signing for the

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1 ~~[handicapped]~~ person with a disability or illiterate person
2 executes an affidavit acknowledged before a notary public that
3 ~~[he]~~ the person is authorized to sign the petition for the
4 ~~[handicapped]~~ person with a disability or illiterate person.
5 In order for the signature on behalf of the ~~[handicapped]~~
6 person with a disability or illiterate person to be counted and
7 not purged, the original affidavit shall be submitted along
8 with the petition containing the signature on behalf of the
9 illiterate person or ~~[handicapped person's signature]~~ person
10 with a disability.

11 J. If the petition is certified as valid pursuant
12 to Subsection G of this section or is certified as containing
13 in excess of the minimum number of valid names, addresses and
14 signatures mandated by law, then such certification shall be
15 recorded as part of the minutes at the next meeting of the
16 governing body or the board of county commissioners.

17 K. If the petition is certified as containing less
18 than the minimum number of valid names, addresses and
19 signatures mandated by law, then the municipal clerk, county
20 clerk, governing body or board of county commissioners shall:

21 (1) cause the names, addresses and signatures
22 ~~[which]~~ that were purged from the petition to be posted in the
23 municipal or county clerk's office no later than on the day the
24 petition is certified;

25 (2) determine the total number of people

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1 signing the petition, the number purged, the number [~~which~~
2 that were not purged and the minimum number of valid names,
3 addresses and signatures required by law for such a petition
4 and post this information along with and at the same time as
5 the posting required in Paragraph (1) of this subsection;

6 (3) publish once, pursuant to the provisions
7 of Subsection J of Section 3-1-2 NMSA 1978, within one week of
8 the certification, the information compiled pursuant to
9 Paragraphs (1) and (2) of this subsection; and

10 (4) cause the information compiled pursuant to
11 Paragraphs (1) and (2) of this subsection and the date and
12 place of publication pursuant to Paragraph (3) of this
13 subsection to be recorded as part of the minutes at the next
14 meeting of the governing body or the board of county
15 commissioners after publication has occurred.

16 L. The following rules shall govern reinstatement
17 of purged signatures:

18 (1) within ten days after the petition is
19 certified as containing less than the minimum number of valid
20 names, addresses and signatures mandated by law, any person
21 whose signature has been purged from a petition may present
22 evidence to the clerk to show that [~~his~~] the person's signature
23 has been wrongfully purged;

24 (2) if the clerk fails to reinstate that
25 person's signature within three days of demand, then that

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1 person may, within ten days of the clerk's refusal to
2 reinstate, petition the district court for an order to
3 reinstate [~~his~~] the person's signature on the petition. Upon a
4 prima facie showing by the petitioner of the right to have that
5 person's signature included upon the petition, the district
6 court shall issue an order to the municipal clerk, county
7 clerk, governing body or board of county commissioners to
8 require reinstatement of the signature of the petitioner;

9 (3) within ten days after receiving the order
10 of the district court, the municipal clerk, county clerk,
11 governing body or board of county commissioners shall reinstate
12 the signature of the petitioner on the petition or show cause
13 why the signature of the petitioner has not been reinstated.
14 Upon hearing, if the district court finds that the person whose
15 signature has been purged meets the qualifications for signing
16 the petition, the district court shall make final its order of
17 reinstatement to the municipal clerk, county clerk, governing
18 body or board of county commissioners; and

19 (4) if a sufficient number of signatures are
20 reinstated by the clerk, the district court or both to make the
21 petition valid, then the reinstatement by the clerk or the
22 district court, whichever occurs last, shall be deemed the date
23 of certification of the validity of the petition for the
24 purposes of adopting election resolutions, calling elections or
25 for other matters as provided in the Municipal Code or

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1 otherwise provided by law.

2 M. Any petition that contains an insufficient
3 number of signatures after all signatures have been reinstated
4 pursuant to Subsection L of this section is invalid.

5 N. When a petition governed by this section is
6 filed with the municipal clerk or the governing body of a
7 municipality, the governing body or municipal clerk shall
8 perform or cause to be performed the duties required under this
9 section, except as otherwise prohibited by law. When a
10 petition governed by this section is required to be filed with
11 the county clerk or board of county commissioners, the board of
12 county commissioners or county clerk shall perform or cause to
13 be performed the duties required under this section, except as
14 otherwise prohibited by law.

15 O. Any person or any municipal or county official
16 knowingly violating the provisions of this section, knowingly
17 providing or causing to be provided any false information on a
18 petition or forging a signature or otherwise signing a petition
19 when that person knows [~~he~~] the person is not a qualified
20 elector in the municipality is guilty of a fourth degree
21 felony.

22 P. The provisions of this section shall not be
23 binding upon a municipality to the extent such provisions are
24 inconsistent with or superseded by the terms and provisions of:

25 (1) the charter of a municipality incorporated

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1 by a special act;

2 (2) the charter of a municipality adopted
3 pursuant to Article 10, Section 6 of the constitution of New
4 Mexico;

5 (3) the charter of a municipality adopted
6 pursuant to the Municipal Charter Act; or

7 (4) the charter of a combined municipal
8 organization.

9 Q. Once a petition has been filed with a municipal
10 clerk, a county clerk, a governing body or a board of county
11 commissioners, no name on the petition may be withdrawn except
12 those names purged pursuant to Subsection H of this section."

13 Section 2. Section 3-8-22 NMSA 1978 (being Laws 1985,
14 Chapter 208, Section 30, as amended) is amended to read:

15 "3-8-22. CONDUCT OF ELECTION--ELIGIBILITY FOR
16 ASSISTANCE--ORAL ASSISTANCE FOR LANGUAGE MINORITY VOTERS--AID
17 OR ASSISTANCE TO VOTER MARKING BALLOT--WHO MAY ASSIST
18 VOTER--TYPE OF ASSISTANCE.--

19 A. A voter may request assistance in voting only if
20 ~~[he]~~ the voter is:

21 (1) ~~[blind]~~ visually impaired;

22 (2) ~~[physically disabled]~~ a person with a
23 physical disability;

24 (3) unable to read or write; or

25 (4) a member of a language minority who is

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1 unable to read well enough to exercise the elective franchise.

2 B. When a voter who is eligible for assistance
3 requires assistance in marking [~~his~~] a paper ballot or
4 recording [~~his~~] a vote on a voting machine, the voter shall
5 announce this fact in an audible tone before receiving [~~his~~]
6 the paper ballot or before entering the voting machine.

7 C. The voter's request for assistance shall be
8 noted next to [~~his~~] the voter's name in the signature roster
9 and shall be initialed by the presiding judge.

10 D. After noting the voter's request for assistance
11 in the signature roster, the voter shall be allowed to receive
12 assistance in marking [~~his~~] a paper ballot or recording [~~his~~] a
13 vote on a voting machine.

14 E. A person who swears falsely in order to secure
15 assistance with voting is guilty of perjury.

16 F. If a voter who has requested assistance in
17 marking [~~his~~] a ballot [~~is blind~~] has a visual impairment or
18 physical disability, is unable to read or write or is a member
19 of a language minority who has requested assistance, [~~he~~] the
20 voter may be accompanied into the voting machine by a person of
21 [~~his~~] the voter's own choice; provided that the person shall
22 not be the voter's employer, an agent of that employer, an
23 officer or agent of the voter's union or a candidate whose name
24 appears on the ballot in the election. A member of the
25 precinct board may assist a voter, if requested to do so by

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1 that voter.

2 G. A person who accompanies the voter into the
3 voting booth or voting machine may assist the voter in marking
4 and folding [~~his~~] a paper ballot or recording [~~his~~] a vote on
5 the voting machine. A member of the precinct board who assists
6 a voter shall not disclose the name of any candidate or
7 questions for whom any voter voted.

8 H. Oral assistance shall be made available to
9 assist language minority voters who cannot read sufficiently
10 well to exercise the elective franchise. "Language minority"
11 means a person who is [~~an~~] Native American [~~Indian~~] or of
12 Spanish heritage, and "inability to read well enough to
13 exercise the elective franchise" means inability to read the
14 languages in which the ballot is printed or the inability to
15 understand instructions for operating the voting machine.

16 I. The position of election translator is created.
17 The election translator shall be an additional member of the
18 regular precinct board, unless oral assistance to language
19 minorities can otherwise be rendered by a member of the regular
20 precinct board. The election translator shall be appointed by
21 the municipal clerk in the same manner as other precinct board
22 members are appointed, except that the municipal clerk in
23 appointing Native American [~~Indian~~] election translators shall
24 seek the advice of the pueblo or tribal officials residing in
25 that municipality. The election translator shall take the oath

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1 required of precinct board members and shall meet the same
2 qualifications as other precinct board members.

3 J. Each municipal clerk shall compile and maintain
4 a list of standby election translators to serve in those
5 precincts on election day when the appointed election
6 translator is unavailable for such service."

7 Section 3. Section 3-21-1 NMSA 1978 (being Laws 1965,
8 Chapter 300, Section 14-20-1, as amended by Laws 1995, Chapter
9 170, Section 4 and also by Laws 1995, Chapter 211, Section 3)
10 is amended to read:

11 "3-21-1. ZONING--AUTHORITY OF COUNTY OR MUNICIPALITY.--

12 A. For the purpose of promoting health, safety,
13 morals or the general welfare, a county or municipality is a
14 zoning authority and may regulate and restrict within its
15 jurisdiction the:

- 16 (1) height, number of stories and size of
17 buildings and other structures;
18 (2) percentage of a lot that may be occupied;
19 (3) size of yards, courts and other open
20 space;
21 (4) density of population; and
22 (5) location and use of buildings, structures
23 and land for trade, industry, residence or other purposes.

24 B. The county or municipal zoning authority may:

- 25 (1) divide the territory under its

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1 jurisdiction into districts of such number, shape, area and
2 form as is necessary to carry out the purposes of Sections
3 3-21-1 through 3-21-14 NMSA 1978; and

4 (2) regulate or restrict the erection,
5 construction, reconstruction, alteration, repair or use of
6 buildings, structures or land in each district. All such
7 regulations shall be uniform for each class or kind of
8 buildings within each district, but regulation in one district
9 may differ from regulation in another district.

10 C. All state-licensed or state-operated community
11 residences for ~~[the mentally ill or developmentally disabled]~~
12 persons with a mental or developmental disability and serving
13 ten or fewer persons may be considered a residential use of
14 property for purposes of zoning and may be permitted use in all
15 districts in which residential uses are permitted generally,
16 including particularly residential zones for single-family
17 dwellings.

18 D. A board of county commissioners of the county in
19 which the greatest ~~[portion]~~ amount of the territory of the
20 petitioning village, community, neighborhood or district lies
21 may declare by ordinance that a village, community,
22 neighborhood or district is a "traditional historic community"
23 upon petition by twenty-five percent or more of the registered
24 qualified electors of the territory within the village,
25 community, neighborhood or district requesting the designation.

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1 The number of registered qualified electors shall be based on
2 county records as of the date of the last general election.

3 E. Any village, community, neighborhood or district
4 that is declared a traditional historic [~~village~~] community
5 shall be excluded from the extraterritorial zone and
6 extraterritorial zoning authority of any municipality whose
7 extraterritorial zoning authority extends to include all or a
8 portion of the traditional historic community and shall be
9 subject to the zoning jurisdiction of the county in which the
10 greatest portion of the traditional historic community lies."

11 Section 4. Section 3-51-46 NMSA 1978 (being Laws 1973,
12 Chapter 22, Section 3, as amended) is amended to read:

13 "3-51-46. PASSENGER MOTOR VEHICLE OF [~~DISABLED PERSON~~] A
14 PERSON WITH A DISABILITY--PARKING PRIVILEGE.--Passenger motor
15 vehicles owned by and carrying [~~disabled persons~~] a person with
16 a disability and displaying special registration plates, or
17 passenger motor vehicles carrying persons with severe mobility
18 impairment and displaying parking placards, issued pursuant to
19 Section 66-3-16 NMSA 1978, shall be permitted to park for
20 unlimited periods of time in parking zones restricted as to
21 length of time parking is normally permitted and are exempt
22 from payment of any parking fee of the state or its political
23 subdivisions. The provisions of this section shall prevail
24 over any other law, rule or local ordinance but do not apply to
25 zones where stopping, standing or parking is prohibited, zones

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1 reserved for special types of vehicles, zones where parking is
2 prohibited during certain hours of the day in order to
3 facilitate traffic during those hours when parking is
4 prohibited and zones subject to similar regulation because
5 parking presents a traffic hazard."

6 Section 5. Section 3-60-26 NMSA 1978 (being Laws 1975,
7 Chapter 341, Section 26) is amended to read:

8 "3-60-26. POWERS OF MUNICIPALITY.--Every municipality
9 shall have all the powers necessary or convenient to carry out
10 and effectuate the purposes and provisions of the Community
11 Development Law, including but not necessarily limited to the
12 following powers:

13 A. to undertake and carry out community development
14 projects within its area of operation, including clearance and
15 redevelopment, rehabilitation, conservation and development
16 activities and programs; to make, enter into and execute
17 contracts and other agreements and instruments necessary or
18 convenient to the exercise of its powers under the Community
19 Development Law; and to disseminate slum clearance, prevention
20 of blight and community development information;

21 B. to provide, arrange or contract for the
22 furnishing or repair by any public or private person or agency
23 for services, privileges, works, streets, roads, public
24 utilities, public buildings or other facilities for or in
25 connection with a community development project; to, within its

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1 area of operation, install, acquire, construct, reconstruct,
2 maintain and operate streets, utilities, parks, playgrounds,
3 public buildings, including but not limited to parking
4 facilities, transportation centers, public safety buildings and
5 other public improvements or facilities as may be required by
6 the municipality, the state or a political subdivision of the
7 state; and to agree to any conditions that it may deem
8 reasonable and appropriate [~~which~~] that are attached to federal
9 financial assistance and imposed pursuant to federal law,
10 including conditions relating to the determination of
11 prevailing salaries or wages or compliance with federal and
12 state labor standards, compliance with federal property
13 acquisition policy and the provision of relocation assistance
14 in accordance with federal law, in the undertaking or carrying
15 out of a community development project; and to include in any
16 contract let in connection with the project provisions to
17 fulfill any of these conditions as it may deem reasonable and
18 appropriate; provided, however, that all purchases of personal
19 property shall be in accordance with the [~~Public Purchases Act~~]
20 Procurement Code;

21 C. within its area of operation, to inspect any
22 building or property in any community development area in order
23 to make surveys, appraisals, soundings or test borings and to
24 obtain an order for this purpose from a court of competent
25 jurisdiction in the event inspection is denied by the property

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1 owner or occupant; to acquire by purchase, lease, option, gift,
2 grant, bequest, devise, eminent domain or otherwise any real
3 property or personal property for its administrative or project
4 purposes, together with any improvements thereon; to hold,
5 improve, clear or prepare for redevelopment any such property;
6 to mortgage, pledge, hypothecate or otherwise encumber or
7 dispose of any real property; to insure or provide for the
8 insurance of any real or personal property or operations of the
9 municipality against any risks or hazards, including the power
10 to pay premiums on any such insurance; and to enter into any
11 contracts necessary to effectuate the purposes of the Community
12 Development Law. However, no statutory provisions with respect
13 to the acquisition, clearance or disposition of real property
14 by public bodies shall restrict a municipality or other public
15 body exercising powers [~~hereunder~~] under the Community
16 Development Law in the exercise of its functions with respect
17 to a community development project unless the legislature shall
18 specifically so state;

19 D. to invest any community development project
20 funds held in reserve or sinking funds or other project funds
21 [~~which~~] that are not required for immediate disbursement in
22 property or securities in which municipalities may legally
23 invest funds subject to their control; to redeem bonds as have
24 been issued pursuant to Section [~~30 of the Community~~
25 ~~Development Law~~] 3-60-30 NMSA 1978 at the redemption price

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1 established [~~therein~~] in the bonds or to purchase the bonds at
2 less than redemption price. All bonds so redeemed or purchased
3 shall be canceled;

4 E. to borrow money subject to those procedures and
5 limitations as may be provided in the constitution of New
6 Mexico or the Municipal Code and to apply for and accept
7 advances, loans, grants, contributions and any other form of
8 financial assistance from the federal government, the state,
9 the county or other public body or from any sources, public or
10 private, for the purposes of the Community Development Law; and
11 to give security as may be required and subject to the
12 provisions and limitations of general law except as may
13 otherwise be provided by the Community Development Law and to
14 enter into and carry out contracts in connection therewith. A
15 municipality may include in any contract for financial
16 assistance with the federal government for a community
17 development project conditions imposed pursuant to federal law
18 and [~~which~~] that the municipality may deem reasonable or
19 appropriate and [~~which~~] that are not inconsistent with the
20 purposes of the Community Development Law;

21 F. within its area of operation, to make all plans
22 necessary for the carrying out of the purposes of the Community
23 Development Law and to contract with any person, public or
24 private, in making and carrying out [~~such~~] the plans and to
25 adopt or approve, modify and amend the plans. The plans may

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1 include, without limitation:

2 (1) a general plan for development of the
3 community as a whole;

4 (2) community development plans for specific
5 areas;

6 (3) plans for programs of voluntary or
7 assisted repair and rehabilitation of buildings and
8 improvements;

9 (4) plans for the enforcement of state and
10 local laws, codes and regulations relating to the use of land
11 and the use and occupancy of buildings and improvements and to
12 the compulsory repair, rehabilitation, demolition or removal of
13 buildings and improvements; and

14 (5) appraisals, title searches, surveys,
15 studies and other preliminary plans and work necessary to
16 prepare for the undertaking of community development projects.

17 The municipality is authorized to develop, test and report
18 methods and techniques and carry out demonstrations and other
19 activities for the prevention and the elimination of slums and
20 urban blight and to pay for, accept and utilize grants of funds
21 from the federal government for such purposes;

22 G. to prepare plans and provide reasonable
23 assistance for the relocation of families displaced from a
24 community development area to the extent essential for
25 acquiring possession of and clearing the area or its parts to

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1 permit the carrying out of the community development project;

2 H. to appropriate, under existing authority, the
3 funds and make expenditures necessary to carry out the purposes
4 of the Community Development Law and, under existing authority,
5 to levy taxes and assessments for such purposes; to close,
6 vacate, plan or replan streets, roads, sidewalks, ways or other
7 places; in accordance with applicable law or ordinances, to
8 plan or replan, zone or rezone any part of the municipality or
9 make exceptions from building regulations; and to enter into
10 agreements with a community development agency vested with
11 community development project powers under Section [~~34 of the~~
12 ~~Community Development Law~~] 3-60-34 NMSA 1978, which agreements
13 may extend over any period, notwithstanding any provision or
14 rule of law to the contrary, respecting action to be taken by
15 [~~such~~] the municipality pursuant to any of the powers granted
16 by the Community Development Law;

17 I. within its area of operation, to organize,
18 coordinate and direct the administration of the provisions of
19 the Community Development Law as they apply to the municipality
20 in order that the objective of remedying slum and blighted
21 areas and preventing the causes within the municipality may be
22 most effectively promoted and achieved; and to establish any
23 new office or offices of the municipality or to reorganize
24 existing offices as necessary;

25 J. to acquire real property, in addition to power

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1 elsewhere conferred [~~herein which~~] in the Community Development
2 Law, that is appropriate for the preservation or restoration of
3 historic sites; the beautification of urban land; the
4 conservation of open spaces, natural resources and scenic
5 areas; the provision of recreational opportunities; or is to be
6 used for public purposes; and

7 K. to engage in any or all of the following
8 activities as part of a community development project:

9 (1) acquisition, construction, reconstruction
10 or installation of public works, facilities and site or other
11 improvements, including but not limited to neighborhood
12 facilities, senior citizen centers, historic properties,
13 utilities, streets, street lights, water and sewer facilities,
14 including connections for residential users, foundations and
15 platforms for air-rights sites, pedestrian malls and walkways,
16 parks, playgrounds and other recreation facilities, flood and
17 drainage facilities, parking facilities, solid waste disposal
18 facilities and fire protection or health facilities [~~which~~]
19 that serve designated community development areas;

20 (2) special projects directed to the removal
21 of material and architectural barriers [~~which~~] that restrict
22 the mobility and accessibility of elderly persons and
23 [~~handicapped~~] persons with disabilities;

24 (3) provision of public services in the
25 community development area [~~which~~] that are not otherwise

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1 available in the area, including but not limited to the
2 provisions of public services directed to the employment,
3 economic development, crime prevention, child care, health,
4 drug abuse, special education, welfare or recreation needs of
5 the people who reside in the community development area;

6 (4) payment of the nonfederal share of any
7 federal grant-in-aid program to the municipality [~~which~~] that
8 will be a part of a community development project;

9 (5) payment of relocation costs and assistance
10 to individuals, families, businesses, organizations and farm
11 operations displaced as a direct result of a community
12 development project in accordance with applicable law governing
13 such payment; and

14 (6) payment of reasonable administrative costs
15 and carrying charges related to the planning and execution of
16 community development plans and projects [~~and~~].

17 [~~E. Provided that all~~] Payments made by the municipality
18 or community development agency under the terms of a contract
19 for reconstruction or rehabilitation of private property shall
20 be made from a special fund created for that purpose and shall
21 not be paid directly to [~~such~~] the property owner but shall
22 instead be paid to the contractor by the municipality or agency
23 from such fund upon proper authorization of the property owner
24 and notification that the terms of the contract have been
25 fulfilled. However, all such rehabilitation contracts shall be

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1 between the property owner and contractor after a sealed
2 bidding procedure and award of contract approved by the
3 municipality [~~has~~] have taken place."

4 Section 6. Section 9-7-4.1 NMSA 1978 (being Laws 2004,
5 Chapter 51, Section 1) is amended to read:

6 "9-7-4.1. COMPREHENSIVE STRATEGIC PLAN FOR HEALTH.--

7 A. The department, in conjunction with the New
8 Mexico health policy commission and other state agencies,
9 pursuant to Section 9-7-11.1 NMSA 1978, shall develop a
10 comprehensive strategic plan for health that emphasizes
11 prevention, personal responsibility, access and quality.

12 B. The department shall publish the comprehensive
13 strategic plan for health by July 1, 2004 and July 1 of
14 subsequent even-numbered years. By July 1 of odd-numbered
15 years, the department shall review and update or amend the plan
16 in response to changes and developments.

17 C. The department shall include the legislature,
18 health care providers, consumer and patient advocates, health
19 care financing organizations, managed care organizations, major
20 insurers in the state, the human services department, the
21 children, youth and families department, the [~~state agency on~~]
22 aging and long-term services department, pharmaceutical
23 manufacturers and other stakeholders in its development of the
24 comprehensive strategic plan for health so as to give
25 geographic representation to all areas of the state. The

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1 department shall ensure that public participation and public
2 input are integrated into the planning process. The department
3 shall convene regional meetings on the proposed plan to allow
4 public review and comment, including oral and written
5 testimony, pursuant to the Open Meetings Act.

6 D. The department shall consult with the
7 governments of Indian nations, tribes and pueblos located
8 wholly or partially within New Mexico to include Indian
9 nations, tribes and pueblos in the development of the
10 comprehensive strategic plan for health.

11 E. The department shall report its findings,
12 recommendations and goals in its biennial comprehensive
13 strategic plan for health. The plan shall address the
14 following areas and others that the governor and the
15 legislature may from time to time request:

16 (1) a summary of the state's health care
17 system that includes the financial, administrative and delivery
18 structure in both the public and private sector;

19 (2) the diseases, injuries and risk factors
20 for physical, behavioral and oral health that are the greatest
21 cause of illness, injury or death in the state, with special
22 attention to and recognition of the disparities that currently
23 exist for different population groups;

24 (3) key indicators of and barriers to health
25 care coverage and access, with specific emphasis on reducing

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1 the number of uninsured New Mexicans;

2 (4) the role of the department, other state
3 agencies and the private sector in identifying strategies and
4 interventions to provide health care coverage, access and
5 quality;

6 (5) a continuum of care model that emphasizes
7 prevention, early intervention and health promotion and that
8 includes public health services, emergency medical services,
9 primary care, acute care, specialized care, tertiary care and
10 long-term care;

11 (6) health education, wellness, nutrition and
12 exercise initiatives that emphasize personal health
13 responsibility;

14 (7) workforce initiatives to identify, recruit
15 and retain health care professionals;

16 (8) health care facility infrastructure,
17 capacity, capitalization and financial viability in both the
18 public and private sector;

19 (9) licensing, credentialing, oversight and
20 tracking initiatives designed to improve health care quality
21 and outcome measurements;

22 (10) programs, services and activities
23 designed to address the needs of ~~[the disabled, elderly and~~
24 ~~other special-needs populations]~~ persons who have a disability,
25 are elderly or have special needs;

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1 (11) anticipated demands and challenges on the
2 health care system as the need for long-term care services
3 increases;

4 (12) data and information addressing key
5 health status and system indicators, statistics, benchmarks,
6 targets and goals for the state and comparing it nationally,
7 regionally and to other states of similar size and
8 demographics; provided that individually identifiable health
9 information and other proprietary information is protected as
10 required by state or federal law; and

11 (13) planning and response to public health
12 emergencies, including bioterrorism, pandemic flu, disease
13 outbreaks and other situations that will require a coordinated
14 response by the health care system."

15 Section 7. Section 9-8-13 NMSA 1978 (being Laws 1977,
16 Chapter 252, Section 15, as amended) is amended to read:

17 "9-8-13. AUTHORITY TO CONDUCT SOCIAL SERVICES.--

18 A. The social services division of the department
19 has authority to:

20 (1) establish, administer and supervise child
21 welfare activities and social services to children, including
22 but not limited to:

23 (a) children placed for adoption;
24 (b) homeless, dependent and neglected
25 children;

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1 (c) children in foster family homes or
2 institutions because of dependency or neglect; and

3 (d) children with a physical or mental
4 disability who [~~because of physical or mental defect~~] may need
5 such services;

6 (2) establish, administer and supervise social
7 services for adults;

8 (3) license foster homes; and

9 (4) prescribe such regulations as it deems
10 necessary to enforce and comply with this section and the Child
11 Placement Agency Licensing Act and inspect and require reports
12 from all private institutions, boarding homes, shelter care
13 homes, group homes, foster homes and other facilities providing
14 assistance, care or other direct services to children or aged,
15 blind, disabled or other dependent persons.

16 B. Nothing contained in this section or in the
17 Human Services Department Act shall authorize the secretary:

18 (1) to establish or prescribe standards or
19 regulations for, or otherwise regulate programs for or services
20 to, children in group homes excepting only:

21 (a) the right to inspect and require
22 reports from group homes as may be reasonably necessary to
23 carry out any functions that may otherwise be specifically
24 granted the department by law; and

25 (b) the right to require annual reports

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1 from group homes stating the name, address and telephone number
2 of: 1) their principal offices; 2) their residential
3 facilities for the care of children; 3) the membership of their
4 boards of directors or other governing bodies if any; and 4)
5 the persons in charge of the group homes and of their
6 residential facilities; or

7 (2) to accept any delegation from or to
8 exercise, perform or participate in any functions or duties,
9 including any investigations or inspections, of the department
10 of health or of its secretary that relate to group homes.

11 As used in this subsection, "group home" includes any home
12 the principal function of which is to care for a group of
13 children on a twenty-four-hour-a-day residential basis and that
14 receives no funds as such directly from or through the
15 department and that is a member of any state or national
16 association that requires it to observe standards comparable to
17 pertinent recognized state or national group home standards for
18 the care of children, such as the New Mexico Christian child
19 care association, the national association of homes for
20 children or the council on accreditation or that is certified
21 by any such organization as complying with such standards."

22 Section 8. Section 21-2-6 NMSA 1978 (being Laws 1978,
23 Chapter 54, Section 1, as amended) is amended to read:

24 "21-2-6. STATEWIDE PLANNING--PARTICIPATING AGENCIES AND
25 PERSONS.--

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1 A. The state commission in carrying out its
2 planning activities for post-secondary education shall consult
3 with and invite the active participation of:

4 (1) representatives of post-secondary
5 educational institutions of the several types enumerated in
6 Paragraph (2) of Subsection A of Section 21-2-2 NMSA 1978;

7 (2) the [~~state board of education~~] public
8 education commission;

9 (3) the [~~state department of~~] public education
10 department;

11 (4) representatives of public and private
12 elementary and secondary schools;

13 (5) the secretary of labor;

14 (6) the tourism department;

15 (7) the apprenticeship council;

16 (8) the economic development department;

17 (9) the state advisory council on vocational
18 education;

19 (10) the secretary of finance and
20 administration or [~~his~~] the secretary's designee;

21 (11) persons familiar with the education needs
22 of [~~the disadvantaged, of the handicapped and of minority~~
23 ~~groups~~] persons with a disability and persons disadvantaged by
24 economic, racial or ethnic status;

25 (12) representatives of business, industry,

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1 organized labor and agriculture;

2 (13) the general public; and

3 (14) private in-state post-secondary
4 institutions.

5 B. Whenever the planning activities carried out
6 under the provisions of Section 21-2-5 NMSA 1978 are concerned
7 with the types of post-secondary education enumerated in
8 Subparagraphs (a) through (e) of Paragraph (1) of Subsection A
9 of Section 21-2-2 NMSA 1978, the state commission shall
10 directly involve the [~~state board of education~~] public
11 education commission and the [~~state department of~~] public
12 education department in all planning activities."

13 Section 9. Section 21-6-2 NMSA 1978 (being Laws 1899,
14 Chapter 42, Section 3, as amended) is amended to read:

15 "21-6-2. PURPOSES--ADMISSION AGE--ADMISSION OF
16 NONRESIDENTS--TUITION--CHANGE OF NAME--EXPENDITURES FOR
17 GRADUATES IN COLLEGE--AUDIOLOGICAL CLINIC--SCHOLARSHIPS--
18 PRESIDENT'S POWERS.--

19 A. Except as otherwise provided in this section,
20 the New Mexico school for the deaf shall be devoted exclusively
21 to the care and instruction of [~~the deaf and the hard-of-~~
22 ~~hearing those who are either deaf or hard-of-hearing~~] persons
23 of [~~both sexes~~] either sex who are residents within the state
24 [~~of New Mexico~~] and between the ages of five years and the age
25 of majority and who are deaf or hard-of-hearing; provided that

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1 the board of regents, in its discretion, may admit residents of
2 this state who have attained the age of one year for daytime
3 care and instruction, but not for residential purposes, and may
4 also admit residents of this state who are over the age of
5 majority.

6 B. The board of regents may make expenditures for
7 undergraduate collegiate expenses of graduates of the New
8 Mexico school for the deaf. The board of regents may permit
9 the use of facilities of the school by public and private
10 agencies in the state in carrying on a conservation-of-hearing
11 program when [~~such~~] the agencies participate in the cost of the
12 operation, upon such terms and conditions as the board of
13 regents may prescribe.

14 C. The board of regents may contract with the
15 veterans' administration and the [~~division of~~] vocational
16 rehabilitation division of the public education department to
17 provide instruction for [~~handicapped~~] adults with a disability
18 in vocations or lip reading taught at the school, but such
19 [~~handicapped~~] adults may not be housed at the school. The
20 board of regents may lease for a [~~nominal~~] nominal sum for
21 periods not to exceed three months to the public schools,
22 institutions and agencies of the state any hearing test
23 equipment owned by the school.

24 D. The board of regents, for the purpose of
25 creating a source of teachers of the deaf, may pay tuition and

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1 other necessary expenses of graduates of New Mexico colleges
2 desiring to take training to teach the deaf in out-of-state
3 training centers and intending to make the teaching of the deaf
4 in New Mexico their profession.

5 E. All instruction shall be free. Deaf or hard-of-
6 hearing children from other states or territories may be
7 received and educated in the school under such rules and
8 regulations as the board of regents may prescribe, but in no
9 event shall such children be admitted except upon the payment
10 or guaranty of at least one thousand dollars (\$1,000) for the
11 school year, on the basis of nine months for [~~such~~] a school
12 year [~~and~~]. The president of the board of regents is
13 authorized to make and enter into on behalf of the school all
14 necessary agreements and contracts with the [~~U.S.~~] United
15 States government and the proper authorities of [~~such~~] other
16 states and territories for the reception and education of such
17 children, and [~~he~~] the president is further authorized to
18 receive and receipt for all [~~moneys~~] money paid upon such
19 account and to endorse and transfer all checks, vouchers or
20 other evidences of payment made or received in behalf of the
21 school."

22 Section 10. Section 21-21G-3 NMSA 1978 (being Laws 1988,
23 Chapter 111, Section 3, as amended) is amended to read:

24 "21-21G-3. DEFINITIONS.--As used in the Graduate
25 Scholarship Act:

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1 A. "academic year" means any consecutive period of
2 two semesters, three quarters or other comparable units
3 commencing with the fall term each year;

4 B. "award recipient" means a student awarded a
5 graduate scholarship;

6 C. [~~commission~~] "department" means the
7 [~~commission on~~] higher education department;

8 D. "eligible institution" means any graduate-
9 degree-granting state university accredited by the north
10 central association of colleges and secondary schools;

11 E. "graduate and professional field" means any
12 program of study intended to result in a master's or doctoral
13 degree, excluding the degree in medicine; and

14 F. "groups underrepresented in graduate education"
15 means women, minorities, [~~the visually handicapped, the~~
16 ~~physically disabled~~] persons with a visual impairment or other
17 physical disability and other groups who have traditionally
18 been underrepresented in the specific area of graduate study or
19 profession for which the scholarship is awarded."

20 Section 11. Section 22-14-1 NMSA 1978 (being Laws 1967,
21 Chapter 16, Section 191) is amended to read:

22 "22-14-1. DEFINITIONS.--As used in Sections [~~77-12-2~~
23 ~~through 77-12-14~~ ~~New Mexico Statutes Annotated, 1953~~
24 ~~Compilation~~] 22-14-2 through 22-14-16 NMSA 1978:

25 A. "vocational education" means vocational or

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1 technical training or retraining conducted as part of a program
2 designed to enable an individual to engage in a remunerative
3 occupation. Vocational education may provide but is not
4 limited to guidance and counseling, vocational instruction,
5 training for vocational education instructors, transportation
6 and training material and equipment;

7 B. [~~handicapped individual~~] "person with a
8 disability" means [~~any individual under~~] a person with a
9 physical or mental disability [~~which~~] that constitutes a
10 substantial handicap to employment but [~~which~~] that is of such
11 a nature that vocational rehabilitation may be reasonably
12 expected to enable the [~~individual~~] person to engage in a
13 remunerative occupation;

14 C. "vocational rehabilitation" means services or
15 training necessary to enable a [~~handicapped individual~~] person
16 with a disability to engage in a remunerative occupation.

17 Vocational rehabilitation may provide but is not limited to
18 medical or vocational diagnosis, vocational guidance,
19 counseling and placement, rehabilitation training, physical
20 restoration, transportation, occupational licenses, customary
21 occupational tools or equipment, maintenance and training
22 material and equipment; and

23 D. "federal aid funds" means funds, gifts or grants
24 received by the state under any federal aid for vocational
25 education or vocational rehabilitation."

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1 Section 12. Section 22-14-16 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 204) is amended to read:

3 "22-14-16. ADMISSION TO STATE EDUCATIONAL INSTITUTIONS--
4 EXEMPTION FROM CERTAIN FEES.--Upon written request of the
5 [~~state board~~] department, all state educational institutions
6 shall accept for admission, without any charge for any fees
7 except tuition charges, [~~all handicapped individuals~~] a person
8 with a disability meeting the standards of the institution."

9 Section 13. Section 24-1G-4 NMSA 1978 (being Laws 2005,
10 Chapter 55, Section 4) is amended to read:

11 "24-1G-4. TELEHEALTH COMMISSION CREATED--POWERS AND
12 DUTIES--MEMBERSHIP.--

13 A. The "New Mexico telehealth commission" is
14 created. The commission is administratively attached to the
15 department of health, which shall work in conjunction with the
16 New Mexico health policy commission, in accordance with the
17 Executive Reorganization Act.

18 B. The commission shall consist of no more than
19 twenty-five members with members, one-third of whom shall be
20 from rural areas, chosen from the following categories, all of
21 whom shall be appointed by and serve at the pleasure of the
22 governor:

- 23 (1) health care facilities;
24 (2) health care practitioners;
25 (3) health care workforce educators;

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- 1 (4) telehealth technology experts;
- 2 (5) the telecommunications industry;
- 3 (6) the business community;
- 4 (7) health care insurance providers or other
5 health care payers;
- 6 (8) Indian nations, tribes and pueblos;
- 7 (9) legislators;
- 8 (10) state agencies responsible for:
 - 9 (a) telecommunications;
 - 10 (b) public health;
 - 11 (c) medicaid and social services;
 - 12 (d) workforce development;
 - 13 (e) children's health and social
14 services;
 - 15 (f) services for the elderly and
16 ~~disabled~~ persons with a disability;
 - 17 (g) criminal justice;
 - 18 (h) health policy and planning; and
 - 19 (i) education; and
- 20 (11) other members as the governor may appoint
21 to ensure appropriate cultural and geographic representation
22 and the interests of the public.

23 C. The commission shall:

- 24 (1) identify how telehealth can be used to
25 increase access to care and implement state comprehensive

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1 health plans;

2 (2) identify barriers to telehealth
3 utilization and expansion, including payment, infrastructure,
4 training and workforce availability;

5 (3) inventory the state's telehealth assets,
6 map available telecommunications infrastructure and examine the
7 financial impact of failing to develop the state's telehealth
8 capacities;

9 (4) coordinate public and private sector
10 initiatives to enhance networking, portal development and
11 connectivity and to expand telehealth and telecommunications
12 capacity;

13 (5) establish such subcommittees as the
14 commission deems necessary to fulfill its purpose, powers and
15 duties or to address specific telehealth issues;

16 (6) identify specific actions to increase
17 collaborative efforts and public-private partnerships to
18 increase the use of telehealth for health care access
19 development, patient outcome improvement, patient and workforce
20 education and health care practitioner recruitment and
21 development;

22 (7) develop and disseminate specific
23 telehealth standards and guidelines to ensure quality of care,
24 positive health outcomes, appropriate use of technology and
25 protection of privacy and confidentiality;

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1 (8) review and comment on initiatives,
2 projects or grant applications to ensure telehealth standards
3 and guidelines are met and maximum collaboration and
4 cooperation across the state is encouraged;

5 (9) meet at least once each quarter at the
6 call of the chair or vice chair, who shall be designated by the
7 governor from among the membership; and

8 (10) report annually to the governor and the
9 legislature on the state of the telehealth system and the
10 adequacy and allocation of telehealth services throughout the
11 state, providing the governor and the legislature with specific
12 recommendations for improving telehealth and related service
13 systems.

14 D. A majority of the members of the commission
15 constitutes a quorum for the transaction of business."

16 Section 14. Section 24-2-1 NMSA 1978 (being Laws 1977,
17 Chapter 253, Section 40) is amended to read:

18 "24-2-1. AUTHORITY TO CONDUCT [~~CRIPPLED CHILDREN~~]
19 SERVICES FOR CHILDREN WITH A DISABILITY.--The public health
20 [~~services~~] division of the department of health [~~and~~
21 ~~environment department~~] has authority to establish, administer
22 and supervise activities to [~~crippled~~] children [~~and children~~
23 ~~suffering from conditions which lead to crippling~~] who have a
24 physical disability or whose condition may become a disability.

25 The public health [~~services~~] division also may supervise the

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1 administration of those services to [~~crippled~~] children [~~which~~]
2 with a disability that are not administered directly by it."

3 Section 15. Section 24-9A-1 NMSA 1978 (being Laws 1979,
4 Chapter 132, Section 1, as amended) is amended to read:

5 "24-9A-1. DEFINITIONS.--As used in the Maternal, Fetal
6 and Infant Experimentation Act:

7 A. "viability" means that stage of fetal
8 development when the unborn child is potentially able to live
9 outside the mother's womb, albeit with artificial aid;

10 B. "conception" means the fertilization of the ovum
11 of a human female by the sperm of a human male;

12 C. "health" means physical or mental health;

13 D. "clinical research" means any biomedical or
14 behavioral research involving human subjects, including the
15 unborn, conducted according to a formal procedure. The term is
16 to be construed liberally to embrace research concerning all
17 physiological processes in [~~man~~] human beings and includes
18 research involving human in vitro fertilization, but shall not
19 include diagnostic testing, treatment, therapy or related
20 procedures conducted by formal protocols deemed necessary for
21 the care of the particular patient upon whom such activity is
22 performed and shall not include human in vitro fertilization
23 performed to treat infertility; provided that this procedure
24 shall include provisions to [~~insure~~] ensure that each living
25 fertilized ovum, zygote or embryo is implanted in a human

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1 female recipient, and no physician may stipulate that a woman
2 must abort in the event the pregnancy should produce a
3 [~~deformed or handicapped~~] child with a disability. Provided
4 that emergency medical procedures necessary to preserve the
5 life or health of the mother or the fetus shall not be
6 considered to be clinical research;

7 E. "subject at risk", "subject" or "at risk" means
8 any [~~individual~~] person who may be exposed to the likelihood of
9 injury, including physical or psychological injury, as a
10 consequence of participation as a subject in:

11 (1) any research, development or related
12 activity [~~which~~] that departs from the application of those
13 established and accepted methods deemed necessary to meet [~~his~~]
14 the person's needs;

15 (2) controlled research studies necessary to
16 establish accepted methods designed to meet [~~his~~] the person's
17 needs; or

18 (3) research activity [~~which~~] that poses a
19 significant risk to the subject;

20 F. "significant risk" means [~~any~~] an activity
21 [~~which~~] that is likely to cause disfigurement or loss or
22 impairment of the function of any member or organ;

23 G. "fetus" means the product of conception from the
24 time of conception until the expulsion or extraction of the
25 fetus or the opening of the uterine cavity, but shall not

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1 include the placenta, extraembryonic membranes, umbilical cord,
2 extraembryonic fluids and their resident cell types and
3 cultured cells;

4 H. "live-born infant" means an offspring of a
5 [~~human being which~~] person that exhibits [~~either~~] heartbeat,
6 spontaneous respiratory activity, spontaneous movement of
7 voluntary muscles or pulsation of the umbilical cord if still
8 attached to the infant ex utero; provided the Maternal, Fetal
9 and Infant Experimentation Act does not apply to a fetus or
10 infant absent the characteristics set forth in this subsection;

11 I. "infant" means an offspring of a human being
12 from the time it is born until the end of its first
13 chronological year;

14 J. "born" means the time the head or any other part
15 of the body of the fetus emerges from the vagina or the time
16 the uterine cavity is opened during a caesarean section or
17 hysterotomy; and

18 K. "in vitro fertilization" means any fertilization
19 of human ova [~~which~~] that occurs outside the body of a female,
20 either through admixture of donor human sperm and ova or by any
21 other means."

22 Section 16. Section 27-1-2 NMSA 1978 (being Laws 1937,
23 Chapter 18, Section 3) is amended to read:

24 "27-1-2. POWERS OF [STATE] HUMAN SERVICES DEPARTMENT.--

25 A. ~~The [State Department of Public Welfare shall be~~

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1 ~~a public corporation, under the name of "The New Mexico~~
2 ~~Department of Public Welfare", and under its corporate name]~~
3 human services department is an agency of the state [~~of New~~
4 ~~Mexico~~] and shall at all times be [~~and remain~~] under the
5 exclusive control of this state. The management and control of
6 the [~~said~~] human services department is [~~hereby~~] vested in the
7 [~~State Board of Public Welfare herein provided for~~] secretary
8 of human services.

9 B. Subject to the constitution of [~~this state~~] New
10 Mexico, the human services department [~~shall have~~] has the
11 power to:

12 [~~(a) To~~] (1) sue and, with the consent of the
13 legislature [~~of this state~~], be sued;

14 [~~(b) To~~] (2) adopt and use a corporate seal;

15 [~~(c) To~~] (3) have succession in its corporate
16 name;

17 [~~(d) To~~] (4) make contracts as [~~herein~~]
18 authorized in Chapter 27 NMSA 1978 to carry out the purposes
19 [~~herein expressed~~] of that chapter;

20 [~~(e) To~~] (5) adopt, amend and repeal bylaws,
21 rules and regulations;

22 [~~(f) To~~] (6) purchase, lease and hold [~~such~~]
23 real and personal property [~~as is~~] necessary or convenient for
24 the carrying out of its powers and duties, [~~and~~] to exercise
25 the right of eminent domain to acquire such real property in

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1 the same manner as the state now exercises [~~said~~] that right
2 and to dispose of any property acquired in any manner;

3 [~~(g) To~~] (7) have such powers as may be
4 necessary or appropriate for the exercise of the powers
5 [~~herein~~] specifically conferred upon it in Chapter 27 NMSA
6 1978;

7 [~~(h) To~~] (8) receive and have custody for
8 protection and administration, disburse, dispose of and account
9 for funds, commodities, equipment, supplies and any kind of
10 property given, granted, loaned or advanced to the state [~~of~~
11 ~~New Mexico~~] for public assistance, public welfare, social
12 security or any other similar purpose;

13 [~~(i) To~~] (9) enter into reciprocal agreements
14 with public welfare agencies of other states relative to the
15 provision for relief or assistance to transients and
16 nonresidents;

17 [~~(j) To~~] (10) establish and administer
18 programs of old age assistance and aid to dependent children
19 and [~~to the needy blind~~] persons with a visual impairment;

20 [~~(k) To~~] (11) establish and administer a
21 program of services for children [~~who are crippled or who are~~
22 ~~suffering from conditions which lead to crippling~~] with a
23 disability or who have a condition that may lead to a
24 disability, and to supervise the administration of those
25 services [~~which~~] that are not administered directly by it;

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1 [~~(1)~~—~~To~~] (12) establish, extend and
2 strengthen public welfare services for children; and

3 [~~(m)~~—~~To~~] (13) establish and administer a
4 program for general relief."

5 Section 17. Section 27-1-3 NMSA 1978 (being Laws 1937,
6 Chapter 18, Section 4, as amended) is amended to read:

7 "27-1-3. ACTIVITIES OF HUMAN SERVICES DEPARTMENT.--The
8 [~~human services~~] department shall be charged with the
9 administration of all the welfare activities of the state as
10 provided in Chapter 27 NMSA 1978, except as otherwise provided
11 for by law. The [~~human services~~] department shall, except as
12 otherwise provided by law:

13 A. administer old age assistance, aid to dependent
14 children, assistance to [~~the needy blind and otherwise~~
15 ~~handicapped~~] persons with a visual impairment or other physical
16 disability and general relief;

17 B. administer all aid or services to [~~crippled~~]
18 children with a disability, including the extension and
19 improvement of services for [~~crippled~~] children with such a
20 disability, insofar as practicable under conditions in this
21 state, provide for locating children who [~~are crippled or who~~
22 ~~are suffering from conditions which lead to crippling~~] have a
23 disability or a condition that may become a disability, provide
24 corrective and any other services and care and facilities for
25 diagnosis, hospitalization and after-care for such children

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1 ~~[who are crippled or who are suffering from conditions which~~
2 ~~lead to crippling]~~ and supervise the administration of those
3 services ~~[which]~~ that are not administered directly by the
4 department;

5 C. administer and supervise all child welfare
6 activities, service to children placed for adoption, service
7 and care of homeless, dependent and neglected children, service
8 and care for children in foster family homes or in institutions
9 because of dependency or delinquency and care and service to
10 ~~[any]~~ a child who because of a physical or mental ~~[defect]~~
11 disability may need such service;

12 D. formulate detailed plans, make rules and
13 regulations and take action deemed necessary or desirable to
14 carry out the provisions of Chapter 27 NMSA 1978 and ~~[which]~~
15 that is not inconsistent with the provisions of that chapter;

16 E. cooperate with the federal government in matters
17 of mutual concern pertaining to public welfare and public
18 assistance, including the adoption of such methods of
19 administration as are found by the federal government to be
20 necessary for the efficient operation of the plan for public
21 welfare and assistance;

22 F. assist other departments, agencies and
23 institutions of local, state and federal governments when so
24 requested, cooperate with such agencies when expedient in
25 performing services in conformity with the purposes of Chapter

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1 27 NMSA 1978 and cooperate with medical, health, nursing and
2 welfare groups, any state agency charged with the
3 administration of laws providing for vocational rehabilitation
4 of [~~physically handicapped~~] persons with a physical disability
5 and organizations within the state;

6 G. act as the agent of the federal government in
7 welfare matters of mutual concern in conformity with the
8 provisions of Chapter 27 NMSA 1978 and in the administration of
9 any federal funds granted to this state, to aid in furtherance
10 of any such functions of the state government;

11 H. establish in counties or in districts, which may
12 include two or more counties, local units of administration to
13 serve as agents of the department;

14 I. at its discretion, establish local boards of
15 public welfare for such territory as it may see fit and by rule
16 and regulation prescribe the duties of the local board;

17 J. administer such other public welfare functions
18 as may be assumed by the state after [~~the effective date of~~
19 ~~this section~~] June 19, 1987;

20 K. carry on research and compile statistics
21 relative to the entire public welfare program throughout the
22 state, including all phases of dependency, defectiveness,
23 delinquency and related problems, and develop plans in
24 cooperation with other public and private agencies for the
25 prevention as well as treatment of conditions giving rise to

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1 public welfare problems; and

2 L. inspect and require reports from all private
3 institutions, boarding homes and agencies providing assistance,
4 care or other direct services to [~~children who are crippled,~~
5 ~~neglected, delinquent or dependent, the aged, blind, feeble-~~
6 ~~minded and other dependent persons~~] persons who are elderly,
7 who have a visual impairment, who have a physical or
8 developmental disability or who are otherwise dependent.

9 Nothing contained in this section shall be construed to
10 authorize the department to establish or prescribe standards or
11 regulations for or otherwise regulate programs or services to
12 children in group homes as defined in Section 9-8-13 NMSA
13 1978."

14 Section 18. Section 27-2B-5 NMSA 1978 (being Laws 1998,
15 Chapter 8, Section 5 and Laws 1998, Chapter 9, Section 5, as
16 amended) is amended to read:

17 "27-2B-5. WORK REQUIREMENTS--WORK PARTICIPATION RATES.--

18 A. The following qualify as work activities:

19 (1) unsubsidized employment, including self-
20 employment;

21 (2) subsidized private sector employment,
22 including self-employment;

23 (3) subsidized public sector employment;

24 (4) work experience, including work associated
25 with the refurbishing of publicly assisted housing if

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1 sufficient private sector employment is not available;

2 (5) on-the-job training;

3 (6) job search and job readiness assistance,
4 as long as the department complies with the federal act;

5 (7) community service programs;

6 (8) vocational education, except that
7 vocational education shall not qualify as a work activity for
8 longer than is provided by the federal act;

9 (9) job skills training activities directly
10 related to employment;

11 (10) education directly related to employment
12 for a participant who has not received a high school diploma or
13 a certificate of high school equivalency;

14 (11) satisfactory attendance at a secondary
15 school or course of study leading to a certificate of general
16 equivalency in the case of a participant who has not completed
17 secondary school or received such a certificate; and

18 (12) the provision of child care services to a
19 participant who is participating in a community service
20 program.

21 B. The department shall recognize community service
22 programs and job training programs that are operated by an
23 Indian nation, tribe or pueblo.

24 C. The department may not require a participant to
25 work more than four hours per week over the work requirement

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1 rate set pursuant to the federal act.

2 D. The department shall require a parent, caretaker
3 or other adult who is a member of a benefit group to engage in
4 a work activity once the department determines [~~he~~] the person
5 is ready to engage in a work activity or once [~~he~~] the person
6 has received cash assistance or services for twenty-four months
7 or as otherwise required by the federal act, whether or not
8 consecutive, whichever is earlier.

9 E. The following qualify as temporary alternative
10 work activities that the department may establish for no longer
11 than twelve weeks except as otherwise provided:

12 (1) participating in parenting classes, money
13 management classes or life skills training;

14 (2) participating in a certified alcohol or
15 drug addiction program;

16 (3) in the case of a homeless benefit group,
17 finding a home;

18 (4) in the case of a participant who is a
19 victim of domestic violence residing in a domestic violence
20 shelter or receiving counseling or treatment or participating
21 in criminal justice activities directed at prosecuting the
22 domestic violence perpetrator, for no longer than twenty-four
23 weeks; and

24 (5) in the case of a participant who does not
25 speak English, participating in a course in English as a second

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1 language.

2 F. Subject to the availability of funds, the
3 department in cooperation with the labor department, [~~New~~
4 ~~Mexico office of~~] Indian affairs department and other
5 appropriate state agencies may develop projects to provide for
6 the placement of participants in work activities, including the
7 following:

8 (1) participating in unpaid internships with
9 private and government entities;

10 (2) refurbishing publicly assisted housing;

11 (3) volunteering at a head start program or a
12 school;

13 (4) weatherizing low-income housing; and

14 (5) restoring public sites and buildings,
15 including monuments, parks, fire stations, police buildings,
16 jails, libraries, museums, auditoriums, convention halls,
17 hospitals, buildings for administrative offices and city halls.

18 G. If a participant is engaged in full-time post-
19 secondary education studies or an activity set out in
20 Paragraphs (9) through (11) of Subsection A of this section,
21 the participant shall engage in another work activity at the
22 same time. Additionally, for two-parent families that receive
23 federally funded child-care assistance, the participant's
24 spouse shall engage in a work activity set out in Paragraphs
25 (1) through (5) [~~or~~] and (7) of Subsection A of this section

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1 unless the participant suffers from a temporary or complete
2 disability that bars ~~[him]~~ the participant from engaging in a
3 work activity or ~~[he]~~ the participant is barred from engaging
4 in a work activity because ~~[he]~~ the participant provides sole
5 care for a ~~[disabled]~~ person with a disability.

6 H. A participant engaged in post-secondary
7 education studies shall make reasonable efforts to obtain a
8 loan, scholarship, grant or other assistance to pay for costs
9 and tuition and the department shall disregard those amounts in
10 the eligibility determination.

11 I. For as long as the described conditions exist,
12 the following are exempt from the work requirement:

13 (1) a participant barred from engaging in a
14 work activity because ~~[he is temporarily or completely~~
15 ~~disabled]~~ the participant has a temporary or permanent
16 disability;

17 (2) a participant over age sixty;

18 (3) a participant barred from engaging in a
19 work activity because ~~[he]~~ the participant provides the sole
20 care for a ~~[disabled]~~ person with a disability;

21 (4) a single custodial parent caring for a
22 child less than twelve months old for a lifetime total of
23 twelve months;

24 (5) a single custodial parent caring for a
25 child under six years of age if the parent is unable to obtain

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1 child care for one or more of the following reasons:

2 (a) unavailability of appropriate child
3 care within a reasonable distance from the parent's home or
4 work as defined by the children, youth and families department;

5 (b) unavailability or unsuitability of
6 informal child care by a relative under other arrangements as
7 defined by the children, youth and families department; or

8 (c) unavailability of appropriate and
9 affordable formal child-care arrangements as defined by the
10 children, youth and families department;

11 (6) a pregnant woman during her last trimester
12 of pregnancy;

13 (7) a participant prevented from working by a
14 temporary emergency or a situation that precludes work
15 participation for thirty days or less;

16 (8) a participant who demonstrates by reliable
17 medical, psychological or mental reports, court orders or
18 police reports that family violence or threat of family
19 violence effectively bars the participant from employment; and

20 (9) a participant who demonstrates good cause
21 of the need for the exemption."

22 Section 19. Section 27-2B-6 NMSA 1978 (being Laws 1998,
23 Chapter 8, Section 6 and Laws 1998, Chapter 9, Section 6, as
24 amended by Laws 2003, Chapter 311, Section 3 and Laws 2003,
25 Chapter 432, Section 3) is amended to read:

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1 "27-2B-6. DURATIONAL LIMITS.--

2 A. Pursuant to the federal act, on or after
3 July 1, 1997 a participant may receive federally funded cash
4 assistance and services for up to sixty months.

5 B. During a participant's fourth, sixth and eighth
6 semiannual reviews, the department shall examine the
7 participant's progress to determine if the participant has
8 successfully completed an educational or training program or
9 increased the number of hours [~~he~~] the participant is working
10 as required by the federal act. The department may refer the
11 participant to alternative work activities or provide
12 additional services to address possible barriers to employment
13 facing the participant.

14 C. Up to twenty percent of the population of
15 participants may be exempted from the sixty-month durational
16 limit set out in Subsection A of this section because of
17 hardship or because those participants are battered or subject
18 to extreme cruelty.

19 D. For the purposes of this section, a participant
20 has been battered or subjected to extreme cruelty if [~~he~~] the
21 participant can demonstrate by reliable medical, psychological
22 or mental reports, court orders or police reports that [~~he~~] the
23 participant has been subjected to and currently is affected by:

24 (1) physical acts that result in physical
25 injury;

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- 1 (2) sexual abuse;
2 (3) being forced to engage in nonconsensual
3 sexual acts or activities;
4 (4) threats or attempts at physical or sexual
5 abuse;
6 (5) mental abuse; or
7 (6) neglect or deprivation of medical care
8 except when the deprivation is based by mutual consent on
9 religious grounds.

10 E. For the purposes of this section, a hardship
11 exception applies to a person who demonstrates through reliable
12 medical, psychological or mental reports, social security
13 administration records, court orders, police reports or
14 department records that ~~[he]~~ the person is a person:

15 (1) who is barred from engaging in a work
16 activity because ~~[he is temporarily or completely disabled]~~ the
17 person has a temporary or permanent disability;

18 (2) who is the sole provider of home care to
19 ~~[an ill or disabled]~~ a family member who is ill or has a
20 disability;

21 (3) whose ability to be gainfully employed is
22 affected by domestic violence;

23 (4) whose application for supplemental
24 security income is pending in the application or appeals
25 process and who:

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1 (a) meets the criteria of Paragraph (1)
2 of this subsection; or

3 (b) was granted a waiver from the work
4 requirement pursuant to Paragraph (1) of Subsection I of
5 Section 27-2B-5 NMSA 1978 in the last twenty-four months; or

6 (5) who otherwise qualifies for a hardship
7 exception as defined by the department.

8 F. Pursuant to the federal act, the department
9 shall not count a month of receipt of cash assistance or
10 services toward the sixty-month durational limit if during the
11 time of receipt the participant:

12 (1) was a minor and was not the head of a
13 household or married to the head of a household; or

14 (2) lived in Indian country, as defined in the
15 federal act, if the most reliable data available with respect
16 to the month indicate that at least fifty percent of the adults
17 living in Indian country or in the village were not employed."

18 Section 20. Section 27-4-2 NMSA 1978 (being Laws 1973,
19 Chapter 311, Section 2, as amended) is amended to read:

20 "27-4-2. DEFINITIONS.--As used in the Special Medical
21 Needs Act:

22 A. "department" or "division" means the income
23 support division of the human services department;

24 B. "board" means the [~~income support~~] division [~~of~~
25 ~~the human services department~~];

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1 C. "aged person" means ~~[one]~~ a person who has
2 attained the age of sixty-five years and does not have a spouse
3 financially able, according to regulations of the ~~[board]~~
4 division, to furnish support;

5 D. "~~[disabled]~~ person with a disability" means
6 ~~[one]~~ a person who has attained the age of eighteen years and
7 is determined to ~~[be permanently and totally disabled]~~ have a
8 permanent and total disability, according to regulations of the
9 ~~[board]~~ division; and

10 E. "blind person" means ~~[one]~~ a person who is
11 determined to be blind according to regulations of the ~~[board]~~
12 division."

13 Section 21. Section 27-4-3 NMSA 1978 (being Laws 1973,
14 Chapter 311, Section 3) is amended to read:

15 "27-4-3. PERSONS WITH SPECIAL NEEDS.--

16 A. The ~~[board]~~ division shall by regulation
17 establish a program to provide essential medical care for
18 ~~[aged, blind or disabled]~~ persons who are elderly or blind or
19 who have a disability and who are not eligible for public
20 assistance under the Public Assistance Act and who have a
21 serious medical condition ~~[which]~~ that will as a reasonable
22 medical probability lead to death in the near future.

23 B. Such medical condition ~~[will]~~ shall be certified
24 by an individual licensed under state law to practice medicine
25 or osteopathy. The medical care shall be reviewed and approved

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1 according to regulations of the [~~board~~] division."

2 Section 22. Section 27-9-1 NMSA 1978 (being Laws 1983,
3 Chapter 323, Section 1) is amended to read:

4 "27-9-1. PROGRAM--DEMONSTRATIONS.--The human services
5 department, in cooperation with the department of health [~~and~~
6 ~~environment department~~], is authorized to administer
7 demonstration programs [~~which~~] that provide in-home and
8 coordinated community care services to the frail elderly and to
9 [~~disabled individuals~~] persons with a disability who would
10 otherwise require institutionalization. The programs
11 authorized by this section shall serve both those eligible and
12 not eligible for federal medical assistance programs."

13 Section 23. Section 27-13-7 NMSA 1978 (being Laws 2003,
14 Chapter 207, Section 1) is amended to read:

15 "27-13-7. FISCAL INTERMEDIARY--EXEMPTIONS--WORKERS'
16 COMPENSATION.--

17 A. A fiscal intermediary shall not be subject to
18 vicarious liability as an employer or principal for a wrongful
19 act committed by a personal care attendant if the attendant:

20 (1) is not a current or former employee of the
21 fiscal intermediary;

22 (2) has not received training or instruction
23 from the fiscal intermediary with respect to providing personal
24 care services to a [~~disabled~~] person with a disability, not
25 including administrative paper work;

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1 (3) has been hired by and received training or
2 instruction from the consumer or [~~his~~] the consumer's
3 authorized representative to provide personal care to the
4 consumer; and

5 (4) provides basic assistance with daily
6 living activities that do not require the education,
7 certification or training of a licensed health care
8 practitioner.

9 B. A fiscal intermediary may identify a personal
10 care attendant as a covered employee with the fiscal
11 intermediary's workers' compensation carrier solely to provide
12 workers' compensation coverage in the event of a work-related
13 injury. Nothing in this subsection shall be construed to
14 create an employer-employee relationship between the fiscal
15 intermediary and the personal care attendant.

16 C. Nothing in this section shall be construed to
17 provide the fiscal intermediary with immunity from a claim for
18 a wrongful act committed by the fiscal intermediary or its
19 employees.

20 D. As used in this section:

21 (1) "consumer" means a person who is eligible
22 for and receives state-funded or -operated services based on
23 the person's disabilities;

24 (2) "fiscal intermediary" means a provider
25 that furnishes administrative assistance for a consumer who

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1 selects a consumer-directed, rather than consumer-delegated,
2 personal care program;

3 (3) "personal care attendant" means a person
4 who provides assistance to a consumer with activities of daily
5 living, including bathing, dressing, eating, transportation,
6 shopping and similar activities; and

7 (4) "personal care program" means a state-
8 funded or -operated support program, including medicaid, that
9 provides the services of a personal care attendant for certain
10 ~~[disabled individuals]~~ persons with a disability."

11 Section 24. Section 28-7-2 NMSA 1978 (being Laws 1967,
12 Chapter 232, Section 2) is amended to read:

13 "28-7-2. POLICY.--It is the policy of this state to
14 encourage and enable ~~[the blind, the visually handicapped and~~
15 ~~the otherwise physically disabled]~~ persons who are blind,
16 visually impaired or who have another physical disability to
17 participate fully in the social and economic life of the state
18 and to engage in remunerative employment."

19 Section 25. Section 28-7-3 NMSA 1978 (being Laws 1967,
20 Chapter 232, Section 3, as amended) is amended to read:

21 "28-7-3. EQUAL RIGHT TO USE PUBLIC FACILITIES.--

22 A. ~~[The blind, the visually handicapped and the~~
23 ~~otherwise physically disabled]~~ Persons who are blind, visually
24 impaired or who have another physical disability have the same
25 right as ~~[the able-bodied]~~ others to the full and free use of

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1 the streets, highways, sidewalks, walkways, public buildings,
2 public facilities and other public places.

3 B. ~~[The blind, the visually handicapped and the~~
4 ~~otherwise physically disabled]~~ Persons who are blind, visually
5 impaired or who have another physical disability are entitled
6 to full and equal accommodations, advantages, facilities and
7 privileges of all common carriers, airplanes, motor vehicles,
8 railroad trains, motor buses, streetcars, boats or any other
9 public conveyances or modes of transportation, hotels, lodging
10 places, places of public accommodation, amusement or resort and
11 any other places to which the general public is invited,
12 subject only to the conditions and limitations established by
13 law and applicable alike to all persons.

14 C. Every totally or partially blind person shall
15 have the right to be accompanied by a guide dog, specially
16 trained for the purpose, in any of the places listed in this
17 section without being required to pay an extra charge for the
18 guide dog; provided that ~~[he]~~ the person shall be liable for
19 any damage done to the property or facilities by the dog.

20 D. The attorney general, district attorney or any
21 ~~[handicapped]~~ person with a disability may file an action in
22 the judicial district when a building has been built or altered
23 and the work has not been accomplished in accordance with
24 ~~[Section 104 and Section 106 of]~~ the current uniform building
25 code, other applicable publications and established handicapped

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1 standards. The building official shall notify those applying
2 for a permit that they [~~must~~] shall comply with established
3 standards. Any interested person may appeal the granting or
4 denial of a waiver to the district court where the building is
5 located. If the court finds that the building owner was
6 required to comply with handicap access standards of the
7 uniform building code and has failed to comply with such
8 standards within a reasonable period of time, then the party
9 filing action shall recover the court costs, [~~attorneys'~~]
10 attorney fees and appropriate injunctive relief to remedy the
11 violation."

12 Section 26. Section 28-7-5 NMSA 1978 (being Laws 1967,
13 Chapter 232, Section 5) is amended to read:

14 "28-7-5. INTERFERENCE WITH RIGHTS OF BLIND--PENALTY.--
15 [~~Any~~] A person [~~or persons~~], firm or corporation or the agent
16 of [~~any~~] a person [~~or persons~~], firm or corporation who denies
17 or interferes with admittance to or enjoyment of the public
18 facilities enumerated [~~herein~~] in Section 28-7-3 NMSA 1978 or
19 otherwise interferes with the rights of a [~~totally or~~
20 ~~partially~~] blind or [~~otherwise disabled~~] visually impaired
21 person or a person who has a physical disability enumerated
22 [~~herein shall be~~] in the White Cane Law is guilty of a
23 misdemeanor."

24 Section 27. Section 28-7-6 NMSA 1978 (being Laws 1967,
25 Chapter 232, Section 6) is amended to read:

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1 "28-7-6. ANNUAL PROCLAMATION OF WHITE CANE SAFETY DAY BY
2 GOVERNOR.--Each year, the governor shall take suitable public
3 notice of October 15 as white cane safety day. [~~He~~] The
4 governor shall issue a proclamation in which the governor:

5 A. [~~he~~] comments upon the significance of the white
6 cane;

7 B. [~~he~~] calls upon the citizens of the state to
8 observe the provisions of the White Cane Law and to take
9 precautions necessary to the safety of [~~the disabled~~] persons
10 with a disability;

11 C. [~~he~~] reminds the citizens of the state of the
12 policies with respect to [~~the disabled herein~~] persons with a
13 disability declared in the White Cane Law and urges the
14 citizens to cooperate in giving effect to them; and

15 D. [~~he~~] emphasizes the need of the citizens to be
16 aware of the presence of [~~disabled~~] persons with a disability
17 in the community and to keep [~~safe and functional for the~~
18 ~~disabled the~~] streets, highways, sidewalks, walkways, public
19 buildings, public facilities, other public places, places of
20 public accommodation, amusement and resort and other places to
21 which the public is invited safe and functional and to offer
22 assistance to [~~disabled~~] persons with a disability upon
23 appropriate occasions."

24 Section 28. Section 28-7-7 NMSA 1978 (being Laws 1967,
25 Chapter 232, Section 7) is amended to read:

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1 "28-7-7. POLICY OF STATE ON EMPLOYMENT OF ~~[DISABLED]~~
2 PERSONS WITH A DISABILITY.--It is the policy of this state that
3 ~~[the blind, the visually handicapped and the otherwise~~
4 ~~physically disabled]~~ a person who is blind, visually impaired
5 or who has another physical disability shall be employed in the
6 state service, the service of the political subdivisions of the
7 state, ~~[in]~~ the public schools and ~~[in]~~ all other employment
8 supported in whole or in part by public funds on the same terms
9 and conditions as ~~[the able-bodied]~~ others, unless it is shown
10 that the particular disability prevents the performance of the
11 work involved."

12 Section 29. Section 28-10-3.1 NMSA 1978 (being Laws 1995,
13 Chapter 95, Section 1, as amended) is amended to read:

14 "28-10-3.1. FULL-SERVICE GASOLINE STATIONS--DECAL
15 DISPLAY--SERVICE TO ~~[HANDICAPPED]~~ PERSON WITH A DISABILITY.--

16 A. The governor's commission on disability shall
17 design and produce a decal for display in full-service gasoline
18 stations signifying that the gasoline station will provide
19 gasoline pumping, window washing, fluid checks and other
20 services provided at its full-service island to any properly
21 permitted or certified ~~[handicapped]~~ driver with a disability
22 at a self-service island.

23 B. Any full-service gasoline station providing the
24 services described in Subsection A of this section may request
25 and shall receive the decal upon application to the governor's

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1 commission on disability.

2 C. No gasoline station shall display the decal
3 issued by the governor's commission on disability unless it
4 provides full service to any [~~handicapped~~] driver with a
5 disability at a self-service island.

6 D. [~~Any~~] A gasoline station owner or operator who
7 displays a decal signifying that the station will provide
8 additional services to [~~handicapped~~] drivers with a disability
9 at a self-service island and who fails to provide that service
10 shall be subject to revocation of [~~their~~] the decal for display
11 according to this [~~act~~] section."

12 Section 30. Section 28-10-5 NMSA 1978 (being Laws 1973,
13 Chapter 349, Section 5, as amended) is amended to read:

14 "28-10-5. DISABILITY FUND [~~FOR THE HANDICAPPED~~] CREATED.--

15 A. There is created in the state treasury a
16 "disability fund [~~for the handicapped~~"]. All funds, gifts,
17 donations, bequests and other income of the governor's
18 commission on disability shall be deposited by the director of
19 the commission in [~~that~~] the fund and shall be [~~available~~]
20 appropriated to the commission to further the purpose of
21 Sections 28-10-1 through 28-10-8.1 NMSA 1978 or for the
22 purposes stated by the donor or grantor of the funds.

23 B. Distributions made to the disability fund [~~for~~
24 ~~the handicapped~~] from the [~~handicapped~~] housing modification
25 for persons with a disability permanent fund shall constitute a

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1 separate account in the fund and are appropriated to the
2 governor's commission on disability for the purpose of carrying
3 out a residential accessibility modification program.

4 C. Money in the disability fund [~~for the~~
5 ~~handicapped~~] shall not revert but shall be used only as
6 provided in Sections 28-10-1 through 28-10-8.1 NMSA 1978."

7 Section 31. Section 28-10-5.1 NMSA 1978 (being Laws 2001,
8 Chapter 226, Section 1) is amended to read:

9 "28-10-5.1. [~~HANDICAPPED~~] HOUSING MODIFICATION FOR
10 PERSONS WITH A DISABILITY PERMANENT FUND--INVESTMENT--
11 DISTRIBUTION.--

12 A. The "[~~handicapped~~] housing modification for
13 persons with a disability permanent fund" is created in the
14 state treasury. The fund shall consist of money appropriated
15 to the fund and any gifts, donations or bequests made to the
16 fund. Money in the fund shall be invested by the state
17 investment officer as land grant permanent funds are invested
18 pursuant to Chapter 6, Article 8 NMSA 1978, and earnings from
19 investment of the fund shall be credited to the fund. Money in
20 the fund shall not revert at the end of any fiscal year and
21 shall not be expended for any purpose, except that an annual
22 distribution shall be made to the fund for [~~the handicapped~~]
23 persons with a disability in accordance with Subsection B of
24 this section.

25 B. On July 1 of fiscal year 2002 and on July 1 of

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1 each fiscal year thereafter, an annual distribution shall be
2 made from the [~~handicapped~~] housing modification for persons
3 with a disability permanent fund to the disability fund [~~for~~
4 ~~the handicapped~~] in an amount equal to three hundred thousand
5 dollars (\$300,000) until that amount is less than an amount
6 equal to five percent of the average of the year-end market
7 values of the [~~handicapped~~] housing modification for persons
8 with a disability permanent fund for the immediately preceding
9 five calendar years. Thereafter, the amount of the annual
10 distribution shall be five percent of the average of the year-
11 end market values of the [~~handicapped~~] housing modification for
12 persons with a disability permanent fund for the immediately
13 preceding five calendar years."

14 Section 32. Section 28-10-9 NMSA 1978 (being Laws 1969,
15 Chapter 129, Section 1) is amended to read:

16 "28-10-9. SHORT TITLE.--~~[This act]~~ Sections 28-10-9
17 through 28-10-12 NMSA 1978 may be cited as the "[~~Handicapped~~]
18 Disability Employment Act"."

19 Section 33. Section 28-10-10 NMSA 1978 (being Laws 1969,
20 Chapter 129, Section 2) is amended to read:

21 "28-10-10. [~~DEFINITIONS~~] DEFINITION.--As used in the
22 [~~Handicapped~~] Disability Employment Act, [~~"handicapped"~~]
23 "persons with a disability" includes [~~physical and mental~~
24 ~~handicaps~~] persons with a mental or physical disability."

25 Section 34. Section 28-10-11 NMSA 1978 (being Laws 1969,

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1 Chapter 129, Section 3) is amended to read:

2 "28-10-11. STATE POLICY.--In order to further the efforts
3 of New Mexico in alleviating the problems of [~~the handicapped~~]
4 persons with a disability, full consideration shall be given to
5 the employment of such persons in state government in positions
6 [~~where~~] in which they meet the necessary performance
7 requirements or in positions [~~where~~] in which performance
8 requirements can be modified to take advantage of their
9 abilities without detriment to the state service."

10 Section 35. Section 28-10-12 NMSA 1978 (being Laws 1969,
11 Chapter 129, Section 4) is amended to read:

12 "28-10-12. PERSONNEL BOARD--RULES.--The [~~state~~] personnel
13 board shall establish rules and procedures consistent with the
14 state policy of employment of [~~the handicapped. Such~~] persons
15 with a disability. The rules and procedures shall be adopted
16 after consultation with appropriate vocational rehabilitation
17 agencies, state institutions, interested private associations
18 and organizations and interested individuals. Any rules or
19 procedures adopted by the personnel board shall provide that:

20 A. certification in an appropriate form shall be
21 required from an appropriate agency to the effect that:

22 (1) the [~~handicapped~~] person with a disability
23 has the ability to perform the duties of the position sought;

24 (2) the [~~handicapped~~] person with a disability
25 is physically qualified to do the work without hazard to

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1 ~~[himself]~~ that person or to others; and

2 (3) the ~~[handicapped]~~ person with a disability
3 is socially competent ~~[to maintain himself]~~ in a work
4 environment and, either independently or with continuing help
5 as has been provided ~~[for him]~~, in after-working-hours living;
6 ~~[and]~~

7 B. there ~~[be]~~ are suitable periods of probation or
8 trial employment for ~~[such handicapped]~~ persons with a
9 disability before ~~[such]~~ the employment becomes permanent under
10 the provisions of the Personnel Act; and

11 C. the ~~[above]~~ processes ~~[of]~~ set forth in this
12 section for establishing the eligibility of ~~[such handicapped]~~
13 persons ~~[is]~~ with a disability are construed to meet the
14 requirements of competitive entrance examinations under the
15 provisions of the ~~[State]~~ Personnel Act."

16 Section 36. Section 30-16-12 NMSA 1978 (being Laws 1963,
17 Chapter 303, Section 16-12) is amended to read:

18 "30-16-12. FALSELY REPRESENTING ~~[SELF]~~ ONESELF AS
19 INCAPACITATED.--Falsely representing ~~[self]~~ oneself as
20 ~~[incapacitated]~~ disabled consists of ~~[any]~~ a person falsely
21 representing ~~[himself]~~ the person's own self to be blind,
22 visually impaired, deaf ~~[dumb, crippled or otherwise physically~~
23 ~~defective]~~ or having a physical disability for the purpose of
24 obtaining money or other thing of value.

25 Whoever commits falsely representing ~~[self]~~ oneself as

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1 [inapacited] disabled is guilty of a petty misdemeanor."

2 Section 37. Section 31-18B-2 NMSA 1978 (being Laws 2003,
3 Chapter 384, Section 2) is amended to read:

4 "31-18B-2. DEFINITIONS.--As used in the Hate Crimes Act:

5 A. "age" means sixty years of age or older;

6 B. "gender identity" means a person's
7 self-perception, or perception of that person by another, of
8 the person's identity as a male or female based upon the
9 person's appearance, behavior or physical characteristics that
10 are in accord or opposed to the person's physical anatomy,
11 chromosomal sex or sex at birth;

12 C. [~~"handicapped status"~~] "disability" means that
13 the person has a physical or mental [~~impairment~~] disability
14 that substantially limits one or more of that person's
15 functions, such as caring for [~~himself~~] oneself, performing
16 manual tasks, walking, seeing, hearing, speaking, breathing,
17 learning and working;

18 D. "motivated by hate" means the commission of a
19 crime with the intent to commit the crime because of the actual
20 or perceived race, religion, color, national origin, ancestry,
21 age, handicapped status, gender, sexual orientation or gender
22 identity of the victim, whether or not the offender's belief or
23 perception was correct; and

24 E. "sexual orientation" means heterosexuality,
25 homosexuality or bisexuality, whether actual or perceived."

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1 Section 38. Section 31-18B-3 NMSA 1978 (being Laws 2003,
2 Chapter 384, Section 3) is amended to read:

3 "31-18B-3. HATE CRIMES--NONCAPITAL FELONIES,
4 MISDEMEANORS OR PETTY MISDEMEANORS COMMITTED BECAUSE OF THE
5 VICTIM'S ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL
6 ORIGIN, ANCESTRY, AGE, [~~HANDICAPPED STATUS~~] DISABILITY, GENDER,
7 SEXUAL ORIENTATION OR GENDER IDENTITY--ALTERATION OF BASIC
8 SENTENCE.--

9 A. When a separate finding of fact by the court or
10 jury shows beyond a reasonable doubt that an offender committed
11 a noncapital felony motivated by hate, the basic sentence of
12 imprisonment prescribed for the offense in Section 31-18-15
13 NMSA 1978 may be increased by one year. An increase in the
14 basic sentence of imprisonment pursuant to the provisions of
15 this subsection shall be in addition to an increase in a basic
16 sentence prescribed for the offense in Section 31-18-17 NMSA
17 1978. A sentence imposed pursuant to the provisions of this
18 subsection may include an alternative sentence that requires
19 community service, treatment, education or any combination
20 thereof. The court may suspend or defer any or all of the
21 sentence or grant a conditional discharge, unless otherwise
22 provided by law.

23 B. If a finding was entered in a previous case that
24 the offender was convicted for committing a crime that was
25 motivated by hate, and if a separate finding of fact by the

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1 court or jury shows beyond a reasonable doubt that in the
2 instant case the offender committed a noncapital felony that
3 was motivated by hate, the basic sentence of imprisonment
4 prescribed for the offense in Section 31-18-15 NMSA 1978 may be
5 increased by two years. An increase in the basic sentence of
6 imprisonment pursuant to the provisions of this subsection
7 shall be in addition to an increase in a basic sentence
8 prescribed for the offense in Section 31-18-17 NMSA 1978. A
9 sentence imposed pursuant to the provisions of this subsection
10 may include an alternative sentence that requires community
11 service, treatment, education or any combination thereof. The
12 court may suspend or defer any or all of the sentence, or grant
13 a conditional discharge unless otherwise provided by law.

14 C. If the case is tried before a jury and if a
15 prima facie case has been established showing that in the
16 commission of the offense the offender was motivated by hate,
17 the court shall submit the issue to the jury by special
18 interrogatory. If the case is tried by the court and if a
19 prima facie case has been established showing that in the
20 commission of the offense the offender was motivated by hate,
21 the court shall decide the issue and shall make a separate
22 finding of fact regarding the issue. If the court or jury
23 determines that the offender is guilty of the crime and finds
24 beyond a reasonable doubt that the offender was motivated by
25 hate, the court shall include that determination in the

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1 judgment and sentence.

2 D. When a petty misdemeanor or a misdemeanor is
3 motivated by hate, the basic sentence of imprisonment
4 prescribed for the offense in Section 31-19-1 NMSA 1978 may
5 include an alternative sentence that requires community
6 service, treatment, education or any combination thereof. The
7 court may suspend or defer any or all of the sentence or grant
8 a conditional discharge, unless otherwise provided by law."

9 Section 39. Section 32A-5-44 NMSA 1978 (being Laws 1993,
10 Chapter 77, Section 171) is amended to read:

11 "32A-5-44. ELIGIBILITY FOR SUBSIDIZED ADOPTIONS.--

12 A. The social services division of the human
13 services department may make payments to adoptive parents or to
14 medical vendors on behalf of a child placed for adoption by the
15 division or by [~~a child placement~~] an agency [~~licensed by the~~
16 ~~division~~] when the division determines that:

17 (1) the child is difficult to place; and

18 (2) the adoptive family is capable of

19 providing the permanent family relationship needed by the child
20 in all respects, except that the needs of the child are beyond
21 the economic resources and ability of the family.

22 B. As used in Sections [~~32-5-43~~] 32A-5-43 through
23 [~~32-5-45~~] 32A-5-45 NMSA 1978, a "difficult to place child"
24 means a child who [~~is physically or mentally handicapped or~~
25 ~~emotionally disturbed~~] has a mental, physical or emotional

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1 disability or who is in special circumstances by virtue of age,
2 sibling relationship or racial background."

3 Section 40. Section 32A-6-2 NMSA 1978 (being Laws 1995,
4 Chapter 207, Section 2, as amended) is amended to read:

5 "32A-6-2. DEFINITIONS.--As used in the Children's Mental
6 Health and Developmental Disabilities Act:

7 A. "aversive stimuli" means anything that, because
8 it is believed to be unreasonably unpleasant, uncomfortable or
9 distasteful to the child, is administered or done to the child
10 for the purpose of reducing the frequency of a behavior, but
11 does not include verbal therapies, physical restrictions to
12 prevent imminent harm to self or others or psychotropic
13 medications that are not used for purposes of punishment;

14 B. "clinician" means a physician, licensed
15 psychologist, licensed independent social worker or licensed
16 professional clinical counselor;

17 C. "consistent with the least drastic means
18 principle" means that the habilitation or treatment and the
19 conditions of habilitation or treatment for the child,
20 separately and in combination:

21 (1) are no more harsh, hazardous or intrusive
22 than necessary to achieve acceptable treatment objectives for
23 the child;

24 (2) involve no restrictions on physical
25 movement and no requirement for residential care, except as

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1 reasonably necessary for the administration of treatment or for
2 the protection of the child or others from physical injury; and

3 (3) are conducted at the suitable available
4 facility closest to the child's place of residence;

5 D. "convulsive treatment" means any form of mental
6 health treatment that depends upon creation of a convulsion by
7 any means, including electroconvulsive treatment and insulin
8 coma treatment;

9 E. "developmental disability" means a severe
10 chronic disability that:

11 (1) is attributable to a mental or physical
12 impairment or a combination of mental or physical impairments;

13 (2) is manifested before a person reaches
14 twenty-two years of age;

15 (3) is expected to continue indefinitely;

16 (4) results in substantial functional
17 limitations in three or more of the following areas of major
18 life activities:

19 (a) self-care;

20 (b) receptive and expressive language;

21 (c) learning;

22 (d) mobility;

23 (e) self-direction;

24 (f) capacity for independent living; or

25 (g) economic self-sufficiency; and

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1 (5) reflects a person's need for a combination
2 and sequence of special, interdisciplinary or generic
3 treatments or other supports and services that are of lifelong
4 or extended duration and that are individually planned or
5 coordinated;

6 F. "evaluation facility" means a community mental
7 health or developmental disability program, a medical facility
8 having psychiatric or developmental disability services
9 available or, if none of the foregoing is reasonably available
10 or appropriate, the office of a licensed physician or a
11 licensed psychologist, any of which shall be capable of
12 performing a mental status examination adequate to determine
13 the need for involuntary treatment;

14 G. "experimental treatment" means any mental health
15 or developmental disabilities treatment that presents
16 significant risk of physical harm, but does not include
17 accepted treatment used in the competent practice of medicine
18 and psychology and supported by scientifically acceptable
19 studies;

20 H. "grave passive neglect" means failure to provide
21 for basic personal or medical needs or for one's own safety to
22 such an extent that it is more likely than not that serious
23 bodily harm will result in the near future;

24 I. "habilitation" means the process by which
25 professional persons and their staff assist [the

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1 ~~developmentally disabled~~] a child with a developmental
2 disability in acquiring and maintaining those skills and
3 behaviors that enable the child to cope more effectively with
4 the demands of [~~his~~] the child's own person and of [~~his~~] the
5 child's environment and to raise the level of [~~his~~] the child's
6 physical, mental and social efficiency. "Habilitation"
7 includes programs of formal, structured education and
8 treatment;

9 J. "likelihood of serious harm to oneself" means
10 that it is more likely than not that in the near future the
11 child will attempt to commit suicide or will cause serious
12 bodily harm to [~~himself~~] the child's self by violent or other
13 self-destructive means, including grave passive neglect;

14 K. "likelihood of serious harm to others" means
15 that it is more likely than not that in the near future the
16 child will inflict serious, unjustified bodily harm on another
17 person or commit a criminal sexual offense, as evidenced by
18 behavior causing, attempting or threatening such harm, which
19 behavior gives rise to a reasonable fear of such harm from the
20 child;

21 L. "mental disorder" means a substantial disorder
22 of the child's emotional processes, thought or cognition that
23 grossly impairs judgment, behavior or capacity to recognize
24 reality, but does not mean developmental disability;

25 M. "mental health or developmental disabilities

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1 professional" means a physician or other professional who, by
2 training or experience, is qualified to work with [~~individuals~~
3 ~~with~~] persons who have a mental [~~disorders~~] disorder or a
4 developmental [~~disabilities~~] disability;

5 N. "physician" or "licensed psychologist", when
6 used for the purpose of hospital admittance or discharge, means
7 a physician or licensed psychologist who has been granted
8 admitting privileges at a hospital licensed by the department
9 of health, if such privileges are required;

10 O. "psychosurgery" means those operations currently
11 referred to as lobotomy, psychiatric surgery and behavioral
12 surgery and all other forms of brain surgery if the surgery is
13 performed for the following purposes:

14 (1) modification or control of thoughts,
15 feelings, actions or behavior rather than the treatment of a
16 known and diagnosed physical disease of the brain;

17 (2) treatment of abnormal brain function or
18 normal brain tissue in order to control thoughts, feelings,
19 actions or behavior; or

20 (3) treatment of abnormal brain function or
21 abnormal brain tissue in order to modify thoughts, feelings,
22 actions or behavior when the abnormality is not an established
23 cause for those thoughts, feelings, actions or behavior.

24 "Psychosurgery" does not include prefrontal sonic
25 treatment in which there is no destruction of brain tissue;

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1 P. "residential treatment or habilitation program"
2 means diagnosis, evaluation, care, treatment or habilitation
3 rendered inside or on the premises of a mental health or
4 developmental disabilities facility, hospital, clinic,
5 institution, supervisory residence or nursing home when the
6 individual resides on the premises and where one or more of the
7 following measures is available for use:

8 (1) a mechanical device to restrain or
9 restrict the child's movement;

10 (2) a secure seclusion area from which the
11 child is unable to exit voluntarily;

12 (3) a facility or program designed for the
13 purpose of restricting the child's ability to exit voluntarily;
14 or

15 (4) the involuntary emergency administration
16 of psychotropic medication; and

17 Q. "treatment" means any effort to accomplish a
18 significant change in the mental or emotional condition or
19 behavior of the child."

20 Section 41. Section 32A-16-4 NMSA 1978 (being Laws 1989,
21 Chapter 290, Section 4, as amended) is amended to read:

22 "32A-16-4. POWERS AND DUTIES OF THE BOARD.--The child
23 development board shall:

24 A. recommend to the secretary of children, youth
25 and families the hiring of a director of child development;

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1 B. consider and adopt licensure requirements,
2 policies and procedures for individuals working in licensed or
3 registered health facilities with children from birth to age
4 five; provided that such licensure requirements shall not apply
5 to individuals working in group homes pursuant to Section
6 9-8-13 NMSA 1978;

7 C. consider and make recommendations to the [~~state~~
8 ~~board of~~] public education department regarding additional
9 licensure requirements for public school personnel working with
10 public school children up to age eight;

11 D. work with other state agencies to promote a
12 uniform and comprehensive method of licensing child care
13 personnel;

14 E. develop and adopt policies and procedures for
15 the office of child development;

16 F. develop levels of licensure for nonpublic school
17 personnel depending upon the age of children served, the
18 training facility used and the program in which the individual
19 is employed;

20 G. work with the department of health to develop
21 levels of licensure for nonpublic school personnel serving
22 children who are developmentally delayed or at risk for
23 developmental delay, birth through two years;

24 H. develop and adopt program criteria for state-
25 funded preschool programs serving children from birth to age

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1 five; provided that criteria shall not apply to programs
2 serving children who [~~are developmentally delayed~~] have a
3 developmental delay or are at risk for [~~developmental~~]
4 developing a delay, birth through two years, and programs
5 serving children who [~~are developmentally disabled~~] have a
6 developmental delay, three through five years; and

7 I. work with other state agencies to monitor the
8 implementation of state-funded preschool program criteria."

9 Section 42. Section 43-1-3 NMSA 1978 (being Laws 1977,
10 Chapter 279, Section 2, as amended) is amended to read:

11 "43-1-3. DEFINITIONS.--As used in the Mental Health and
12 Developmental Disabilities Code:

13 A. "aversive stimuli" means anything [~~which~~] that,
14 because it is believed to be unreasonably unpleasant,
15 uncomfortable or distasteful to the client, is administered or
16 done to the client for the purpose of reducing the frequency of
17 a behavior, but does not include verbal therapies, physical
18 restrictions to prevent imminent harm to self or others or
19 psychotropic medications [~~which~~] that are not used for purposes
20 of punishment;

21 B. "client" means any patient who is requesting or
22 receiving mental health services or any person requesting or
23 receiving developmental disabilities services or who is present
24 in a mental health or developmental disabilities facility for
25 the purpose of receiving such services or who has been placed

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1 in a mental health or developmental disabilities facility by
2 [~~his~~] the person's parent or guardian or by any court order;

3 C. "code" means the Mental Health and Developmental
4 Disabilities Code;

5 D. "consistent with the least drastic means
6 principle" means that the habilitation or treatment and the
7 conditions of habilitation or treatment for the client,
8 separately and in combination:

9 (1) are no more harsh, hazardous or intrusive
10 than necessary to achieve acceptable treatment objectives for
11 the client;

12 (2) involve no restrictions on physical
13 movement and no requirement for residential care except as
14 reasonably necessary for the administration of treatment or for
15 the protection of the client or others from physical injury;
16 and

17 (3) are conducted at the suitable available
18 facility closest to the client's place of residence;

19 E. "convulsive treatment" means any form of mental
20 health treatment [~~which~~] that depends upon creation of a
21 convulsion by any means, including but not limited to
22 electroconvulsive treatment and insulin coma treatment;

23 F. "court" means a district court of New Mexico;

24 G. "department" or "division" means the behavioral
25 health services division of the department of health;

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1 H. "developmental disability" means a disability of
2 a person [~~which~~] that is attributable to mental retardation,
3 cerebral palsy, autism or neurological dysfunction [~~which~~] that
4 requires treatment or habilitation similar to that provided to
5 persons with mental retardation;

6 I. "evaluation facility" means a community mental
7 health or developmental disability program, a medical facility
8 having psychiatric or developmental disability services
9 available, including the New Mexico behavioral health institute
10 at Las Vegas, the Los Lunas medical center or, if none of the
11 foregoing is reasonably available or appropriate, the office of
12 a licensed physician or a certified psychologist, any of which
13 shall be capable of performing a mental status examination
14 adequate to determine the need for involuntary treatment;

15 J. "experimental treatment" means any mental health
16 or developmental disabilities treatment [~~which~~] that presents
17 significant risk of physical harm, but does not include
18 accepted treatment used in competent practice of medicine and
19 psychology and supported by scientifically acceptable studies;

20 K. "grave passive neglect" means failure to provide
21 for basic personal or medical needs or for one's own safety to
22 such an extent that it is more likely than not that serious
23 bodily harm will result in the near future;

24 L. "habilitation" means the process by which
25 professional persons and their staff assist [~~the~~

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1 ~~developmentally disabled~~] a client with a developmental
2 disability in acquiring and maintaining those skills and
3 behaviors [~~which~~] that enable [~~him~~] the person to cope more
4 effectively with the demands of [~~his own person and of his~~] the
5 person's self and environment and to raise the level of [~~his~~]
6 the person's physical, mental and social efficiency.

7 "Habilitation" includes but is not limited to programs of
8 formal, structured education and treatment;

9 M. "likelihood of serious harm to oneself" means
10 that it is more likely than not that in the near future [~~the~~] a
11 person will attempt to commit suicide or will cause serious
12 bodily harm to [~~himself~~] the person's self by violent or other
13 self-destructive means, including but not limited to grave
14 passive neglect;

15 N. "likelihood of serious harm to others" means
16 that it is more likely than not that in the near future [~~the~~] a
17 person will inflict serious, unjustified bodily harm on another
18 person or commit a criminal sexual offense, as evidenced by
19 behavior causing, attempting or threatening such harm, which
20 behavior gives rise to a reasonable fear of such harm from the
21 person;

22 O. "mental [~~disorder~~] disability" means [~~the~~]
23 substantial disorder of [~~the~~] a person's emotional processes,
24 thought or cognition [~~which~~] that grossly impairs judgment,
25 behavior or capacity to recognize reality, but does not mean

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1 developmental disability;

2 P. "mental health or developmental disabilities
3 professional" means a physician or other professional who by
4 training or experience is qualified to work with [~~individuals~~
5 persons with a mental [~~disorders~~] disability or a developmental
6 [~~disabilities~~] disability;

7 Q. "physician" or "certified psychologist", when
8 used for the purpose of hospital admittance or discharge, means
9 a physician or certified psychologist who has been granted
10 admitting privileges at a hospital licensed by the department
11 of health, if such privileges are required;

12 R. "psychosurgery":
13 (1) means those operations currently referred
14 to as lobotomy, psychiatric surgery and behavioral surgery and
15 all other forms of brain surgery if the surgery is performed
16 for the purpose of the following:

17 [~~(1)~~] (a) modification or control of
18 thoughts, feelings, actions or behavior rather than the
19 treatment of a known and diagnosed physical disease of the
20 brain;

21 [~~(2)~~] (b) treatment of abnormal brain
22 function or normal brain tissue in order to control thoughts,
23 feelings, actions or behavior; or

24 [~~(3)~~] (c) treatment of abnormal brain
25 function or abnormal brain tissue in order to modify thoughts,

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1 feelings, actions or behavior when the abnormality is not an
2 established cause for those thoughts, feelings, actions or
3 behavior; and

4 (2) "psychosurgery" does not include
5 prefrontal sonic treatment in which there is no destruction of
6 brain tissue;

7 S. "residential treatment or habilitation program"
8 means diagnosis, evaluation, care, treatment or habilitation
9 rendered inside or on the premises of a mental health or
10 developmental disabilities facility, hospital, clinic,
11 institution or supervisory residence or nursing home when the
12 [~~individual~~] client resides on the premises; and

13 T. "treatment" means any effort to accomplish a
14 significant change in the mental or emotional condition or
15 behavior of the client."

16 Section 43. Section 43-1-4 NMSA 1978 (being Laws 1977,
17 Chapter 279, Section 3, as amended) is amended to read:

18 "43-1-4. LEGAL REPRESENTATION OF CLIENTS.--

19 A. [~~All~~] Clients shall be represented by counsel at
20 all proceedings under the code and shall be entitled to obtain
21 advice of counsel at any time regarding their status under the
22 code.

23 B. [~~When a client has not retained his own attorney~~
24 ~~and is unable to do so~~] The court shall appoint counsel to
25 represent [~~him~~] a client who has not retained counsel and is

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1 unable to do so. When appointing counsel, the court shall give
2 preference to nonprofit organizations offering representation
3 to ~~[mentally ill and developmentally disabled]~~ persons ~~[When]~~
4 with a mental illness or a developmental disability. A client
5 ~~[is not indigent, he]~~ shall be liable for the cost of ~~[his]~~
6 legal representation unless the client is indigent."

7 Section 44. Section 43-1-19 NMSA 1978 (being Laws 1977,
8 Chapter 279, Section 18, as amended) is amended to read:

9 "43-1-19. DISCLOSURE OF INFORMATION.--

10 A. Except as otherwise provided in the code, no
11 person shall, without the authorization of the client, disclose
12 or transmit any confidential information from which a person
13 well acquainted with the client might recognize the client as
14 the described person, or any code, number or other means that
15 can be used to match the client with confidential information
16 regarding ~~[him]~~ the client.

17 B. Authorization from the client shall not be
18 required for the disclosure or transmission of confidential
19 information in the following circumstances:

20 (1) when the request is from a mental health
21 or developmental disability professional or from an employee or
22 trainee working with ~~[mentally disordered or developmentally~~
23 ~~disabled persons]~~ a person with a mental disability or
24 developmental disability, to the extent ~~[their]~~ that the
25 practice, employment or training on behalf of the client

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1 requires [~~that they have~~] access to such information is
2 necessary;

3 (2) when such disclosure is necessary to
4 protect against a clear and substantial risk of imminent
5 serious physical injury or death inflicted by the client on
6 [~~himself~~] the client's self or another;

7 (3) when the disclosure of such information is
8 to the primary caregiver of the client and the disclosure is
9 only of information necessary for the continuity of the
10 client's treatment in the judgment of the treating physician or
11 certified psychologist who discloses the information; or

12 (4) when such disclosure is to an insurer
13 contractually obligated to pay part or all of the expenses
14 relating to the treatment of the client at the residential
15 facility. The information disclosed shall be limited to data
16 identifying the client, facility and treating or supervising
17 physician and the dates and duration of the residential
18 treatment. It shall not be a defense to an insurer's
19 obligation to pay that the information relating to the
20 residential treatment of the client, apart from information
21 disclosed pursuant to this section, has not been disclosed to
22 the insurer.

23 C. No authorization given for the transmission or
24 disclosure of confidential information shall be effective
25 unless it:

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- 1 (1) is in writing and signed; and
2 (2) contains a statement of the client's right
3 to examine and copy the information to be disclosed, the name
4 or title of the proposed recipient of the information and a
5 description of the use that may be made of the information.

6 D. The client has a right of access to confidential
7 information [~~about himself~~] and has the right to make copies of
8 any information and to submit clarifying or correcting
9 statements and other documentation of reasonable length for
10 inclusion with the confidential information. The statements
11 and other documentation shall be kept with the relevant
12 confidential information, shall accompany it in the event of
13 disclosure and shall be governed by the provisions of this
14 section to the extent they contain confidential information.
15 Nothing in this subsection shall prohibit the denial of access
16 to such records when a physician or other mental health or
17 developmental disabilities professional believes and notes in
18 the client's medical records that such disclosure would not be
19 in the best interests of the client. In any such case, the
20 client has the right to petition the court for an order
21 granting such access.

22 E. Where there exists evidence that the client
23 whose consent to disclosure of confidential information is
24 sought is incapable of giving or withholding valid consent and
25 the client does not have a guardian or treatment guardian

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1 appointed by a court, the person seeking such authorization
2 shall petition the court for the appointment of a treatment
3 guardian to make a substitute decision for the client, except
4 that if the client is less than fourteen years of age, the
5 client's parent or guardian is authorized to consent to
6 disclosure on behalf of the client.

7 F. Information concerning a client disclosed under
8 this section shall not be released to any other person, agency
9 or governmental entity or placed in files or computerized data
10 banks accessible to any persons not otherwise authorized to
11 obtain information under this section.

12 G. Nothing in the code shall limit the
13 confidentiality rights afforded by federal statute or
14 regulation."

15 Section 45. Section 50-4-21 NMSA 1978 (being Laws 1955,
16 Chapter 200, Section 2, as amended) is amended to read:

17 "50-4-21. DEFINITIONS.--As used in the Minimum Wage Act:

18 A. "employ" includes suffer or permit to work;

19 B. "employer" includes any individual, partnership,
20 association, corporation, business trust, legal representative
21 or any organized group of persons employing one or more
22 employees at any one time, acting directly or indirectly in the
23 interest of an employer in relation to any employee, but shall
24 not include the United States, the state or any political
25 subdivision thereof; and

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1 C. "employee" includes any individual employed by
2 any employer, but shall not include:

3 (1) any individual employed in domestic
4 service in or about a private home;

5 (2) any individual employed in a bona fide
6 executive, administrative or professional capacity and
7 [~~foremen~~] forepersons, superintendents and supervisors;

8 (3) any individual employed by the United
9 States or by the state or any political subdivision thereof;

10 (4) any individual engaged in the activities
11 of an educational, charitable, religious or nonprofit
12 organization where the employer-employee relationship does not,
13 in fact, exist or where the services rendered to such
14 organizations are on a voluntary basis. The employer-employee
15 relationship shall not be deemed to exist with respect to any
16 individual being served for purposes of rehabilitation by a
17 charitable or nonprofit organization, notwithstanding the
18 payment to the individual of a stipend based upon the value of
19 the work performed by the individual;

20 (5) [~~salesmen~~] salespersons or employees
21 compensated upon piecework, flat rate schedules or commission
22 basis;

23 (6) students regularly enrolled in primary or
24 secondary schools working after school hours or on vacation;

25 (7) registered apprentices and learners

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1 otherwise provided by law;

2 (8) persons eighteen years of age or under who
3 are not students in a primary, secondary, vocational or
4 training school;

5 (9) persons eighteen years of age or under who
6 are not graduates of a secondary school;

7 (10) persons employed by ambulance services;

8 (11) G.I. bill trainees while under training;

9 (12) seasonal employees of any employer
10 obtaining and holding a valid certificate issued annually by
11 the ~~[state labor commissioner]~~ director of the labor and
12 industrial division of the labor department. The certificate
13 shall state the job designations and total number of employees
14 to be exempted. In approving or disapproving an application
15 for a certificate of exemption, the ~~[commissioner]~~ director
16 shall consider the following:

17 (a) whether such employment shall be at
18 an educational, charitable or religious youth camp or retreat;

19 (b) that such employment will be of a
20 temporary nature;

21 (c) that the individual will be
22 furnished ~~[his]~~ room and board in connection with such
23 employment, or if the camp or retreat is a day camp or retreat,
24 the individual will be furnished board in connection with such
25 employment;

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1 (d) the purposes for which the camp or
2 retreat is operated;

3 (e) the job classifications for the
4 positions to be exempted; and

5 (f) any other factors that the
6 ~~[commissioner]~~ director deems necessary to consider;

7 (13) any employee employed in agriculture:

8 (a) if such employee is employed by an
9 employer who did not, during any calendar quarter during the
10 preceding calendar year, use more than five hundred man-days of
11 agricultural labor;

12 (b) if such employee is the parent,
13 spouse, child or other member of ~~[his]~~ the employer's immediate
14 family; for the purpose of this subsection, employer shall
15 include the principal stockholder of a family corporation;

16 (c) if such employee: 1) is employed as
17 a hand-harvest laborer and is paid on a piece-rate basis in an
18 operation ~~[which]~~ that has been, and is customarily and
19 generally recognized as having been, paid on a piece-rate basis
20 in the region of employment; 2) commutes daily from ~~[his]~~ the
21 employee's permanent residence to the farm on which ~~[he]~~ the
22 employee is so employed; and 3) has been employed in
23 agriculture less than thirteen weeks during the preceding
24 calendar year;

25 (d) if such employee, other than an

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1 employee described in Subparagraph (c) of this paragraph: 1)
2 is sixteen years of age or under and is employed as a hand-
3 harvest laborer, is paid on a piece-rate basis in an operation
4 [~~which~~] that has been, and is generally recognized as having
5 been, paid on a piece-rate basis in the region of employment;
6 2) is employed on the same farm as [~~his~~] the employee's parent
7 or person standing in the place of [~~his~~] the parent; and 3) is
8 paid at the same piece-rate as employees over age sixteen are
9 paid on the same farm; or

10 (e) if such employee is principally
11 engaged in the range production of livestock; or

12 (14) employees of charitable, religious or
13 nonprofit organizations who reside on the premises of group
14 homes operated by such charitable, religious or nonprofit
15 organizations for [~~mentally retarded or emotionally or~~
16 ~~developmentally disabled~~] persons who have a mental, emotional
17 or developmental disability."

18 Section 46. Section 50-4-23 NMSA 1978 (being Laws 1967,
19 Chapter 242, Section 1) is amended to read:

20 "50-4-23. [~~HANDICAPPED~~] PERSONS WITH A DISABILITY--
21 MINIMUM WAGE--~~[LABOR COMMISSIONER]~~ DIRECTOR POWERS AND
22 DUTIES.--

23 A. The [~~state labor commissioner~~] director of the
24 labor and industrial division of the labor department, to the
25 extent necessary in order to prevent curtailment of

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1 opportunities for employment, shall, by regulation, provide for
2 the employment under special certificates of individuals,
3 including individuals employed in agriculture, whose earning or
4 productive capacity is impaired by physical or mental
5 [~~deficiency~~] disability or injury or any other disability, at
6 wages [~~which~~] that are lower than the minimum wage applicable
7 under Section [~~59-3-22 New Mexico Statutes Annotated, 1953~~
8 ~~Compilation~~] 50-4-22 NMSA 1978, but not less than fifty percent
9 of such wage.

10 B. The [~~state labor commissioner~~] director, pursuant
11 to [~~his~~] regulations and upon certification of any state agency
12 administering or supervising the administration of vocational
13 rehabilitation services, may issue special certificates [~~which~~]
14 that allow the holder thereof to work at wages [~~which~~] that are
15 less than those required by Subsection A of this section and
16 [~~which~~] that are related to the workers' productivity, for the
17 employment of:

18 (1) [~~handicapped~~] workers with a disability
19 who are engaged in work [~~which~~] that is incidental to training
20 or evaluation programs; and

21 (2) [~~multihandicapped individuals~~] persons
22 with multiple disabilities and other [~~individuals~~] persons
23 whose earning capacity is so severely impaired that they are
24 unable to engage in competitive employment.

25 C. The [~~state labor commissioner~~] director may, by

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1 regulation or order, provide for the employment of [~~handicapped~~
2 ~~individuals~~] persons with a disability in work activities
3 centers under special certificates at wages [~~which~~] that are
4 less than the minimums applicable under Section [~~59-2-22 New~~
5 ~~Mexico Statutes Annotated, 1953 Compilation~~] 50-4-22 NMSA 1978,
6 or less than that prescribed in Subsection A of this section,
7 and [~~which~~] that constitute equitable compensation for such
8 [~~individuals~~] persons. As used in this subsection, "work
9 activities centers" means centers planned and designed
10 exclusively to provide therapeutic activities for [~~handicapped~~]
11 persons with a disability whose physical or mental [~~impairment~~]
12 disability is so severe as to make their productive capacity
13 inconsequential.

14 D. The state agency administering or supervising
15 the administration of vocational rehabilitation may issue a
16 temporary certificate for a period not to exceed ninety days
17 pursuant to Subsections A, B and C of this section and may
18 request an extension of the certification by the [~~state labor~~
19 ~~commissioner~~] director when it is determined that the severity
20 of disability of an individual or circumstances warrants an
21 extension of the certification."

22 Section 47. Section 58-18-3.1 NMSA 1978 (being Laws
23 1982, Chapter 86, Section 3, as amended) is amended to read:

24 "58-18-3.1. ADDITIONAL DEFINITIONS--MULTIPLE-FAMILY
25 DWELLINGS, TRANSITIONAL AND CONGREGATE HOUSING FACILITIES.--

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1 As used in the Mortgage Finance Authority Act:

2 A. "multiple-family dwelling project" means
3 residential housing that is designed for occupancy by more than
4 four persons or families living independently of each other or
5 living in a congregate housing facility, at least sixty percent
6 of whom are persons and families of low or moderate income,
7 including without limitation persons of low or moderate income
8 who are elderly and [~~handicapped~~] who have a disability as
9 determined by the authority, provided that the percentage of
10 low-income persons and families shall be at least the minimum
11 required by federal tax law;

12 B. "transitional housing facility" means
13 residential housing that is designed for temporary or
14 transitional occupancy by persons or families of low or
15 moderate income or special needs;

16 C. "congregate housing facility" means residential
17 housing designed for occupancy by more than four persons or
18 families of low or moderate income living independently of each
19 other. The facility may contain group dining, recreational,
20 health care or other communal facilities and each unit in a
21 congregate housing facility shall contain at least its own
22 living, sleeping and bathing facilities;

23 D. "project mortgage loan" means a mortgage loan
24 made to a sponsor to finance project costs of a multiple-family
25 dwelling or transitional or congregate housing [~~project~~]

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1 facility; and

2 E. "sponsor" means an individual, association,
3 corporation, joint venture, partnership, limited partnership,
4 trust or any combination thereof that has been approved by the
5 authority as qualified to own and maintain a multiple-family
6 dwelling or transitional or congregate housing [~~project~~]
7 facility in New Mexico, maintains its principal office or a
8 branch office in New Mexico and has agreed to subject itself to
9 the regulatory powers of the authority and the jurisdiction of
10 the courts of the state."

11 Section 48. Section 60-13-44 NMSA 1978 (being Laws 1967,
12 Chapter 199, Section 52, as amended) is amended to read:

13 "60-13-44. TRADE BUREAUS--STANDARDS--CONFLICTS.--

14 A. The electrical bureau shall recommend to the
15 commission minimum standards for the installation or use of
16 electrical wiring. The recommendations shall substantially
17 embody the applicable provisions of an electrical code for
18 safety to life and property promulgated by a nationally
19 recognized association and developed through an open, balanced
20 consensus process.

21 B. The mechanical bureau shall recommend to the
22 commission minimum standards for the installation of all
23 fixtures, consumers' gas pipe, appliances and materials
24 installed in the course of a mechanical installation. The
25 recommendations shall be in substantial conformity with codes

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1 and standards that are developed through an open, balanced
2 consensus process. Manufacturers may choose the independent
3 certification organization they wish to certify their products
4 if the certification organization is accredited by the American
5 national standards institute or other accreditation
6 organization selected by the commission.

7 C. The general construction bureau shall recommend
8 to the commission minimum standards for the construction,
9 alteration or repair of buildings, except for those activities
10 within the jurisdiction of the electrical bureau or the
11 mechanical bureau. The recommendations shall substantially
12 embody the applicable provisions of a nationally recognized
13 building code that is developed through an open, balanced
14 consensus process and shall give due regard to physical,
15 climatic and other conditions peculiar to New Mexico. The
16 standards shall include the authority to permit or deny
17 occupancy of existing and new buildings or structures and
18 authority to accept or deny the use of materials manufactured
19 within or without the state. The general construction bureau
20 may set minimum fees or charges for conducting tests to verify
21 claims or specifications of manufacturers.

22 D. The general construction bureau shall recommend
23 to the commission additional specifications for any public
24 building constructed in the state through expenditure of state,
25 county or municipal funds, bonds and other revenues, which

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1 specifications shall embody standards making the building
2 accessible to [~~individuals who are physically handicapped~~]
3 persons who have a physical disability, and the specifications
4 shall conform substantially with those contained in a
5 nationally recognized standard for making public facilities
6 accessible to [~~the physically handicapped~~] persons with a
7 physical disability that is developed through an open, balanced
8 consensus process. All orders and rules recommended by the
9 general construction bureau and adopted by the commission under
10 the provisions of this section shall be printed and distributed
11 to all licensed contractors, architects and engineers and to
12 the governor's commission on disability. The orders and rules
13 shall take effect on a date fixed by the commission, which
14 shall not be less than thirty days after their adoption by the
15 commission, and shall have the force of law.

16 E. The general construction bureau shall have the
17 right of review of all specifications of public buildings and
18 the responsibility to ensure compliance with the adopted
19 standards.

20 F. All political subdivisions of the state are
21 subject to the provisions of codes adopted and approved under
22 the Construction Industries Licensing Act. Such codes
23 constitute a minimum requirement for the codes of political
24 subdivisions.

25 G. The trade bureaus within their respective

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1 jurisdictions shall recommend to the commission standards that
2 are developed through an open, balanced consensus process for
3 the installation or use of electrical wiring, the installation
4 of all fixtures, consumers' gas pipe, appliances and materials
5 installed in the course of mechanical installation and the
6 construction, alteration or repair of all buildings intended
7 for use by [~~the physically handicapped~~] persons with a physical
8 disability or persons requiring special facilities to
9 accommodate the aged. The recommendations shall give due
10 regard to physical, climatic and other conditions peculiar to
11 New Mexico.

12 H. The trade bureaus within their respective
13 jurisdictions shall recommend to the commission standards for
14 the construction, alteration, repair, use or occupancy of
15 manufactured commercial units, modular homes and
16 premanufactured homes. The recommendations shall substantially
17 embody the applicable provisions or standards for the safety to
18 life, health, welfare and property approved by the nationally
19 recognized standards association and developed through an open,
20 balanced consensus process and shall give due regard to
21 physical, climatic and other conditions peculiar to New Mexico.
22 Wherever existing state codes or standards conflict with the
23 codes and standards adopted by the commission under the
24 provisions of this subsection, the provisions of the applicable
25 New Mexico building codes adopted pursuant to the Construction

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1 Industries Licensing Act and the LPG and CNG Act in effect at
2 the applicable time shall exclusively apply and control, except
3 for codes and standards for mobile housing units.

4 I. Modular homes and premanufactured homes in
5 existence at the time of the effective date of the Construction
6 Industries Licensing Act shall have their use or occupancy
7 continued if such use or occupancy was legal on the effective
8 date of that act, provided such continued use or occupancy is
9 not dangerous to life. Any change in the use or occupancy or
10 any major alteration or repair of a modular home or
11 premanufactured home shall comply with all codes and standards
12 adopted under the Construction Industries Licensing Act.

13 J. The commission shall review all recommendations
14 made under the provisions of this section and shall by rule
15 adopt standards and codes that substantially comply with the
16 requirements of this section that apply to the recommendations
17 of the trade bureaus."

18 Section 49. Section 66-7-352.2 NMSA 1978 (being Laws
19 1983, Chapter 45, Section 2) is amended to read:

20 "66-7-352.2. LEGISLATIVE INTENT.--The policy and intent
21 of [~~this~~] the legislature is declared to be as follows:

22 A. that [~~this~~] the legislature finds there is a
23 significant safety hazard for [~~mobility-impaired~~] persons with
24 a physical disability crossing through parking lots and that
25 this hazard is greatly reduced when parking is provided

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1 adjacent to a building entrance;

2 B. that many commercial and governmental
3 establishments now provide reserved parking for [~~disabled~~]
4 persons with a disability, ensuring full and equal opportunity
5 for [~~the disabled~~] persons with a disability to maintain
6 independence and self-respect; and

7 C. that ultimately society will benefit from the
8 increased interaction of [~~the disabled~~] persons with a
9 disability with the mainstream that these parking spaces will
10 provide."

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